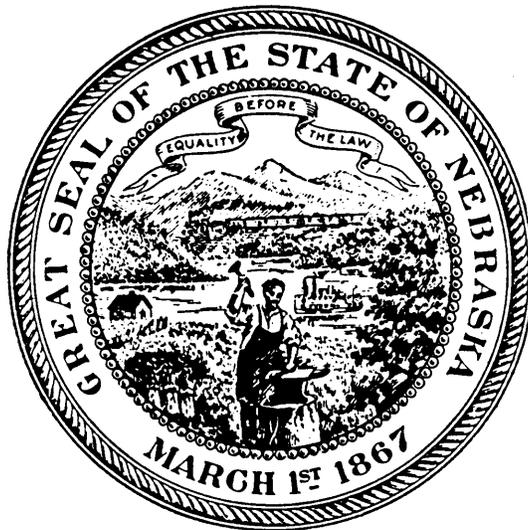


REVISED STATUTES
OF
NEBRASKA

REISSUE OF VOLUME 3
2008

COMPRISING ALL THE STATUTORY LAWS OF A
GENERAL NATURE IN FORCE AT DATE OF
PUBLICATION ON THE SUBJECTS ASSIGNED
TO CHAPTERS 37 TO 43, INCLUSIVE



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Revisor of Statutes

For the benefit of the
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CERTIFICATE OF AUTHENTICATION

I, Joanne M. Pepperl, Revisor of Statutes, do hereby certify that the Reissue of Volume 3 of the Revised Statutes of Nebraska, 2008, contains all of the laws set forth in Chapters 37 to 43, appearing in Volume 3, Revised Statutes of Nebraska, 2004, as amended and supplemented by the Ninety-ninth Legislature, First Session, 2005, through the One Hundredth Legislature, Second Session, 2008, of the Nebraska Legislature, in force at the time of publication hereof.

Joanne M. Pepperl
Revisor of Statutes

Lincoln, Nebraska
August 1, 2008

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GAME AND PARKS

**CHAPTER 37
GAME AND PARKS**

Article.

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ARTICLE 1

GAME AND PARKS COMMISSION

Section

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37-101 Game and Parks Commission; members; qualifications; term; appointment; removal; limitation on reappointment.

(1)(a) The Game and Parks Commission shall consist of nine members, one from each of the eight districts provided for by section 37-102 and one at-large member, and shall be appointed by the Governor with the consent of a majority of all members of the Legislature.

(b) Members of the commission shall be legal residents and citizens of Nebraska and shall be well informed and interested in matters under the jurisdiction of the commission.

(c) At least three members of the commission shall be actually engaged in agricultural pursuits.

(d) Not more than five of the members of the commission shall be affiliated with the same political party. The political party affiliation of each prospective member shall be determined as of the statewide general election prior to his or her appointment.

(e) Members of the commission representing districts provided for by section 37-102 shall be bona fide residents of the district from which they are appointed.

(f) When a member ceases to be a member of the political party determined under subdivision (d) of this subsection, ceases to be a bona fide resident of the district, or ceases to be actually engaged in agricultural pursuits if required to meet the qualifications for his or her appointment, the office shall be immediately vacated.

(2)(a) When the term of a member of the commission representing a district provided for by section 37-102 expires, a successor shall be appointed as provided in subsection (1) of this section from the same district as the member whose term has expired. The terms of the members serving district numbers 4, 6, and 8 on January 1, 2009, shall be extended to January 15 of the year following the expiration of their current terms. Members appointed for terms expiring prior to January 1, 2012, shall be appointed for five-year terms. Members appointed for terms expiring on or after January 1, 2012, shall be appointed for four-year terms. The terms of all members shall begin on January 15, and the term of the at-large member shall begin January 15, 2009.

(b) 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. An appointment made for the remainder of the term shall not be considered a full term.

(c) No person who has served two full terms shall be eligible for reappointment as a member of the commission.

(3) If the Legislature is not in session when members of the commission are appointed by the Governor, they shall take office and act as recess appointees until the Legislature next thereafter convenes.

(4) Members may be removed by the Governor for inefficiency, neglect of duty, or misconduct in office, but only after delivering to the member a copy of the charges and affording an opportunity of being publicly heard in person or by counsel in his or her own defense, upon not less than ten days' notice. Such hearing shall be held before the Governor.

If such member is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such member and his or her findings thereon, together with a complete record of the proceedings.

Source: Laws 1929, c. 113, § 1, p. 443; C.S.1929, § 81-6501; Laws 1935, c. 174, § 1, p. 639; C.S.Supp.,1941, § 81-6501; R.S.1943, § 81-801; Laws 1947, c. 315, § 1, p. 953; Laws 1949, c. 282, § 1, p. 978; Laws 1957, c. 377, § 1, p. 1318; Laws 1963, c. 512, § 1, p. 1626; Laws 1969, c. 796, § 1, p. 3003; R.S.1943, (1996), § 81-801; Laws 1998, LB 922, § 1; Laws 2002, LB 1003, § 12; Laws 2008, LB1049, § 1.

Operative date January 1, 2009.

The commission is a department of state government, has an actual legal existence, and is a legal entity. Duerfeldt v. State, 184 Neb. 242, 166 N.W.2d 737 (1969).

37-102 Game and Parks Commission; districts.

For purposes of section 37-101, the state is hereby divided into eight districts. The limits and designations of the eight districts shall be as follows:

- (1) District No. 1. The counties of Richardson, Pawnee, Nemaha, Johnson, Otoe, Cass, Sarpy, Saunders, Butler, Gage, Seward, Saline, and Jefferson;
- (2) District No. 2. Douglas County;
- (3) District No. 3. The counties of Washington, Dodge, Colfax, Platte, Merrick, Nance, Boone, Madison, Stanton, Cuming, Burt, Thurston, Wayne, Pierce, Antelope, Knox, Cedar, Dixon, and Dakota;
- (4) District No. 4. The counties of Thayer, Nuckolls, Webster, Adams, Clay, Fillmore, York, Polk, Hamilton, Hall, Buffalo, Kearney, and Franklin;
- (5) District No. 5. The counties of Harlan, Furnas, Red Willow, Hitchcock, Dundy, Chase, Hayes, Frontier, Gosper, Phelps, Dawson, Lincoln, and Perkins;
- (6) District No. 6. The counties of Howard, Greeley, Wheeler, Sherman, Valley, Garfield, Holt, Boyd, Keya Paha, Rock, Brown, Loup, Blaine, Custer, Logan, McPherson, Arthur, Grant, Hooker, Thomas, and Cherry;
- (7) District No. 7. The counties of Deuel, Garden, Keith, Sheridan, Cheyenne, Morrill, Box Butte, Dawes, Sioux, Scotts Bluff, Banner, and Kimball; and
- (8) District No. 8. Lancaster County.

Source: Laws 1947, c. 315, § 2, p. 954; Laws 1963, c. 513, § 1, p. 1628; R.S.1943, (1996), § 81-801.01; Laws 1998, LB 922, § 2; Laws 2002, LB 1003, § 13.

37-103 Game and Parks Commission; chairperson; election.

The members of the Game and Parks Commission shall meet in January of each year and shall elect a chairperson of the commission from the membership.

Source: Laws 1929, c. 113, § 2, p. 443; C.S.1929, § 81-6502; Laws 1935, c. 174, § 2, p. 640; C.S.Supp.,1941, § 81-6502; R.S.1943, § 81-802; R.S.1943, (1996), § 81-802; Laws 1998, LB 922, § 3.

37-104 Game and Parks Commission; meetings; special meeting; notice; place; quorum; agreement with city of Lincoln for building and facilities; location.

Regular meetings of the Game and Parks Commission shall be held quarterly. Special meetings may be held upon call of the chairperson or pursuant to a call signed by three other members, of which the chairperson shall have three days' written notice. No official action shall be taken except at a public meeting at the headquarters of the commission or at a public meeting at a location within the state as determined by a majority of members of the commission. Four members of the commission shall constitute a quorum for the transaction of business.

All regular meetings held in Lincoln, Nebraska, shall be held in suitable offices to be provided under the authority of Chapter 72, article 14. The Game and Parks Commission is authorized to enter into an agreement with the city of Lincoln providing for the supplying by the city of Lincoln to the State of Nebraska for the commission of a headquarters office building and related buildings and facilities therefor, including the parking of motor vehicles, to be located on real estate which is north of Holdrege Street and east of 33rd Street.

Source: Laws 1969, c. 776, § 1, p. 2947; Laws 1997, LB 141, § 1; R.S.Supp.,1997, § 81-803.01; Laws 1998, LB 922, § 4.

37-105 Game and Parks Commission; expenses; per diem.

The members of the Game and Parks Commission, other than the secretary, shall be reimbursed for all actual and necessary traveling and other expenses incurred in the discharge of their official duties as provided in sections 81-1174 to 81-1177 and shall be allowed a per diem of thirty-five dollars for days actually away from home on business of the commission, not exceeding forty-five days in any one year.

Source: Laws 1929, c. 113, § 4, p. 444; C.S.1929, § 81-6504; Laws 1933, c. 96, § 17, p. 396; Laws 1941, c. 180, § 7, p. 704; C.S.Supp.,1941, § 81-6504; R.S.1943, § 81-804; Laws 1947, c. 315, § 3, p. 954; Laws 1967, c. 584, § 1, p. 1973; Laws 1977, LB 482, § 1; Laws 1981, LB 204, § 172; Laws 1988, LB 864, § 13; R.S.1943, (1996), § 81-804; Laws 1998, LB 922, § 5.

37-106 Game and Parks Commission; secretary; qualifications; terms; compensation; duties; removal.

The Game and Parks Commission shall appoint a secretary, who will act as its director and chief conservation officer and be in charge of its activities. He or she shall be a person with knowledge of and experience in the requirements of the protection, propagation, conservation, and restoration of the wildlife resources of the state. The secretary shall serve for a term of six years. The secretary shall not hold any other public office and shall devote his or her entire time to the service of the state in the discharge of his or her official duties. The secretary shall receive such compensation as the commission may determine and shall be reimbursed for all actual and necessary traveling and other expenses incurred by him or her in the discharge of his or her official duties as provided in sections 81-1174 to 81-1177. Before entering upon the duties of his or her office, the secretary shall take and subscribe to the

constitutional oath of office, and shall, in addition thereto, swear or affirm that he or she holds no other public office, nor any position under any political committee or party. Such oath or affirmation shall be filed in the office of the Secretary of State. Under the direction of the commission, the secretary shall have general supervision and control of all activities and functions of the commission, shall enforce all the provisions of the law of the state relating to wild animals, birds, fish, parks, and recreational areas, and shall exercise all necessary powers incident thereto not specifically conferred on the commission. The secretary may be removed by the commission for inefficiency, neglect of duty, or misconduct in office, but only by a majority vote of the commissioners after delivering to the secretary a copy of the charges and affording him or her an opportunity of being publicly heard in person or by counsel in his or her own defense. If the secretary is removed, the commission shall place in its minutes a complete statement of all charges made against the secretary and its findings thereon, together with a complete record of the proceedings and the recorded vote thereon.

Source: Laws 1929, c. 113, § 10, p. 446; C.S.1929, § 81-6510; Laws 1935, c. 174, § 7, p. 642; C.S.Supp.,1941, § 81-6510; R.S.1943, § 81-807; Laws 1967, c. 36, § 7, p. 163; Laws 1967, c. 585, § 10, p. 1979; Laws 1981, LB 204, § 173; R.S.1943, (1996), § 81-807; Laws 1998, LB 922, § 6.

Cross References

For provisions relating to oath of office and bond approval generally, see Article XV, section 1, Constitution of Nebraska, and Chapter 11.

37-107 Game and Parks Commission; secretary; duties; deposit of receipts from administration of game and fish laws; credited to State Game Fund.

It shall be the duty of the secretary to keep an exact and detailed account and record of the activities of the Game and Parks Commission, and on September 15 of each year, he or she shall submit to the Governor a report of all expenditures made during the preceding fiscal year, vouchers for which shall be kept on file in the office of the secretary and open to the inspection of the Governor, Auditor of Public Accounts, and members of the Legislature. All money received by the commission from the administration of fish and game shall be remitted to the State Treasurer for credit to the State Game Fund except as otherwise provided in the Game Law.

Source: Laws 1929, c. 113, § 9, p. 446; C.S.1929, § 81-6509; R.S.1943, § 81-808; Laws 1961, c. 427, § 1, p. 1335; R.S.1943, (1996), § 81-808; Laws 1998, LB 922, § 7.

37-108 Game and Parks Commission; employees; appointment; compensation; interference with an election; prohibited.

The secretary, under the direction of the Game and Parks Commission acting in official session, is authorized to appoint such conservation officers, agents, office employees, and such other employees as may be required efficiently to enforce the laws for the protection of wildlife and for the administration of hatcheries, game preserves, recreational areas, and parks. In addition to the necessary conservation officers, the commission shall specify and require the appointment of such other agents and employees as may be required to execute its plans and projects and to administer its affairs, and the commission shall

prescribe their duties. The commission shall fix the compensation of conservation officers and other agents and employees. Conservation officers and other agents and employees may be removed by the commission but only after a hearing. While retaining the right to vote as he or she may please and to express privately his or her opinion on all political subjects, no employee or officer of the commission shall use his or her official authority or influence for the purpose of interfering with an election or affecting the results thereof.

Source: Laws 1929, c. 113, § 11, p. 446; C.S.1929, § 81-6511; Laws 1935, c. 174, § 8, p. 643; C.S.Supp.,1941, § 81-6511; R.S.1943, § 81-809; Laws 1967, c. 585, § 11, p. 1980; Laws 1977, LB 398, § 2; R.S.1943, (1996), § 81-809; Laws 1998, LB 922, § 8.

37-109 Game and Parks Commission; officers; oath.

Each commissioner and every conservation officer and each administrative officer under the Game and Parks Commission, before entering upon the duties of his or her office, shall subscribe and take the constitutional oath of office, which shall be filed in the office of the Secretary of State.

Source: Laws 1929, c. 113, § 13, p. 447; C.S.1929, § 81-6513; Laws 1935, c. 174, § 10, p. 644; C.S.Supp.,1941, § 81-6513; R.S. 1943, § 81-810; R.S.1943, (1996), § 81-810; Laws 1998, LB 922, § 9.

Cross References

For constitutional oath, see Article XV, section 1, Constitution of Nebraska.

37-110 Game and Parks Commission; commissioners, officers, and employees; bond or insurance.

Each member of the Game and Parks Commission, all conservation officers, managers and custodians of parks, hatcheries, and captive wildlife facilities, all other agents, and all employees thereof, shall be bonded or insured as required by section 11-201.

Source: Laws 1929, c. 113, § 14, p. 447; C.S.1929, § 81-6514; Laws 1935, c. 174, § 11, p. 644; C.S.Supp.,1941, § 81-6514; R.S. 1943, § 81-811; Laws 1967, c. 585, § 12, p. 1980; Laws 1978, LB 653, § 32; R.S.1943, (1996), § 81-811; Laws 1998, LB 922, § 10; Laws 1999, LB 176, § 1; Laws 2004, LB 884, § 18.

ARTICLE 2

GAME LAW GENERAL PROVISIONS

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37-201 Law, how cited.

Sections 37-201 to 37-811 shall be known and may be cited as the Game Law.

Source: Laws 1929, c. 112, I, § 2, p. 408; C.S.1929, § 37-102; R.S.1943, § 37-102; Laws 1989, LB 34, § 2; Laws 1989, LB 251, § 1; Laws 1991, LB 403, § 2; Laws 1993, LB 830, § 7; Laws 1994, LB 1088, § 2; Laws 1994, LB 1165, § 6; Laws 1995, LB 274, § 1; Laws 1996, LB 923, § 2; Laws 1997, LB 19, § 2; R.S.Supp.,1997, § 37-102; Laws 1998, LB 922, § 11; Laws 1999, LB 176, § 2; Laws 2000, LB 788, § 2; Laws 2002, LB 1003, § 14; Laws 2003, LB 305, § 1; Laws 2004, LB 826, § 1; Laws 2005, LB 121, § 2; Laws 2005, LB 162, § 1; Laws 2007, LB504, § 1.

37-202 Definitions, where found.

For purposes of the Game Law, unless the context otherwise requires, the definitions found in sections 37-203 to 37-247 are used.

Source: Laws 1929, c. 112, I, § 1, p. 407; C.S.1929, § 37-101; Laws 1931, c. 75, § 1, p. 199; Laws 1937, c. 89, § 1, p. 290; Laws 1941, c. 72, § 1, p. 300; C.S.Supp.,1941, § 37-101; Laws 1943, c. 94, § 1, p. 321; R.S.1943, § 37-101; Laws 1949, c. 100, § 1, p. 275; Laws 1953, c. 123, § 1, p. 386; Laws 1957, c. 139, § 1, p. 464; Laws 1959, c. 148, § 2, p. 563; Laws 1963, c. 200, § 1, p. 647; Laws 1965, c. 194, § 1, p. 592; Laws 1967, c. 216, § 1, p. 578; Laws 1971, LB 733, § 8; Laws 1973, LB 331, § 1; Laws 1975, LB 195, § 1; Laws 1975, LB 142, § 1; Laws 1976, LB 861, § 1; Laws 1981, LB 72, § 1; Laws 1985, LB 557, § 1; Laws 1987, LB 154, § 1; Laws 1989, LB 34, § 1; Laws 1993, LB 121, § 201; Laws 1993, LB 830, § 6; Laws 1994, LB 884, § 57; Laws 1994, LB 1088, § 1; Laws 1994, LB 1165, § 5; Laws 1995, LB 259, § 1; Laws 1997, LB 173, § 1; R.S.Supp.,1997, § 37-101; Laws 1998, LB 922, § 12; Laws 1999, LB 176, § 3; Laws 2002, LB 1003, § 15.

37-203 Aquaculture, defined.

Aquaculture has the meaning found in section 2-3804.01.

Source: Laws 1998, LB 922, § 13.

37-204 Aquaculture facility, defined.

Aquaculture facility means any facility, structure, lake, pond, tank, or tanker truck used for the purpose of propagating, selling, brokering, trading, or transporting cultured aquatic stock.

Source: Laws 1998, LB 922, § 14.

37-205 Aquaculturist, defined.

Aquaculturist means any individual, partnership, limited liability company, or corporation, other than an employee of a state or federal hatchery, involved in producing, transporting, or marketing cultured aquatic stock or products thereof.

Source: Laws 1998, LB 922, § 15.

37-206 Aquatic disease, defined.

Aquatic disease means any departure from a normal state of health of aquatic organisms caused by disease agents.

Source: Laws 1998, LB 922, § 16.

37-207 Aquatic organism, defined.

Aquatic organism means an individual member of any species of fish, mollusk, crustacean, aquatic reptile, aquatic amphibian, aquatic insect, or other aquatic invertebrate. Aquatic organism includes the viable gametes, eggs or sperm, of an aquatic organism.

Source: Laws 1998, LB 922, § 17.

37-208 Bait, defined.

Bait means anything used in luring fish or other animals to a hook, snare, enclosure, or net for the purpose of taking them.

Source: Laws 1998, LB 922, § 18.

37-209 Baitfish, defined.

Baitfish means those species of fish, as listed in rules and regulations of the commission, that are collected from the wild or bought from legal sources and sold for use as bait.

Source: Laws 1998, LB 922, § 19; Laws 1999, LB 176, § 4.

37-209.01 Captive, defined.

Captive, as it pertains to captive wildlife, captive wild birds, or captive wild mammals, means the condition of captivity.

Source: Laws 2002, LB 1003, § 16.

37-210 Captive propagation, defined.

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

Source: Laws 1998, LB 922, § 20.

37-210.01 Captivity, defined.

Captivity means a condition which limits or restricts the free egress or free range of wild birds, wild mammals, or wildlife by the use of fences, barriers, or restraints.

Source: Laws 2002, LB 1003, § 17.

37-211 Commercial aquaculturist, defined.

Commercial aquaculturist means an aquaculturist engaged in the business of growing, selling, brokering, or processing live or viable aquatic organisms for commercial purposes.

Source: Laws 1998, LB 922, § 21.

37-212 Commercial exploitation, defined.

Commercial exploitation means buying, selling, or bartering for economic or financial gain by any person, partnership, limited liability company, association, or corporation.

Source: Laws 1998, LB 922, § 22.

37-213 Commercial fish, defined.

Commercial fish means those species of fish, other than baitfish, as listed in rules and regulations of the commission, allowed to be harvested from the wild or bought, sold, or bartered for economic gain.

Source: Laws 1998, LB 922, § 23.

37-214 Commission, defined.

Commission means the Game and Parks Commission.

Source: Laws 1998, LB 922, § 24.

37-215 Conservation, defined.

Conservation means the use of all methods and procedures for the purpose of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintaining such levels. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, transplantation, regulated taking, and the periodic or total protection of species or populations.

Source: Laws 1998, LB 922, § 25.

37-216 Cultured aquatic stock, defined.

Cultured aquatic stock means aquatic organisms raised from privately owned stocks and aquatic organisms lawfully acquired and held in private ownership until they become intermingled with wild aquatic organisms.

Source: Laws 1998, LB 922, § 26.

37-217 Disabled person, defined.

Disabled person means any person certified by a physician to have a permanent physical impairment which limits personal mobility and results in an inability to travel unassisted more than two hundred feet without the use of a wheelchair, crutch, walker, prosthetic, orthotic, or other assistance device as allowed by rules and regulations adopted and promulgated by the commission.

Source: Laws 1998, LB 922, § 27.

37-218 Ecologic harm, defined.

Ecologic harm means significant loss, disadvantage, or injury to the relationships between organisms and their environment.

Source: Laws 1998, LB 922, § 28.

37-219 Economic harm, defined.

Economic harm means significant loss, disadvantage, or injury to personal or material resources.

Source: Laws 1998, LB 922, § 29.

37-220 Ecosystem, defined.

Ecosystem means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life.

Source: Laws 1998, LB 922, § 30.

37-221 Endangered Species Act, defined.

Endangered Species Act means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq.

Source: Laws 1998, LB 922, § 31.

37-222 Falconry, defined.

Falconry means the sport of taking quarry by means of a trained raptor.

Source: Laws 1998, LB 922, § 32.

37-223 Fish, when used as a noun, defined.

Fish, when used as a noun, means a cold-blooded, vertebrate animal, typically covered with scales, which breathes by gills, swims by body motion using fins for maneuvering, and is dependent upon water as a medium in which to live.

Source: Laws 1998, LB 922, § 33.

37-224 Fish, when used as a verb, defined.

Fish, when used as a verb, means to pursue, shoot, catch, capture, collect, harvest, kill, destroy, or attempt to pursue, shoot, catch, capture, collect, harvest, kill, or destroy.

Source: Laws 1998, LB 922, § 34.

37-225 Fur harvesting, defined.

Fur harvesting means taking or attempting to take any fur-bearing animal by any means as prescribed by rules and regulations of the commission.

Source: Laws 1998, LB 922, § 35.

37-226 Fur-bearing animals, defined.

Fur-bearing animals means all beaver, martens, mink, muskrats, raccoons, opossums, otters, bobcats, gray foxes, red foxes, badgers, long-tailed weasels, Canada lynx, and skunks, except mutation minks and mutation foxes.

Source: Laws 1998, LB 922, § 36; Laws 1999, LB 176, § 5.

37-227 Game, defined.

Game means all game fish, bullfrogs, snapping turtles, tiger salamanders, mussels, crows, game animals, fur-bearing animals, game birds, protected birds, and all other creatures protected by the Game Law.

Source: Laws 1998, LB 922, § 37; Laws 1999, LB 176, § 6.

37-228 Game animals, defined.

Game animals means all antelope, cottontail rabbits, deer, elk, mountain sheep, squirrels, mountain lions, moose, and bears.

Source: Laws 1998, LB 922, § 38.

37-229 Game birds, defined.

Game birds means coots, cranes, curlew, doves, grouse, partridges, pheasants, plovers, prairie chickens, quail, rails, snipes, swans, woodcocks, wild turkeys, and all migratory waterfowl.

Source: Laws 1998, LB 922, § 39; Laws 1999, LB 176, § 7.

Pheasants are game birds. *State v. Allen*, 159 Neb. 314, 66 N.W.2d 830 (1954).

37-230 Game fish, defined.

Game fish means all baitfish, commercial fish, and sport fish.

Source: Laws 1998, LB 922, § 40.

37-231 Habitual offender, defined.

Habitual offender means a person who has been convicted of violating the Game Law two or more times in any calendar year or who has been convicted of violating the Game Law three or more times in any ten-year period beginning with the date of the first conviction.

Source: Laws 1998, LB 922, § 41.

37-232 Hunt, defined.

Hunt means to pursue, shoot, catch, capture, collect, harvest, kill, destroy, or attempt to pursue, shoot, catch, capture, collect, harvest, kill, or destroy.

Source: Laws 1998, LB 922, § 42.

37-233 Migratory game birds, defined.

Migratory game birds means all doves, ducks, geese, rails, snipes, cranes, woodcocks, coots, and swans.

Source: Laws 1998, LB 922, § 43.

37-233.01 Migratory waterfowl, defined.

Migratory waterfowl means any ducks, geese, or brant upon which an open season has been established by the commission.

Source: Laws 1999, LB 176, § 8.

37-234 Nongame fish, defined.

Nongame fish means any species of fish not classified as game fish, threatened species, or endangered species in the Game Law or rules and regulations of the commission.

Source: Laws 1998, LB 922, § 44.

37-235 Officer, defined.

Officer means every person authorized to enforce the Game Law.

Source: Laws 1998, LB 922, § 45.

37-236 Optimum carrying capacity, defined.

Optimum carrying capacity means that point at which a given habitat can support healthy populations of wildlife species, having regard to the total ecosystem without diminishing the ability of the habitat to continue that function.

Source: Laws 1998, LB 922, § 46.

37-237 Person, owner, proprietor, grantee, lessee, and licensee, defined.

Person, owner, proprietor, grantee, lessee, and licensee means and includes individuals, partnerships, limited liability companies, associations, corporations, and municipalities.

Source: Laws 1998, LB 922, § 47.

37-237.01 Protected bird, defined.

Protected bird means all birds except game birds, English sparrows, European starlings, and pigeons other than Antwerp or homing pigeons, commonly called Carrier Pigeons.

Source: Laws 1999, LB 176, § 9.

37-238 Raptor, defined.

Raptor means any bird of the Falconiformes or Strigiformes, except the golden and bald eagles.

Source: Laws 1998, LB 922, § 48.

37-239 Raw fur, defined.

Raw fur means the untanned pelts of any fur-bearing animal except commercially reared mutations.

Source: Laws 1998, LB 922, § 49; Laws 1999, LB 176, § 10.

37-240 Species, defined.

Species means a category of biological classification which describes groups of organisms which show distinctive characteristics and which are able to interbreed.

Source: Laws 1998, LB 922, § 50.

37-241 Sport fish, defined.

Sport fish means those species of fish, as listed in rules and regulations of the commission, typically sought for recreation or consumption.

Source: Laws 1998, LB 922, § 51.

37-242 Take, defined.

Take means to harass, wound, hunt, trap, fish, harvest fur, or attempt to harass, wound, hunt, trap, fish, or harvest fur.

Source: Laws 1998, LB 922, § 52.

37-243 Trap, defined.

Trap means to take or attempt to take any wildlife by any snare, steel-jawed spring trap, or box trap.

Source: Laws 1998, LB 922, § 53.

37-244 Upland game birds, defined.

Upland game birds means all species and subspecies of quail, partridges, pheasants, wild turkeys, and grouse, including prairie chickens.

Source: Laws 1998, LB 922, § 54.

37-245 Wild birds, defined.

Wild birds means the species of birds native to, migrating to or through, or having established free-ranging populations in the State of Nebraska except the English sparrow, the European starling, and the common pigeon.

Source: Laws 1998, LB 922, § 55.

37-246 Wild mammals, defined.

Wild mammals means the species of mammals native to, migrating to or through, or having established free-ranging populations in the State of Nebraska except the fallow deer, the house mouse, the Norway rat, the black rat, the feral domestic dog, and the feral domestic cat.

Source: Laws 1998, LB 922, § 56; Laws 1999, LB 176, § 11.

37-247 Wildlife, defined.

Wildlife means any member of any nondomesticated species of the animal kingdom, whether reared in captivity or not, including any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate and includes any part, product, egg, or offspring thereof or the dead body or parts thereof.

Source: Laws 1998, LB 922, § 57.

37-248 General penalty provision.

Any person violating any of the provisions of the Game Law or any provisions of the rules or regulations adopted and promulgated by the commission, where a penalty is not otherwise fixed, shall be guilty of a Class III misdemeanor and shall be subject to a mandatory fine of at least fifty dollars upon conviction.

Source: Laws 1943, c. 94, § 14, p. 331; R.S.1943, § 37-103; Laws 1957, c. 139, § 2, p. 465; Laws 1977, LB 40, § 172; R.S.1943, (1993), § 37-103; Laws 1998, LB 922, § 58; Laws 1999, LB 176, § 12.

ARTICLE 3**COMMISSION POWERS AND DUTIES**

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§ 37-301

GAME AND PARKS

Section

- 37-351. Nebraska Outdoor Recreation Development Cash Fund; created; investment.
37-352. Nebraska Outdoor Recreation Development Cash Fund; disbursements; commission; multiyear recreational development plan.

(f) TAKING OF WILDLIFE

- 37-353. Taking of wildlife; when authorized.

(a) GENERAL PROVISIONS

37-301 Commission; general authority.

Except as otherwise provided in sections 37-302 to 37-313, 37-315, 37-317, 37-330, 37-425, and 37-608, the commission shall have sole charge of state parks, game and fish, recreation grounds, and all things pertaining thereto. All funds rendered available by law, including funds already collected for such purposes, may be used by the commission in administering and developing such resources.

Source: Laws 1929, c. 113, § 5, p. 444; C.S.1929, § 81-6505; Laws 1935, c. 174, § 3, p. 640; C.S.Supp.,1941, § 81-6505; R.S.1943, § 81-805; Laws 1949, c. 283, § 1, p. 980; Laws 1959, c. 431, § 1, p. 1439; Laws 1959, c. 432, § 21, p. 1455; Laws 1959, c. 433, § 2, p. 1458; Laws 1959, c. 434, § 1, p. 1460; Laws 1961, c. 174, § 5, p. 519; Laws 1967, c. 585, § 8, p. 1977; Laws 1967, c. 231, § 4, p. 611; Laws 1969, c. 799, § 1, p. 3007; Laws 1971, LB 53, § 12; Laws 1972, LB 1169, § 1; Laws 1974, LB 779, § 3; Laws 1981, LB 72, § 22; Laws 1993, LB 235, § 46; Laws 1993, LB 370, § 481; Laws 1994, LB 1066, § 100; Laws 1996, LB 584, § 19; R.S.1943, (1996), § 81-805; Laws 1998, LB 922, § 59.

37-302 Commission; stock game and fish.

The commission shall adopt and carry into effect plans to replenish and stock the state with game and, whenever it is in the best interest of the public to do so, to stock the streams, lakes, and ponds, whether public or private, of this state with fish. It may plan such extensions and additions to existing hatcheries and such new plants as may be necessary to supply fully the state with game and fish and cause the plans to be executed after ascertaining the cost thereof.

Source: Laws 1998, LB 922, § 60.

Cross References

Instream appropriations, authority of commission to obtain permit, see section 46-2,107 et seq.

37-303 Commission; acquire land; gifts and bequests; powers.

(1) With the consent of the Governor, the commission may by purchase, when funds on hand or appropriated therefor are sufficient, or by gift, devise, or otherwise acquire title in the name of the State of Nebraska to sites situated outside organized municipalities, except as provided in section 90-404, for additional state parks, hatcheries, recreation grounds, state recreational trails, wildlife management areas, captive wildlife facilities, and public shooting grounds and may enter into appropriate contracts with reference thereto, all within the limits of amounts that may be appropriated, contributed, or available. For these purposes, the commission may enter into appropriate contracts, leases, or lease-purchase agreements.

(2) The commission, with the consent of the Governor, may take, receive, and hold, either in the name of the state or in trust for the state, exempt from taxation, any grant or devise of lands and any gift or bequest of money or other personal property made in furtherance of the purposes contemplated by this section and shall have such funds or the proceeds of such property invested. Such invested funds shall be deposited, used, and expended under the direction of the commission.

(3) The commission may make a survey of all lands and areas in the state which are suitable for state parks, game refuges, or other similar purposes contemplated by this section and may locate and designate any or all of such lands or areas or parts thereof and take such action as may tend to preserve or conserve them. The commission shall publish such informational material as it deems necessary and may, at its discretion, charge appropriate fees therefor.

Source: Laws 1998, LB 922, § 61; Laws 1999, LB 176, § 13; Laws 2000, LB 701, § 1.

Cross References

Acquisition of school lands, see section 72-261.

Section distinguished from and reconciled with section giving commission eminent domain power. *Duerfeldt v. State*, 184 Neb. 242, 166 N.W.2d 737 (1969).

37-304 Commission; rules and regulations.

The commission may adopt and promulgate rules and regulations, under the procedures set forth in the Administrative Procedure Act, governing the administration and use of all property, real and personal, under its ownership or control. The commission shall adopt and promulgate rules and regulations it deems necessary to administer the activities and facilities described in sections 37-305 to 37-313.

Source: Laws 1998, LB 922, § 62.

Cross References

Administrative Procedure Act, see section 84-920.

37-305 Rules and regulations; camping areas; violation; penalty.

The commission may adopt and promulgate rules and regulations to designate camping areas and permit camping on appropriate lands under its ownership or control. As a condition to such permission, the commission may prescribe such rules and regulations as are reasonable and proper governing public use of such camping areas, including, but not limited to, access to camping areas, area capacity, sanitation, opening and closing hours, public safety, fires, establishment and collection of fees when appropriate, protection of property, and zoning of activities. Such rules and regulations shall be posted on appropriate signs at the areas. Any person who camps on lands owned or controlled by the commission not designated as a camping area by the commission or any person who fails to observe the conditions of occupancy, use, or access posted as provided in this section shall not have permission. Any person violating the provisions of the rules and regulations authorized by this section shall be guilty of a Class V misdemeanor.

Source: Laws 1998, LB 922, § 63.

37-306 Rules and regulations; fire safety; violation; penalty.

The commission may adopt and promulgate rules and regulations permitting any type of fire, including the smoking of tobacco in any form, and providing for the size, location, and conditions under which a fire may be established on any area under its ownership or control. The commission may enact rules and regulations permitting the possession or use of any type of fireworks not prohibited by law on any areas under its ownership or control. The commission may adopt and promulgate rules and regulations authorizing management personnel to temporarily revoke permission by the posting of appropriate signs for all fires of any kind whatsoever, including smoking and the use of fireworks, in any area under its ownership or control, when such posting is in the interest of public health, safety, and welfare or for the preservation of property. Any person who lights any type of fire, uses any fireworks, smokes tobacco in any form, or leaves unattended and unextinguished any fire of any type in any location, in any area under the ownership or control of the commission, unless the commission has given permission, which permission has not been revoked, to such type of fire, to such use or possession of fireworks, or to such smoking of tobacco, shall be guilty of a Class V misdemeanor.

Source: Laws 1998, LB 922, § 64.

37-307 Rules and regulations; animals; violation; penalty.

The commission may adopt and promulgate rules and regulations permitting pets, domestic animals, and poultry to be brought upon or possessed, grazed, maintained, or run at large on any area or portion of any area under its ownership or control. Any person who brings, possesses, grazes, maintains, or permits to run at large his or her pets, domestic animals, or poultry on any area or portion of any area under the ownership or control of the commission, unless the commission has permitted such bringing, possession, grazing, maintaining, or running at large, shall be guilty of a Class V misdemeanor.

Source: Laws 1998, LB 922, § 65.

37-308 Rules and regulations; hunting, fishing, and trapping; use of weapons; violation; penalty.

The commission may adopt and promulgate rules and regulations, temporarily or permanently, permitting hunting, fishing, or the public use of firearms, bow and arrow, or any other projectile weapons or devices on any area or any portion of any area under its ownership or control. The commission may enact special rules and regulations permitting trapping and other forms of fur harvesting on any such area or areas. Any person who, without the permission of the commission, hunts, fishes, traps, harvests fur, or uses firearms, bow and arrow, or any other projectile weapon or device on any area or any portion of any area under the ownership or control of the commission shall be guilty of a Class V misdemeanor.

Source: Laws 1998, LB 922, § 66.

37-308.01 Rules and regulations; appropriate hunting weapons.

The commission shall adopt and promulgate rules and regulations relating to the appropriate weapons which may be used for hunting wildlife. The rules and regulations shall take effect beginning January 1, 2004.

Source: Laws 2002, LB 1003, § 28.

37-309 Rules and regulations; water-related recreational activities; violation; penalty.

The commission may adopt and promulgate rules and regulations permitting swimming, bathing, boating, wading, waterskiing, and the use of any floatation device on all or any portion of any area under its ownership or control. Such regulations may include permission for swimming, bathing, boating, waterskiing, wading, the use of floatation devices, and all other water-related recreational activities in all areas or any portion of any specific area under the ownership or control of the commission and may provide for special general conditions for specific swimming, waterskiing, boating, bathing, or wading areas, which regulations and conditions shall be posted at such areas. Any person who swims, bathes, boats, wades, waterskis, or uses any floatation device on all or any portion of any area under the ownership or control of the commission, unless the commission has given permission for such activity in the specific area or portion thereof, shall be guilty of a Class V misdemeanor.

Source: Laws 1998, LB 922, § 67.

The Legislature has defined a crime herein and provided a penalty and the delegation of administrative or executive authority for implementation of details does not violate the Constitution. State v. Cutright, 193 Neb. 303, 226 N.W.2d 771 (1975).

37-310 Rules and regulations; real and personal property; prohibited acts; violation; penalty.

(1) The commission may adopt and promulgate rules and regulations relating to the protection, use, or removal of any public real or personal property on any area under its ownership or control and may regulate or prohibit the construction or installation of any privately owned structure on such area. The commission may close all or any portion of any area under its ownership or control to any form of public use or access with the erection of proper signs, without the enactment of formal written regulations. Any person who, without the permission of the commission, constructs or installs any privately owned structure or who uses or removes any public real or personal property, on any area under the ownership or control of the commission, or who enters or remains upon all or any portion of any area under the ownership or control of the commission, where proper signs or public notices prohibiting the same have been erected or displayed, shall be guilty of a Class V misdemeanor.

(2) Any person who abandons any motor vehicle, trailer, or other conveyance in any area under the ownership or control of the commission shall be guilty of a Class V misdemeanor.

Source: Laws 1998, LB 922, § 68.

37-311 Rules and regulations; vendors; violation; penalty.

The commission may adopt and promulgate rules and regulations permitting the sale, trade, or vending of any goods, products, or commodities of any type in any area under its ownership or control. Any person who sells, trades, or vends any goods, products, or commodities of any type in any area under the ownership or control of the commission without having received the prior permission of the commission for such activity shall be guilty of a Class V misdemeanor.

Source: Laws 1998, LB 922, § 69.

37-312 Commission permission; procedure.

When the permission of the commission is required as a prerequisite to any activity set out in sections 37-305 to 37-313, such permission shall be established by resolution of the commission. The resolution may set out the circumstances under which the supervisor or managing official in charge of any area under the ownership or control of the commission may give such permission in emergency situations, and such resolution may further provide for the revocation of such permission by the secretary of the commission or by the supervisor or managing official of any area under the ownership and control of the commission.

Source: Laws 1998, LB 922, § 70.

37-313 Rules and regulations; traffic; violation; penalty.

The commission, with regard to roads on any area under its ownership or control, may adopt and promulgate such rules and regulations deemed necessary as authorized by sections 60-680 and 60-6,190. Any person guilty of a violation of the rules and regulations established under the authority of sections 60-680 and 60-6,190 shall be guilty of a Class V misdemeanor.

Source: Laws 1998, LB 922, § 71.

37-314 Seasons; opening and closing; powers of commission; rules and regulations.

(1) The commission may, in accordance with the Game Law, other provisions of law, and lawful rules and regulations, fix, prescribe, and publish rules and regulations as to open seasons and closed seasons, either permanent or temporary, as to conservation orders or similar wildlife management activities authorized by the United States Fish and Wildlife Service, as to bag limits or the methods or type, kind, and specifications of hunting, fur-harvesting, or fishing gear used in the taking of any game, game fish, nongame fish, game animals, fur-bearing animals, or game birds, as to the age, sex, species, or area of the state in which any game, game fish, nongame fish, game animals, fur-bearing animals, or game birds may be taken, or as to the taking of any particular kinds, species, or sizes of game, game fish, nongame fish, game animals, fur-bearing animals, and game birds in any designated waters or areas of this state after due investigation and having due regard to the distribution, abundance, economic value, breeding habits, migratory habits, and causes of depletion or extermination of the same in such designated waters or areas and having due regard to the volume of the hunting, fur harvesting, and fishing practiced therein and the climatic, seasonal, and other conditions affecting the protection, preservation, and propagation of the same in such waters or areas. Such rules and regulations may be amended, modified, or repealed from time to time, subject to such limitations and standards, and such rules and regulations and all amendments, modifications, and repeals thereof shall be based upon investigation and available but reliable data relative to such limitations and standards.

(2) Each such rule, regulation, amendment, modification, and repeal shall specify the date when it shall become effective and while it remains in effect shall have the force and effect of law.

(3) Regardless of the provisions of this section or of other sections of the Game Law which empower the commission to set seasons on game birds, fish, or animals or provide the means and method by which such seasons are set or

promulgated and regardless of the provisions of the Administrative Procedure Act, the commission may close or reopen any open season previously set on game birds, fish, or animals in all or any specific portion of the state. The commission shall only close or reopen such seasons by majority vote at a valid special meeting called under section 37-104 and other provisions of statutes regarding the holding of public meetings. Any closing or reopening of an open season previously set by the commission shall not be effective for at least twenty-four hours after such action by the commission. The commission shall make every effort to make available to all forms of the news media the information on any opening or closing of any open season on game birds, fish, or animals previously set. The commission may only use this special provision allowing the commission to open or close game bird, fish, or animal seasons previously set in emergency situations in which the continuation of the open season would result in grave danger to human life or property. The commission may also close or reopen any season established by a conservation order under the same provisions pertaining to closing and reopening seasons in this section.

Source: Laws 1929, c. 112, III, § 1, p. 413; C.S.1929, § 37-301; Laws 1931, c. 70, § 1, p. 190; Laws 1937, c. 89, § 5, p. 292; C.S.Supp.,1941, § 37-301; Laws 1943, c. 94, § 5, p. 324; R.S. 1943, § 37-301; Laws 1957, c. 242, § 31, p. 844; Laws 1972, LB 777, § 4; Laws 1972, LB 1284, § 14; Laws 1975, LB 489, § 2; Laws 1981, LB 72, § 13; Laws 1989, LB 34, § 12; R.S.1943, (1993), § 37-301; Laws 1998, LB 922, § 72; Laws 1999, LB 176, § 14.

Cross References

Administrative Procedure Act, see section 84-920.

Commission is authorized to prescribe regulations for open and closed seasons. *State v. Allen*, 159 Neb. 314, 66 N.W.2d 830 (1954).

37-315 Commission; reciprocal agreements.

The commission may enter into agreements with other states bordering on the Missouri River providing for reciprocal recognition of licenses, permits, and laws of the agreeing states.

Source: Laws 1998, LB 922, § 73.

37-316 Rules and regulations; special permits; fish-related activities.

The commission shall adopt and promulgate rules and regulations which include (1) provisions for scientific, educational, or private wildlife management purposes as provided in section 37-418, (2) provisions for commercial fishing as provided in sections 37-4,104 and 37-543, (3) provisions for bait dealers as provided in section 37-4,105, and (4) provisions for aquaculturists as provided in section 37-468.

Source: Laws 1993, LB 830, § 14; Laws 1994, LB 1165, § 7; R.S.Supp.,1996, § 37-111; Laws 1998, LB 922, § 74; Laws 2001, LB 130, § 1.

37-317 Commission; disseminate information.

The commission may disseminate information on the state park system and the wildlife resources of the state so as to inform the public of the outdoor recreation opportunities to be found in Nebraska.

Source: Laws 1998, LB 922, § 75.

37-318 Free fishing day; commission; powers and duties.

(1) To promote an interest in fishing and to create an awareness of Nebraska's lakes, rivers, streams, ponds, and parks, a day between March 15 and October 15, to be determined by the commission, shall be recognized as free fishing day. On this day, Nebraska residents and nonresidents may enjoy the privilege of fishing without the purchase of a fishing permit, except that any fishing done under the authority of a special daily fishing permit under section 37-422 still requires the purchase of such permit.

(2) No motor vehicle entry permit or fee will be required for entry into a permit area as defined in section 37-435 on free fishing day.

(3) Nothing in this section shall affect the applicability of statutes and regulations other than the permit requirements referred to in this section.

(4) The commission may adopt and promulgate rules and regulations necessary to carry out this section.

Source: Laws 1996, LB 923, § 1; R.S.Supp.,1996, § 37-311; Laws 1998, LB 922, § 76.

37-319 Lake, pond, or stream closed to fishing; notice.

If the commission desires to close to the taking of fish by any means, any lake, pond, or stream or designated portion thereof frequented by fish, or any lake, pond, or stream or designated portion thereof which it has stocked with fish, it shall cause notice thereof to be posted in at least two places on such lake, pond, or stream. Such notice shall designate as nearly as practicable the lake, pond, or stream or designated portion to be closed and shall state that on and after a date stated in the notice it shall be unlawful to take fish in such lake, pond, or stream.

Source: Laws 1929, c. 112, IV, § 5, p. 422; C.S.1929, § 37-405; Laws 1933, c. 70, § 1, p. 309; Laws 1941, c. 72, § 5, p. 303; C.S.Supp.,1941, § 37-405; R.S.1943, § 37-405; Laws 1957, c. 139, § 11, p. 470; R.S.1943, (1993), § 37-405; Laws 1998, LB 922, § 77.

37-320 Fish; propagation; stocking; removal by authority of commission; sale; proceeds.

The commission may take or authorize the taking of, at any time and in any manner, any fish or spawn belonging to the state for the purpose of propagation or stocking other waters or exchanging with the fish commissioner of other states or of the United States and may engage in the purchase, sale, and use of fish or fish eggs for stocking waters in this state. The proceeds of all sales of such fish, spawn, or eggs shall be paid into the State Game Fund.

Source: Laws 1929, c. 112, V, § 9, p. 429; C.S.1929, § 37-509; R.S.1943, § 37-509; Laws 1959, c. 150, § 8, p. 574; Laws 1989, LB 34, § 32; R.S.1943, (1993), § 37-509; Laws 1998, LB 922, § 78.

37-321 Fish; emergency created by drying up of waters; permission to take by any means; regulations; violation; penalty.

The commission may, by regulation, authorize the taking of fish by any means and in any number whenever the secretary of the commission determines, pursuant to standards imposed by such regulations, that such action is

necessary for proper fish management as a result of an emergency created by the drying up of any waters inhabited by fish. Such determination shall specify the waters in which such emergency action is desirable, and the authorization so granted shall extend to such waters and to no others. The taking of any fish in violation of this section shall be a Class V misdemeanor.

Source: Laws 1961, c. 174, § 7, p. 521; Laws 1977, LB 40, § 189; R.S.1943, (1993), § 37-503.06; Laws 1998, LB 922, § 79.

37-322 Nongame fish; removal by commission; game fish; return to water alive.

In water where nongame fish abound, the commission may remove or cause to be removed by written agreement such nongame fish for fish management purposes and may sell such nongame fish. The proceeds from such sales shall be paid into the State Game Fund. Game fish protected by the Game Law, taken by such methods, shall be immediately returned alive and with as little injury as possible to the waters from which they were taken.

Source: Laws 1929, c. 112, V, § 4, p. 427; C.S.1929, § 37-504; R.S.1943, § 37-504; Laws 1967, c. 216, § 11, p. 587; Laws 1989, LB 34, § 27; R.S.1943, (1993), § 37-504; Laws 1998, LB 922, § 80.

(b) FUNDS

37-323 State Game Fund; created; investment; deposits by commission secretary; withholding funds; liability; penalty.

The secretary of the commission shall remit to the State Treasurer all tax money and other funds received by him or her and shall take the receipt of the treasurer therefor. The State Treasurer shall credit such funds to the State Game Fund except as otherwise provided in the Game Law.

The State Game Fund is created. Any money in the State Game 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.

County clerks, other county officials, and the secretary of the commission shall be liable upon their official bonds for failure to pay over any of such funds coming into their hands. Any other agent who receives permit fees under the Game Law or the rules and regulations of the commission and who fails to remit the fees to the commission within a reasonable time after demand by the commission shall be liable to the commission in damages for double the amount of the funds wrongfully withheld. Any agent who purposefully fails to remit such fees with the intention of converting them is guilty of theft. The penalty for such violation shall be determined by the amount converted as specified in section 28-518.

Source: Laws 1929, c. 112, II, § 6, p. 410; C.S.1929, § 37-206; R.S.1943, § 37-206; Laws 1959, c. 152, § 1, p. 577; Laws 1969, c. 584, § 38, p. 2367; Laws 1989, LB 34, § 7; Laws 1994, LB 1066, § 22; R.S.Supp.,1996, § 37-206; Laws 1998, LB 922, § 81; Laws 1999, LB 176, § 15.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

37-324 Funds from permits and publications; placed in the State Game Fund; how used.

(1) The funds derived from the sale of permits and publications as provided in the Game Law, any unexpended balance now on hand from the sale of hunting, fur-harvesting, and fishing permits, and all money required by the Game Law to be paid into the State Game Fund are hereby appropriated to the use of the commission (a) for the propagation, importation, protection, preservation, and distribution of game and fish and necessary equipment therefor and all things pertaining thereto, (b) for the creation of cash funds under section 37-326, (c) for the administration and enforcement of the State Boat Act, (d) for boating safety educational programs, (e) for the construction and maintenance of boating and docking facilities, navigation aids, and access to boating areas and such other uses which will promote the safety and convenience of the boating public in Nebraska, and (f) for publishing costs for publications relating to topics listed in subdivisions (a) and (b) of this subsection and other topics of general interest to the state as approved by the commission. An amount equal to two dollars from each annual resident fishing permit and two dollars from each combination hunting and fishing permit sold in this state shall be used by the commission for the administration, construction, operation, and maintenance of fish hatcheries and for the distribution of fish.

(2) Expenditures for publications on topics of general interest to the state shall not exceed the income derived from single-copy and subscription sales of commission publications and advertising revenue from such publications.

Source: Laws 1929, c. 112, II, § 12, p. 412; C.S.1929, § 37-212; Laws 1935, c. 82, § 1, p. 271; Laws 1943, c. 94, § 4, p. 324; R.S.1943, § 37-212; Laws 1959, c. 153, § 1, p. 579; Laws 1965, c. 196, § 1, p. 596; Laws 1976, LB 717, § 1; Laws 1981, LB 72, § 7; Laws 1987, LB 105, § 3; Laws 1987, LB 785, § 1; Laws 1989, LB 34, § 10; R.S.1943, (1993), § 37-212; Laws 1998, LB 922, § 82; Laws 2003, LB 305, § 2.

Cross References

State Boat Act, see section 37-1201.

Section sustained as constitutional since license fees are imposed by the state itself. *Wilcox v. Havekost*, 144 Neb. 562, 13 N.W.2d 899 (1944).

37-325 Commission; funds; how expended.

All funds expended by the commission shall be paid by the State Treasurer upon warrants drawn by the Director of Administrative Services on vouchers signed by the secretary. No such vouchers shall be issued except upon accounts authorized by the commission in open meeting, except that vouchers for mileage or other traveling expense shall be allowed as provided in sections 81-1174 to 81-1177. The commission shall at the first regular meeting audit all expenditures made since its last regular meeting.

Source: Laws 1929, c. 113, § 12, p. 447; C.S.1929, § 81-6512; Laws 1935, c. 174, § 9, p. 644; Laws 1941, c. 180, § 8, p. 705; C.S.Supp.,1941, § 81-6512; R.S.1943, § 81-814; Laws 1981, LB 204, § 174; R.S.1943, (1996), § 81-814; Laws 1998, LB 922, § 83.

37-326 Commission; establish change cash funds; use; how funded; amount; monthly accounting.

(1) The commission may establish change cash funds for use at any of the following locations:

- (a) Staffed state parks;
- (b) Staffed state recreation areas;
- (c) Staffed state historical parks;
- (d) Staffed state wildlife management areas; and
- (e) Administrative offices of the commission.

(2) Money for the change cash funds shall be taken from the State Game Fund or the State Park Cash Revolving Fund.

(3) The amount of each change cash fund shall be determined by the commission based upon need at each location. At no location shall the sum of money to be used as a change cash fund exceed fifteen thousand dollars.

(4) Personnel at each location where a change cash fund has been established shall make a monthly accounting of such fund to the commission. The commission shall make a monthly accounting of all change cash funds to the State Treasurer.

Source: Laws 1976, LB 717, § 3; Laws 1978, LB 613, § 1; Laws 1983, LB 163, § 1; Laws 1983, LB 610, § 1; Laws 1989, LB 185, § 1; Laws 1995, LB 48, § 1; R.S.1943, (1996), § 81-814.01; Laws 1998, LB 922, § 84; Laws 2003, LB 305, § 3.

37-327 Commission; fees; duty to establish; limit on increase.

(1) The commission shall establish fees for licenses, permits, stamps, bands, registrations, and certificates issued under the Game Law and the State Boat Act and shall establish the fee required by section 37-562 as provided in such law, act, and section. The commission shall not increase any fee more than six percent in any one year, except that if a fee has not been increased by such percentage in a prior year after 1993, the difference between a six percent increase and the actual percentage increase in such prior year may be added to the percentage increase in a subsequent year. Such fees shall be collected and disposed of as provided in such law, act, and section. The commission shall, as provided in such law, act, and section, establish issuance fees to be retained by authorized agents of such licenses, permits, stamps, bands, registrations, and certificates under such law, act, and section. The commission shall establish such fees by the adoption and promulgation of rules and regulations.

(2) Prior to establishing any fee, the commission shall, at least thirty days prior to the hearing required in section 84-907, make the following information available for public review:

(a) The commission's policy on the minimum cash balance to be maintained in the fund in which the revenue from the fee being established is deposited and the justification in support of such policy;

(b) Monthly estimates of cash fund revenue, expenditures, and ending balances for the current fiscal year and the following two fiscal years for the fund in which the revenue from the fee being established is deposited. Estimates shall be prepared for both the current fee schedule and the proposed fee schedule; and

(c) A statement of the reasons for establishing the fee at the proposed level.

Source: Laws 1993, LB 235, § 1; R.S.1943, (1996), § 81-814.02; Laws 1998, LB 922, § 85; Laws 1999, LB 176, § 16.

Cross References

State Boat Act, see section 37-1201.

37-327.01 Game Law Investigation Cash Fund; created; use; investment; record-keeping duties.

(1) The Game Law Investigation Cash Fund is created. The commission shall use the fund for the purpose of obtaining evidence for enforcement of the Game Law. The fund shall be funded through revenue collected under the Game Law and budgeted or allocated to the fund by the commission, and through donations from persons, wildlife groups, and other charitable sources. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) For the purpose of establishing and maintaining legislative oversight and accountability, the commission shall formulate record-keeping procedures for all expenditures, disbursements, and transfers of cash from the Game Law Investigation Cash Fund. Based on these record-keeping procedures, the commission shall prepare and deliver to the Clerk of the Legislature by September 15 of each year a detailed report of the previous fiscal year which includes, but is not limited to: (a) The June 30 balance in the Game Law Investigation Cash Fund and the amounts delivered to the commission for distribution to agents and informants; (b) the total amount of expenditures; (c) the purpose of the expenditures including: (i) Salaries and any expenses of all agents and informants; (ii) front money for wildlife purchases; (iii) type of wildlife and amount purchased; and (iv) amount of front money recovered; (d) the total number of informants on payroll; and (e) the results procured through such transactions. Each member of the Legislature shall receive a copy of such report by making a request for it to the secretary of the commission.

(3) The commission shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2000, LB 788, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

(c) LANDS

37-328 Commission; acquire site for headquarters; consent of Governor.

The commission, with the consent of the Governor, may, out of funds appropriated for that purpose, acquire a site in Lincoln and erect thereon one or more buildings to serve the commission as a state headquarters.

Source: Laws 1965, c. 554, § 1, p. 1832; R.S.1943, (1996), § 81-805.03; Laws 1998, LB 922, § 86.

37-329 State park system; real estate; acquisition; eminent domain; consent of Legislature.

With the consent of the Legislature, the commission is authorized and empowered to acquire, in the name of the State of Nebraska, real estate in this state of scenic, historic, recreational, or fish and wildlife management value or unique natural areas, or access thereto, by the use of eminent domain, as provided by sections 76-704 to 76-724.

Source: Laws 1959, c. 436, § 6, p. 1466; Laws 1963, c. 515, § 1, p. 1631; Laws 1965, c. 551, § 1, p. 1800; Laws 1967, c. 587, § 1, p. 1985; Laws 1971, LB 724, § 1; Laws 1974, LB 794, § 1; R.S.1943, (1996), § 81-815.26; Laws 1998, LB 922, § 87.

Section not unconstitutional as being a special or local law; title of bill amending this section not unconstitutional for failing to include restrictions on disposition of property so acquired; section contains adequate constitutional standards for use of eminent domain. *Duerfeldt v. State*, 184 Neb. 242, 166 N.W.2d 737 (1969).

37-330 Commission; grant easements.

The commission may grant easements across real estate under its control for purposes that are in the public interest and do not negate the primary purpose for which the real estate is owned or controlled by the commission.

Source: Laws 1998, LB 922, § 88.

37-331 Commission; land; exchange; when.

The commission is hereby authorized and empowered to exchange land owned by the commission for other lands when the acquisition of the other lands involved in the exchange would, in the opinion of the commission, provide greater utility or value to the commission and materially aid in the promulgation of the basic duties and purposes of the commission. Any such exchange shall be made on the basis of dollar-for-dollar appraised valuation.

Source: Laws 1959, c. 435, § 1, p. 1463; R.S.1943, (1996), § 81-805.02; Laws 1998, LB 922, § 89.

37-332 Acquisition of real estate by commission; bordering on lakes or artificial reservoirs; purpose.

The commission is authorized and empowered to acquire by gift, devise, or purchase real estate bordering on the shore of any lake or artificial reservoir constructed for the storage of water, for the purpose of developing public recreation areas and promoting the conservation of natural resources.

Source: Laws 1947, c. 141, § 1, p. 386; R.S.1943, (1993), § 37-424; Laws 1998, LB 922, § 90.

37-333 Meandered lakes; beds; dedication to public use; commission authorized to improve; jurisdiction.

Meandered lakes, the shore lines of which were meandered by government survey, and the beds thereof, are declared to be the property of the state for the benefit of the public, and the revenue therefrom and resources therein shall be subject to the Game Law and the rules and regulations of the commission relative thereto. The commission shall have authority to improve meandered lakes and to adopt and promulgate such rules and regulations as may be necessary to make proper use of the same. Nothing in this section shall be construed as claiming title in the State of Nebraska to any lake or stream or

that portion of a lake or stream located upon lands to which patents have been issued by the United States to private individuals or persons.

Source: Laws 1929, c. 112, IV, § 11, p. 425; C.S.1929, § 37-411; R.S. 1943, § 37-411; Laws 1989, LB 34, § 24; R.S.1943, (1993), § 37-411; Laws 1998, LB 922, § 91.

37-334 Commission; participation with other public entities; wildlife habitats; expenditures authorized.

The commission may participate with the natural resources districts and other public agencies, pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act, for the acquisition on a willing-seller willing-buyer basis only, leasing, taking of easements, development, management, and enhancement of wildlife habitats. The commission may expend, transfer, or reimburse participants with money received from the sale of hunting and fishing permits and habitat stamps for such purposes under policies established by the commission. The commission may use money received pursuant to this section for the matching of federal funds under section 37-901.

Source: Laws 1976, LB 861, § 17; R.S.1943, (1993), § 37-109; Laws 1998, LB 922, § 92; Laws 1999, LB 87, § 71.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

37-335 Commission; wildlife management areas; payments in lieu of taxes; proportionate allocation.

Commencing January 1, 1977, whenever the commission acquires title to private lands for wildlife management purposes, the commission shall annually make payments in lieu of taxes to the county treasurer of the county in which the land is located. Commencing January 1, 1997, the payments shall be the same as the real property taxes which would have been paid on the land if it were owned by a private owner. The value of the land shall be determined by the county assessor pursuant to sections 77-201 and 77-1301 to 77-1371 as if it were being used for the use it had immediately before acquisition by the commission excluding any improvements on the land either before or after its acquisition. The commission may protest the valuation of such land to the county board of equalization pursuant to section 77-1502 if the commission believes the land is not properly valued. The county board of equalization shall treat such protest in the same manner as any other protest pursuant to sections 77-1502 to 77-1509. The action of the county board of equalization on such protest may be appealed as provided in section 77-1510. The county treasurer shall allocate such payments to each taxing unit levying taxes on such property in the county in which the land has tax situs in the same proportion that the levy on the property of such taxing unit bears to the total levy on such real property of all the taxing units in which the property is taxed.

Source: Laws 1976, LB 861, § 18; Laws 1996, LB 345, § 1; R.S.Supp.,1996, § 37-110; Laws 1998, LB 922, § 93; Laws 2002, LB 994, § 4.

(d) WILDLIFE MANAGEMENT

37-336 State wildlife management areas; commission; powers; fees; disposition of proceeds; violation; penalty.

(1) State wildlife management areas shall be administered by the commission but not as a part of the state park system nor with park funds.

(2) The commission may establish and collect reasonable fees for the use of operated facilities of a personal-service nature in state wildlife management areas, may in its sole discretion grant concessions in such areas for the provision of appropriate services to the public, may grant permits for certain land or other resource utilization commensurate with the purposes of this section, and may prescribe and collect appropriate fees or rentals therefor. The proceeds of all such fees, rentals, and other revenue from operated facilities, concessions, or permits shall be deposited in the State Game Fund.

(3) Any person violating this section or the regulations governing the public use or administration of a state wildlife management area shall be guilty of a Class III misdemeanor.

(4) For purposes of this section, state wildlife management areas means those areas which are primarily of public hunting, fishing, or other wildlife values, and which cannot logically be classified in one of the categories listed in subdivision (1), (2), or (3) of section 37-338, when so designated by the commission to be maintained from fish and game funds.

Source: Laws 1959, c. 436, § 12, p. 1467; Laws 1978, LB 613, § 4; R.S.1943, (1996), § 81-815.32; Laws 1998, LB 922, § 94.

(e) STATE PARK SYSTEM

37-337 State park system; purpose.

The intent and purpose of sections 37-337 to 37-348 is to provide for the development and administration of a balanced state park system and to provide nonurban park areas for the inspiration, recreation, and enjoyment primarily of resident populations.

Source: Laws 1959, c. 436, § 1, p. 1464; Laws 1983, LB 610, § 2; R.S.1943, (1996), § 81-815.21; Laws 1998, LB 922, § 95.

37-338 Terms, defined.

For purposes of sections 37-337 to 37-348, unless the context otherwise requires:

(1) State parks means parks of substantial area with the primary value of significant statewide scenic, scientific, or historic interest and having a complete development potential and, when possible, a representative portion which can be retained in a natural or relatively undisturbed state;

(2) State recreation areas means (a) areas with a primary value for day use, but with secondary overnight-use facilities or potential, and which have reasonable expansion capability and are located in accordance with sound park management principles and (b) state recreational trails;

(3) State historical parks means only sites which, in the opinion of competent, recognized authorities, are of notable historical significance to the State of Nebraska, of a size adequate to develop the full interpretative potential of the

site, and which may be equipped with limited day-use facilities when such facilities do not detract from nor interfere with the primary purposes and values thereof; and

(4) State recreational trails means linear corridors of statewide or regional significance, of value for nonmotorized recreational use, and which may be equipped with amenities and support facilities appropriate to their intended purpose.

Source: Laws 1959, c. 436, § 2, p. 1464; Laws 1978, LB 613, § 2; Laws 1983, LB 610, § 3; Laws 1993, LB 235, § 49; R.S.1943, (1996), § 81-815.22; Laws 1998, LB 922, § 96.

37-339 State park system; established; areas included; administration.

(1) The state park system hereby established shall consist of existing and acquired areas determined and designated by the commission as properly falling in one of the following classes: State parks, state recreation areas, and state historical parks.

(2) The commission shall be charged with the responsibility for the establishment and conduct of the state park system and all things pertaining thereto. The state park system shall be administered through a Division of State Parks hereby established within the commission to be headed by a division chief who has been selected for this purpose and who has an appropriate background in this field. The division chief shall be appointed by the commission and shall receive such salary as the commission shall determine.

Source: Laws 1959, c. 436, § 3, p. 1465; Laws 1978, LB 613, § 3; Laws 1983, LB 610, § 4; R.S.1943, (1996), § 81-815.23; Laws 1998, LB 922, § 97.

37-340 State park system; classification of areas.

The commission shall periodically evaluate and assess the state park system by classifications and may redesignate specific areas from one class to another.

Source: Laws 1959, c. 436, § 4, p. 1466; R.S.1943, (1996), § 81-815.24; Laws 1998, LB 922, § 98.

37-341 State park system; areas; designation.

All areas of the state park system shall be appropriately named and adequately designated by signs which shall be uniform in color and design, and of a type commensurate with the specific area. When applicable, state park names shall be indicative of the geography, history, or other natural features of the general area in which the park is located.

Source: Laws 1959, c. 436, § 5, p. 1466; R.S.1943, (1996), § 81-815.25; Laws 1998, LB 922, § 99.

37-342 Leases; lease-purchase agreements; commission; powers; restrictions.

The commission may enter into long-term leases, lease-purchase agreements, or other agreements with private or governmental agencies for the control and use of real estate for state park system purposes. Except as authorized in section 37-907, the commission shall not provide a local governmental subdivision or agency thereof with an indication of intent to incorporate into the state

park system any land or facilities owned or developed by such subdivision or agency unless the indication of intent is first approved by the Legislature. When seeking such approval, the commission shall provide the Legislature with the estimated fiscal impact of the incorporation, including the extent to which the costs of the incorporation can reasonably be expected to be paid from cash funds and the extent to which the costs will likely be required to be paid from General Fund appropriations.

Source: Laws 1959, c. 436, § 7, p. 1466; Laws 1984, LB 967, § 1; R.S.1943, (1996), § 81-815.27; Laws 1998, LB 922, § 100.

37-343 Funds; use.

All funds made available by law, including funds already collected for state park purposes, shall be used only in the development and administration of the state park system.

Source: Laws 1959, c. 436, § 8, p. 1466; R.S.1943, (1996), § 81-815.28; Laws 1998, LB 922, § 101.

37-344 Rules and regulations; use by public.

The commission may permit the use of all or a part of the areas within the state park system by the public and is authorized to adopt, promulgate, and enforce rules and regulations pertaining to the use, care, and administration of the units of such a system.

Source: Laws 1959, c. 436, § 9, p. 1467; R.S.1943, (1996), § 81-815.29; Laws 1998, LB 922, § 102.

37-345 Fees; concessions; disposition; State Park Cash Revolving Fund; created; use; investment.

(1) The commission may establish and collect reasonable fees for the use of state park-operated facilities of a personal-service nature, such as cabins, camps, swimming facilities, boats, and other equipment or services of a similar nature. The commission, in its sole discretion, may grant concessions in state park areas for the provisions of certain appropriate services to the public, may grant permits for certain land or other resource utilization commensurate with the purposes of sections 37-337 to 37-348, and may prescribe and collect appropriate fees or rentals therefor.

(2) The proceeds of all such fees, rentals, or other revenue from operated facilities, concessions, or permits shall be credited to the State Park Cash Revolving Fund, which fund is hereby created in the state treasury, and shall be used by the commission solely for the improvement, maintenance, and operation of the state parks. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1959, c. 436, § 10, p. 1467; Laws 1969, c. 584, § 99, p. 2408; Laws 1995, LB 7, § 103; R.S.1943, (1996), § 81-815.30; Laws 1998, LB 922, § 103.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

37-346 Commission; state parks; use by public; concessions; length of term; fees.

In its discretion, the commission may permit the use of state parks and recreation grounds, or any of them, by the public under such regulations as may be prescribed. It may, in like manner, grant concessions therein upon such rentals or fees and for such terms not exceeding twenty years, as it may deem advisable.

Source: Laws 1929, c. 113, § 6, p. 445; C.S.1929, § 81-6506; Laws 1935, c. 174, § 4, p. 641; C.S.Supp.,1941, § 81-6506; R.S.1943, § 81-812; Laws 1961, c. 428, § 1, p. 1337; R.S.1943, (1996), § 81-812; Laws 1998, LB 922, § 104.

37-347 Commission; Nebraska State Historical Society; recreational trails; cooperative agreements.

(1) The commission is hereby authorized to enter into cooperative agreements with the Nebraska State Historical Society and other appropriate public agencies for the reconnaissance, development, and administration of state historical parks.

(2) The commission may enter into cooperative agreements with appropriate agencies or subdivisions or departments of government for the reconnaissance, development, and administration of state recreational trails.

Source: Laws 1959, c. 436, § 11, p. 1467; Laws 1993, LB 235, § 50; R.S.1943, (1996), § 81-815.31; Laws 1998, LB 922, § 105.

37-348 State park system; violations; penalty.

Any person violating sections 37-337 to 37-348 or the rules and regulations governing the public use or administration of a state park shall be guilty of a Class III misdemeanor.

Source: Laws 1959, c. 436, § 13, p. 1468; Laws 1977, LB 39, § 295; R.S.1943, (1996), § 81-815.33; Laws 1998, LB 922, § 106.

37-349 State parks; use of name for trade purposes, prohibited; violation; penalty.

It shall be unlawful for any person, firm, or corporation carrying on within this state any business of whatever nature, conducted for profit, to adopt or use, as the name of the business, the name of any state park owned by the State of Nebraska. It shall further be unlawful for any person, firm, or corporation selling any commodity or service of any kind or nature whatever within this state to adopt or use, as a trade name, designation, or trademark of the commodity or service, the name of any state park owned by the State of Nebraska. The provisions of this section shall not prohibit or interfere in any way with the activities or powers of the commission. Any person, firm, or corporation which violates this section shall be guilty of a Class V misdemeanor.

Source: Laws 1927, c. 159, § 1, p. 422; C.S.1929, § 81-6516; R.S.1943, § 81-815; Laws 1993, LB 235, § 48; R.S.1943, (1996), § 81-815; Laws 1998, LB 922, § 107.

37-350 Declaration of policy.

Whereas the areas of the state park system are among the most precious resources of this state and the development and utilization of these resources are important to the health and welfare of each person and the public in general, the public policy of this state is hereby declared to be:

- (1) To recognize the immeasurable worth of Nebraska’s recreational opportunities and provide for the development, operation, and maintenance of areas of the state park system;
- (2) To provide quality recreational opportunities because such opportunities are an integral part of the good life desired by all residents of Nebraska; and
- (3) To promote a more aggressive program for the proper improvement and utilization of our state park system.

Source: Laws 1978, LB 109, § 2; R.S.1943, (1993), § 37-1302; Laws 1998, LB 922, § 108.

37-351 Nebraska Outdoor Recreation Development Cash Fund; created; investment.

There is hereby created a fund to be known as the Nebraska Outdoor Recreation Development Cash Fund. The fund shall contain the money received pursuant to section 77-2602 and any funds donated as gifts, bequests, or other contributions to such fund from public or private entities. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1978, LB 109, § 4; R.S.1943, (1993), § 37-1303; Laws 1998, LB 922, § 109.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
 Nebraska State Funds Investment Act, see section 72-1260.

37-352 Nebraska Outdoor Recreation Development Cash Fund; disbursements; commission; multiyear recreational development plan.

(1) No appropriation shall be made from the Nebraska Outdoor Recreation Development Cash Fund until the commission has presented a multiyear recreational development plan to the Legislature for its review, modification, and final approval. An updated version of such plan shall also be submitted to the Legislature annually for its modification and approval. The money in such fund shall be administered according to this section by the commission for the development, operation, and maintenance of areas of the state park system. The money in such fund may be used in whole or in part for the matching of federal funds. All disbursements from the fund shall be made upon warrants drawn by the Director of Administrative Services.

(2) When a recreational plan is prepared for any state park system area or part of a state park system area cooperatively managed by the commission and the Nebraska State Historical Society, such plan shall insure that adequate funds are appropriated to develop and maintain historical aspects.

Source: Laws 1978, LB 109, § 5; Laws 1989, LB 18, § 3; R.S.1943, (1993), § 37-1304; Laws 1998, LB 922, § 110.

(f) TAKING OF WILDLIFE

37-353 Taking of wildlife; when authorized.

All conservation officers, all wildlife managers employed by the commission, and all other staff designated by the commission shall be authorized to take any wildlife from the wild that has escaped captivity, is diseased, is needed for scientific study, is considered dangerous to human or livestock health, is damaging agricultural crops, or is otherwise deemed unsuitable to remain in the wild, as stipulated in rules and regulations adopted and promulgated by the commission.

Source: Laws 1999, LB 176, § 65.

ARTICLE 4**PERMITS AND LICENSES**

(a) GENERAL PERMITS

Section	
37-401.	Hunting, fishing, or fur-harvesting permit; required, when; exemptions; violation; penalty.
37-402.	Hunting, fishing, or fur-harvesting permit; persons exempt.
37-403.	Farm or ranch owner or operator; hunting permit exemption; violation; penalty.
37-404.	Permits; qualifications; limitations.
37-405.	Hunting, fishing, or fur-harvesting permit; expiration; duties of holder.
37-406.	Licenses, permits, and stamps; issuance; fees; violation; penalty.
37-407.	Hunting, fishing, and fur-harvesting permits; fees.
37-408.	Permit fees; remittance.
37-409.	Hunting, fishing, and fur-harvesting permits; lost permit; replacement; fee.
37-410.	Permits; unlawful acts; penalty; confiscation of permits; residents under sixteen years of age, no permit necessary.
37-411.	Hunting, fishing, or fur harvesting without permit; unlawful; exceptions; violations; penalties.
37-412.	Hunting or fur-harvesting permit; exception for dog trials.
37-413.	Firearm hunter education program; commission issue certificate; hunting, lawful when; apprentice hunter education exemption certificate; fee.
37-414.	Bow hunter education program; certificate; issuance; required; when.
37-415.	Lifetime fishing, hunting, or combination permit; fees; replacement; rules and regulations.
37-416.	Lifetime permits; stamps, required.
37-417.	Lifetime permits; fees; disposition.
37-418.	Permits for scientific, educational, or private wildlife management purposes; when granted.
37-419.	Hunting, fishing, or fur-harvesting permit; person stationed in Nebraska in military service; certain students; resident permit.
37-420.	Hunting or fishing permit; veterans; exempt from payment of fees, when; special permits; limitations.
37-421.	Combination hunting and fishing permits; persons eligible; exempt from payment of fees, when; special permits, limitation.
37-421.01.	Military deployment; discounted permit; conditions; fee.
37-422.	Special daily fishing permits; fee; form; requirements; commission; establish; educational fishing project permits.
37-423.	Fishing permit; recipient of old age assistance; exempt from payment of fees; condition.
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§ 37-401**GAME AND PARKS**

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(a) GENERAL PERMITS**37-401 Hunting, fishing, or fur-harvesting permit; required, when; exemptions; violation; penalty.**

For the purpose of supplying revenue for the propagation, importation, distribution, protection, and conservation of the wildlife of this state, including all wild animals, birds, fish, and all things pertaining thereto, every person sixteen years of age or older who hunts for game animals or game birds or takes bullfrogs or any other species defined as game or who takes fish and every person sixteen years of age or older who engages in fur harvesting shall first pay a fee established by the commission pursuant to section 37-327 and obtain a permit except persons exempt from this requirement pursuant to

section 37-402. Any person violating this section shall be guilty of a Class II misdemeanor and shall be fined at least forty dollars.

Source: Laws 1929, c. 112, II, § 1, p. 409; C.S.1929, § 37-201; Laws 1937, c. 89, § 2, p. 291; C.S.Supp.,1941, § 37-201; R.S.1943, § 37-201; Laws 1957, c. 140, § 1, p. 475; Laws 1957, c. 139, § 3, p. 465; Laws 1959, c. 149, § 1, p. 565; Laws 1961, c. 169, § 1, p. 501; Laws 1961, c. 170, § 1, p. 509; Laws 1963, c. 201, § 1, p. 650; Laws 1967, c. 216, § 2, p. 579; Laws 1973, LB 331, § 2; Laws 1975, LB 195, § 2; Laws 1976, LB 861, § 3; Laws 1981, LB 72, § 2; Laws 1983, LB 170, § 1; Laws 1987, LB 105, § 1; Laws 1989, LB 34, § 3; Laws 1993, LB 235, § 3; Laws 1995, LB 259, § 2; Laws 1996, LB 584, § 3; R.S.Supp.,1996, § 37-201; Laws 1998, LB 922, § 111.

37-402 Hunting, fishing, or fur-harvesting permit; persons exempt.

The following persons are exempt from the requirements of section 37-401:

(1) The owner or his or her invitee who takes fish in any body of water (a) which is entirely upon privately owned land, (b) which is entirely privately stocked, (c) which does not connect by inflow or outflow with other water outside such land, and (d) which is not operated on a commercial basis for profit; and

(2) Any paraplegic who takes fish in his or her privately owned body of water if he or she does not operate such body of water on a commercial basis for profit.

Source: Laws 1998, LB 922, § 112.

37-403 Farm or ranch owner or operator; hunting permit exemption; violation; penalty.

Any person who owns or operates farm or ranch land and who actually resides on a portion of such farm or ranch land, together with members of his or her immediate family also residing on such land, may hunt and possess, within duly established season bag and possession limits, upland game birds and all game except migratory waterfowl, shore birds, elk, deer, antelope, wild turkey, and mountain sheep without paying a fee and without obtaining a hunting permit as required in sections 37-401 and 37-411 or a habitat stamp as required in sections 37-426 to 37-433. For purposes of this exemption, immediate family means and is limited to husband and wife and their children and upland game means and is limited to cottontail rabbits, squirrels, grouse, partridges, pheasants, prairie chickens, and quail. Such exemption shall only apply to hunting done on land owned or operated by such person and shall not apply when hunting on the land of other persons. The commission may by rule and regulation require a person hunting without a permit claiming to come under this exemption to sign a statement presented by a conservation officer which states facts which verify that the person comes within this exemption.

A violation of this section shall be a Class IV misdemeanor.

Source: Laws 1998, LB 922, § 113.

37-404 Permits; qualifications; limitations.

(1) Any resident of the United States who has resided in this state continuously for a period of thirty days before applying for a permit under the Game Law and who has a bona fide intention of becoming a legal resident of this state, supported by documentary proof, shall be deemed to be a resident and may be issued a resident permit under the Game Law.

(2) No hunting permit shall be issued to any person who is known to have a significant physical or mental disability and who is unable to safely carry or use a firearm because of such disability.

(3) The commission may limit the number of days for which a permit is issued and the number of fish or game birds taken on one permit. The commission may provide for a method of tagging and identification of fish and game birds taken under a nonresident permit.

Source: Laws 1998, LB 922, § 114; Laws 1999, LB 176, § 17; Laws 2003, LB 305, § 4.

Legislature was constitutionally free to determine by what authority licenses should be imposed upon those desiring to hunt and fish. State ex rel. Stevens v. Nickerson, 97 Neb. 837, 151 N.W. 981 (1915).

37-405 Hunting, fishing, or fur-harvesting permit; expiration; duties of holder.

(1) The commission shall provide for the issuance of permits to hunt, fish, or harvest fur. Application for such permits shall be made to the commission or its agents and shall contain such information as may be prescribed by the commission. All applications for permits to harvest fur shall include the applicant's social security number. A permit shall authorize the person to whom it is issued to hunt, fish, or harvest fur-bearing animals as provided by the Game Law during the period for which the permit is issued.

(2) If the holder of a hunting permit is a hunter of migratory game birds, he or she shall be required to declare himself or herself as such and provide information regarding his or her migratory game bird hunting activity to the commission. Documentation of such a declaration shall be made on the hunting permit or a separate document which shall become a part of the permit. Costs to the commission of implementing such declaration and documentation and for participation in a federal program designed to obtain survey information on migratory bird hunting activity shall be funded from the State Game Fund. For purposes of this subsection, migratory bird has the definition found in 50 C.F.R. part 10, subpart B, section 10.12, and migratory game bird has the definition found in 50 C.F.R. part 20, subpart B, section 20.11(a).

(3) All permits shall expire at midnight on December 31 in the year for which the permit is issued, except as otherwise provided in sections 37-415, 37-420, and 37-421.

(4) A person who is hunting, fur harvesting, or fishing shall present evidence of having a permit immediately upon demand to any officer or person whose duty it is to enforce the Game Law. Any person hunting, fishing, or fur harvesting in this state without such evidence shall be deemed to be without such permit.

(5) The commission shall adopt and promulgate rules and regulations necessary to carry out this section.

Source: Laws 1929, c. 112, II, § 2, p. 409; C.S.1929, § 37-202; Laws 1935, c. 84, § 1, p. 274; C.S.Supp.,1941, § 37-202; Laws 1943,

c. 94, § 2, p. 322; R.S.1943, § 37-202; Laws 1947, c. 131, § 1, p. 373; Laws 1975, LB 79, § 1; Laws 1979, LB 434, § 1; Laws 1981, LB 72, § 3; Laws 1985, LB 224, § 1; Laws 1989, LB 34, § 4; Laws 1997, LB 173, § 2; Laws 1997, LB 752, § 86; R.S.Supp.,1997, § 37-202; Laws 1998, LB 922, § 115; Laws 1999, LB 176, § 18; Laws 2003, LB 305, § 5.

37-406 Licenses, permits, and stamps; issuance; fees; violation; penalty.

(1) Licenses, permits, and stamps required under the Game Law shall be issued by the commission and may be procured from the secretary of the commission. The commission may provide for the electronic issuance of any license, permit, or stamp required under the Game Law and may enter into contracts to procure necessary services and supplies for the electronic issuance of licenses, permits, and stamps. Except for permits issued under sections 37-462 and 37-463, the commission may provide for the issuance of any license, permit, or stamp required under the Game Law in the form of a number which identifies the holder in the records of the commission. The commission may designate itself and other persons, firms, and corporations as agents to issue licenses, permits, and stamps and collect the prescribed fees. The commission and any person, firm, or corporation authorized by the commission to issue licenses, permits, and stamps shall be entitled to collect and retain an additional fee of not less than fifty cents and not more than two dollars, for each license, permit, or stamp issued as reimbursement for the clerical work of issuing the license, permit, or stamp and collecting and remitting the fees.

(2) The commission shall adopt and promulgate rules and regulations regarding electronic issuance of licenses, permits, and stamps, including electronic issuance devices, deposits by agents, and remittance of fees. The commission may provide for the electronic issuance of a license, permit, or stamp by acknowledging the purchase of such license, permit, or stamp without requiring a physical license, permit, or stamp or facsimile of such.

(3) It shall be unlawful for any person to duplicate any electronically issued license, permit, or stamp. Any person violating this subsection shall be guilty of a Class III misdemeanor and shall be fined at least seventy-five dollars, and any license, permit, or stamp involved in such violation shall be confiscated by the court.

Source: Laws 1929, c. 112, II, § 3, p. 409; C.S.1929, § 37-203; R.S.1943, § 37-203; Laws 1963, c. 202, § 1, p. 652; Laws 1983, LB 162, § 1; Laws 1993, LB 235, § 5; R.S.1943, (1993), § 37-203; Laws 1998, LB 922, § 116; Laws 1999, LB 176, § 19; Laws 2002, LB 1003, § 18; Laws 2003, LB 305, § 6; Laws 2007, LB299, § 1.

37-407 Hunting, fishing, and fur-harvesting permits; fees.

The commission may offer multiple-year permits or combinations of permits at reduced rates and may establish fees pursuant to section 37-327 to be paid to the state for resident and nonresident hunting permits, annual fishing permits, three-day fishing permits, one-day fishing permits, combination hunting and fishing permits, fur-harvesting permits, and nonresident special two-day hunting permits issued for periods of two consecutive days between the Wednesday immediately preceding Thanksgiving Day and December 31 of the same calen-

dar year and limited to one special two-day permit per applicant per year, as follows:

(1) Resident fees shall be (a) not more than thirteen dollars for hunting, (b) not more than seventeen dollars and fifty cents for fishing, (c) not more than eleven dollars and fifty cents for a three-day fishing permit, (d) not more than eight dollars for a one-day fishing permit, (e) not more than twenty-nine dollars for both fishing and hunting, and (f) not more than twenty dollars for fur harvesting; and

(2) Nonresident fees shall be (a) not more than two hundred sixty dollars for a period of time specified by the commission for fur harvesting one thousand or less fur-bearing animals and not more than seventeen dollars and fifty cents additional for each one hundred or part of one hundred fur-bearing animals harvested, (b)(i) for persons sixteen years of age and older, not more than eighty dollars for hunting and (ii) for persons under sixteen years of age, not less than the fee required pursuant to subdivision (1)(a) of this section for hunting, (c) not more than thirty-five dollars for a special two-day hunting permit plus the cost of a habitat stamp, (d) not more than nine dollars for a one-day fishing permit, (e) not more than sixteen dollars and fifty cents for a three-day fishing permit, and (f) not more than forty-nine dollars and fifty cents for an annual fishing permit.

Source: Laws 1929, c. 112, II, § 4, p. 410; C.S.1929, § 37-204; Laws 1935, c. 84, § 2, p. 275; Laws 1939, c. 44, § 1, p. 203; C.S.Supp.,1941, § 37-204; Laws 1943, c. 94, § 3, p. 323; R.S. 1943, § 37-204; Laws 1945, c. 78, § 1, p. 288; Laws 1947, c. 132, § 1, p. 374; Laws 1949, c. 101, § 1, p. 278; Laws 1955, c. 130, § 1, p. 376; Laws 1957, c. 140, § 2, p. 475; Laws 1959, c. 150, § 1, p. 568; Laws 1963, c. 203, § 1, p. 654; Laws 1963, c. 202, § 2, p. 652; Laws 1965, c. 195, § 1, p. 594; Laws 1967, c. 215, § 1, p. 576; Laws 1969, c. 290, § 1, p. 1060; Laws 1972, LB 777, § 1; Laws 1974, LB 811, § 4; Laws 1975, LB 489, § 1; Laws 1976, LB 861, § 4; Laws 1977, LB 129, § 1; Laws 1979, LB 78, § 1; Laws 1979, LB 553, § 1; Laws 1981, LB 72, § 4; Laws 1987, LB 105, § 2; Laws 1989, LB 34, § 5; Laws 1993, LB 235, § 6; Laws 1995, LB 579, § 1; Laws 1995, LB 583, § 1; R.S.Supp.,1996, § 37-204; Laws 1998, LB 922, § 117; Laws 2001, LB 111, § 1; Laws 2002, LB 1003, § 19; Laws 2003, LB 306, § 1; Laws 2005, LB 162, § 2; Laws 2007, LB299, § 2.

Legislature was constitutionally free to determine by what authority licenses should be imposed upon those desiring to hunt and fish. State ex rel. Stevens v. Nickerson, 97 Neb. 837, 151 N.W. 981 (1915).

37-408 Permit fees; remittance.

Any county clerk, county official, or agent authorized to issue hunting, fishing, or fur-harvesting permits shall remit the fees for the permits to the commission in the manner and at the times prescribed by the rules and regulations of the commission.

Source: Laws 1929, c. 112, II, § 5, p. 410; C.S.1929, § 37-205; R.S.1943, § 37-205; Laws 1989, LB 34, § 6; R.S.1943, (1993), § 37-205; Laws 1998, LB 922, § 118; Laws 1999, LB 176, § 20.

37-409 Hunting, fishing, and fur-harvesting permits; lost permit; replacement; fee.

The commission may issue a replacement permit for hunting, fishing, both hunting and fishing, or fur harvesting or for such other permits as may be issued by the commission to any person who has lost his or her original permit upon receipt from such person of satisfactory proof of purchase and an affidavit of loss of such original permit. The commission shall prescribe the procedures for applying for a replacement permit and may authorize electronic issuance. The commission may also designate agents to issue replacement permits pursuant to section 37-406. A fee of not less than one dollar and fifty cents and not more than five dollars, as established by the commission, shall be charged for the issuance of each replacement permit.

Source: Laws 1959, c. 151, § 1, p. 576; Laws 1967, c. 216, § 3, p. 580; Laws 1981, LB 72, § 5; Laws 1993, LB 235, § 7; R.S.1943, (1993), § 37-204.01; Laws 1998, LB 922, § 119; Laws 1999, LB 176, § 21; Laws 2001, LB 111, § 2.

37-410 Permits; unlawful acts; penalty; confiscation of permits; residents under sixteen years of age, no permit necessary.

It shall be unlawful (1) for any person who has been issued a permit under the Game Law to lend or transfer his or her permit to another or for any person to borrow or use the permit of another, (2) for any person to procure a permit under an assumed name or to falsely state the place of his or her legal residence or make any other false statement in securing a permit, (3) for any person to knowingly issue or aid in securing a permit under the Game Law for any person not legally entitled thereto, (4) for any person disqualified for a permit to hunt, fish, or harvest fur with or without a permit during any period when such right has been forfeited or for which his or her permit has been revoked by the commission, or (5) for any nonresident under the age of sixteen years to receive a permit to harvest fur from any fur-bearing animal under the Game Law without presenting a written request therefor signed by his or her father, mother, or guardian. All children who are residents of the State of Nebraska and are under sixteen years of age shall not be required to have a permit to hunt, harvest fur, or fish. Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least seventy-five dollars, and any permits purchased or used in violation of this section shall be confiscated by the court.

Source: Laws 1929, c. 112, II, § 8, p. 411; C.S.1929, § 37-208; Laws 1941, c. 72, § 8, p. 305; C.S.Supp.,1941, § 37-208; R.S.1943, § 37-208; Laws 1949, c. 102, § 1, p. 280; Laws 1959, c. 150, § 2, p. 569; Laws 1977, LB 40, § 173; Laws 1981, LB 72, § 6; Laws 1989, LB 34, § 9; R.S.1943, (1993), § 37-208; Laws 1998, LB 922, § 120; Laws 1999, LB 176, § 22; Laws 2003, LB 305, § 7.

37-411 Hunting, fishing, or fur harvesting without permit; unlawful; exceptions; violations; penalties.

(1) Unless issued a permit as required in the Game Law, it shall be unlawful:

(a) For any resident of Nebraska who is sixteen years of age or older or any nonresident of Nebraska to engage in fur harvesting or possess any fur-bearing animal or raw fur, except that a person may possess a fur-bearing animal or raw fur for up to ten days after expiration of a valid permit. Nonresident fur-

harvesting permits may be issued only to residents of states which issue similar permits to residents of Nebraska;

(b) For any resident of Nebraska who is sixteen years of age or older or any nonresident of Nebraska to hunt or possess any kind of game birds, game animals, or crows;

(c) For any person who is sixteen years of age or older to hunt or possess any migratory waterfowl without a federal migratory bird hunting stamp and a Nebraska migratory waterfowl stamp as required under the Game Law and rules and regulations of the commission; or

(d) For any person who is sixteen years of age or older to take any kind of fish, bullfrog, snapping turtle, tiger salamander, or mussel from the waters of this state or possess the same except as provided in section 37-402. All nonresident anglers under sixteen years of age shall be accompanied by a person who has a valid fishing permit.

(2) It shall be unlawful for a nonresident to hunt or possess any kind of game birds or game animals, to take any kind of fish, mussel, turtle, or amphibian, or to harvest fur with a resident permit illegally obtained.

(3) It shall be unlawful for anyone to do or attempt to do any other thing for which a permit is required by the Game Law without first obtaining such permit and paying the fee required.

(4) Any nonresident who hunts or has in his or her possession any wild mammal or wild bird shall first have a nonresident hunting permit as required under the Game Law and rules and regulations of the commission.

(5) Any nonresident who takes or has in his or her possession any wild turtle, mussel, or amphibian shall first have a nonresident fishing permit as required under the Game Law and rules and regulations of the commission.

(6) Except as provided in this section and sections 37-407 and 37-418, it shall be unlawful for any nonresident to trap or attempt to trap or to harvest fur or attempt to harvest fur from any wild mammal.

(7) It shall be unlawful for anyone to lure or entice wildlife into a domesticated cervine animal facility for the purpose of containing such wildlife.

(8)(a) Any person violating this section shall be guilty of a Class II misdemeanor and shall be fined at least seventy-five dollars.

(b) If the offense is failure to hold a hunting, fishing, fur-harvesting, deer, turkey, or antelope permit as required, unless issuance of the required permit is restricted so that permits are not available, the court shall require the offender to purchase the required permit and exhibit proof of such purchase to the court.

Source: Laws 1929, c. 112, II, § 13, p. 412; C.S.1929, § 37-213; Laws 1937, c. 89, § 4, p. 292; Laws 1941, c. 72, § 3, p. 301; C.S.Supp.,1941, § 37-213; R.S.1943, § 37-213; Laws 1949, c. 102, § 2, p. 280; Laws 1957, c. 139, § 5, p. 466; Laws 1959, c. 154, § 1, p. 580; Laws 1959, c. 150, § 4, p. 571; Laws 1959, c. 149, § 2, p. 565; Laws 1961, c. 169, § 2, p. 502; Laws 1961, c. 171, § 1, p. 511; Laws 1965, c. 197, § 1, p. 598; Laws 1965, c. 194, § 2, p. 592; Laws 1967, c. 216, § 5, p. 581; Laws 1972, LB 777, § 2; Laws 1973, LB 331, § 3; Laws 1977, LB 40, § 176; Laws 1978, LB 75, § 1; Laws 1979, LB 553, § 2; Laws 1979, LB 435, § 1; Laws 1981, LB 72, § 9; Laws 1987, LB 171, § 1;

Laws 1987, LB 105, § 4; Laws 1989, LB 34, § 11; Laws 1989, LB 127, § 1; Laws 1993, LB 235, § 10; Laws 1996, LB 584, § 5; R.S.Supp.,1996, § 37-213; Laws 1998, LB 922, § 121; Laws 1999, LB 176, § 23; Laws 1999, LB 404, § 23; Laws 2003, LB 305, § 8; Laws 2005, LB 162, § 3.

Cross References

Predatory animals, subject to destruction, see sections 23-358 and 81-2,236.

Legislature was constitutionally free to determine by what authority licenses should be imposed upon those desiring to hunt and fish. State ex rel. Stevens v. Nickerson, 97 Neb. 837, 151 N.W. 981 (1915).

37-412 Hunting or fur-harvesting permit; exception for dog trials.

No hunting permit or fur-harvesting permit shall be required of any nonresident entering this state solely to participate in scheduled dog trials for which an entry fee is charged. For purposes of this section, scheduled dog trials means events in which hunting dogs and their owners or handlers compete and are judged under controlled conditions in various feats of skill and performance in the hunting or retrieving of birds and animals when such events are conducted under the written authorization of the commission.

Source: Laws 1998, LB 922, § 122.

37-413 Firearm hunter education program; commission issue certificate; hunting, lawful when; apprentice hunter education exemption certificate; fee.

(1) For the purpose of establishing and administering a mandatory firearm hunter education program for persons twelve through twenty-nine years of age who hunt with a firearm or crossbow any species of game, game birds, or game animals, the commission shall provide a program of firearm hunter education training leading to obtaining a certificate of successful completion in the safe handling of firearms and shall locate and train volunteer firearm hunter education instructors. The program shall provide a training course having a minimum of (a) ten hours of classroom instruction or (b) independent study on the part of the student sufficient to pass an examination given by the commission followed by such student's participation in a minimum of four hours of practical instruction. The program shall provide instruction in the areas of safe firearms use, shooting and sighting techniques, hunter ethics, game identification, and conservation management. The commission shall issue a firearm hunter education certificate of successful completion to persons having satisfactorily completed a firearm hunter education course accredited by the commission and shall print, purchase, or otherwise acquire materials as necessary for effective program operation. The commission shall adopt and promulgate rules and regulations for carrying out and administering such programs.

(2) It shall be unlawful for any person twenty-nine years of age or younger to hunt with a firearm or crossbow any species of game, game birds, or game animals except:

(a) A person under the age of twelve years who is accompanied by a person nineteen years of age or older having a valid hunting permit;

(b) A person twelve through twenty-nine years of age who has on his or her person proof of successful completion of a hunter education course or a firearm hunter education course issued by the person's state or province of residence or by an accredited program recognized by the commission; or

(c) A person twelve through twenty-nine years of age who has on his or her person the appropriate hunting permit and an apprentice hunter education exemption certificate issued by the commission pursuant to subsection (3) of this section and who is accompanied as described in subsection (4) of this section.

(3) An apprentice hunter education exemption certificate may be issued to a person twelve through twenty-nine years of age, once during such person's lifetime with one renewal, upon payment of a fee of five dollars and shall expire at midnight on December 31 of the year for which the apprentice hunter education exemption certificate is issued. The commission may adopt and promulgate rules and regulations allowing for the issuance of apprentice hunter education exemption certificates. All fees collected under this subsection shall be remitted to the State Treasurer for credit to the State Game Fund.

(4) For purposes of this section, accompanied means under the direct supervision of a person nineteen years of age or older having a valid hunting permit who is at all times in unaided visual and verbal communication of no more than two persons having an apprentice hunter education exemption certificate. This subsection does not prohibit the use by such person nineteen years of age or older of ordinary prescription eyeglasses or contact lenses or ordinary hearing aids.

Source: Laws 1969, c. 766, § 1, p. 2903; Laws 1974, LB 865, § 1; Laws 1996, LB 584, § 1; R.S.Supp., 1996, § 37-104; Laws 1998, LB 922, § 123; Laws 2001, LB 111, § 3; Laws 2003, LB 305, § 9; Laws 2008, LB690, § 1.
Effective date July 18, 2008.

37-414 Bow hunter education program; certificate; issuance; required; when.

(1) The commission shall establish and administer a bow hunter education program consisting of a minimum of (a) ten hours of classroom instruction or (b) independent study on the part of the student sufficient to pass an examination given by the commission followed by such student's participation in a minimum of four hours of practical instruction. The program shall provide instruction in the safe use of bow hunting equipment, the fundamentals of bow hunting, shooting and hunting techniques, game identification, conservation management, and hunter ethics. When establishing such a program, the commission shall locate and train volunteers as bow hunter education instructors. The commission shall issue a certificate of successful completion to any person who satisfactorily completes a bow hunter education program established by the commission and shall print, purchase, or otherwise acquire materials necessary for effective program operation. The commission shall adopt and promulgate rules and regulations for carrying out and administering such program.

(2) A person twelve through twenty-nine years of age who is hunting antelope, deer, elk, or mountain sheep with a bow and arrow pursuant to any provision of sections 37-447 to 37-453 shall have on his or her person (a) proof of successful completion of a bow hunter education course issued by his or her state or province of residence or by an accredited program recognized by the commission or (b) the appropriate hunting permit and an apprentice hunter

education exemption certificate issued and enforced by the commission pursuant to section 37-413.

Source: Laws 1991, LB 403, § 1; Laws 1996, LB 584, § 2; Laws 1997, LB 107, § 1; R.S.Supp.,1997, § 37-105; Laws 1998, LB 922, § 124; Laws 2001, LB 111, § 4; Laws 2003, LB 305, § 10; Laws 2007, LB299, § 3; Laws 2008, LB690, § 2.
Effective date July 18, 2008.

37-415 Lifetime fishing, hunting, or combination permit; fees; replacement; rules and regulations.

(1) The commission may issue to any Nebraska resident a lifetime fishing, hunting, or combination hunting and fishing permit upon application and payment of the appropriate fee. The fee for a resident lifetime hunting permit shall be not more than two hundred ninety-nine dollars, the fee for a resident lifetime fishing permit shall be not more than three hundred forty-five dollars plus the cost of a lifetime aquatic habitat stamp, and the fee for a resident lifetime combination hunting and fishing permit shall be not more than five hundred ninety-eight dollars plus the cost of a lifetime aquatic habitat stamp, as such fees are established by the commission pursuant to section 37-327. Payment of the fee shall be made in a lump sum at the time of application.

(2) A resident lifetime permit shall not be made invalid by reason of the holder subsequently residing outside the state.

(3) The commission may issue to any nonresident a lifetime fishing, hunting, or combination hunting and fishing permit upon application and payment of the appropriate fee. The fee for a nonresident lifetime hunting permit shall be not more than twelve hundred fifty dollars, the fee for a nonresident lifetime fishing permit shall be not more than eight hundred fifty dollars plus the cost of a lifetime aquatic habitat stamp, and the fee for a nonresident lifetime combination hunting and fishing permit shall be not more than two thousand dollars plus the cost of a lifetime aquatic habitat stamp, as such fees are established by the commission pursuant to section 37-327. Payment of the fee shall be made in a lump sum at the time of application.

(4) A replacement resident or nonresident lifetime permit may be issued if the original has been lost or destroyed. The fee for a replacement shall be not less than one dollar and fifty cents and not more than five dollars, as established by the commission.

(5) The commission may adopt and promulgate rules and regulations to carry out this section and sections 37-416 and 37-417. Such rules and regulations may include, but need not be limited to, establishing fees which vary based on the age of the applicant.

Source: Laws 1983, LB 173, § 1; Laws 1993, LB 235, § 4; R.S.1943, (1993), § 37-202.01; Laws 1998, LB 922, § 125; Laws 1999, LB 176, § 24; Laws 2001, LB 111, § 5; Laws 2003, LB 306, § 2; Laws 2005, LB 162, § 4; Laws 2008, LB1162, § 1.
Effective date July 18, 2008.

37-416 Lifetime permits; stamps, required.

Lifetime hunting, fishing, or combination hunting and fishing permits shall not allow fur harvesting, the hunting of elk, mountain sheep, deer, antelope, or

wild turkey, or other hunting or fishing done under authority of any special permit. The holder of a lifetime permit is required to purchase habitat stamps, aquatic habitat stamps, and Nebraska migratory waterfowl stamps pursuant to section 37-426.

Source: Laws 1983, LB 173, § 2; Laws 1996, LB 584, § 4; R.S.Supp.,1996, § 37-202.02; Laws 1998, LB 922, § 126; Laws 1999, LB 176, § 25; Laws 2005, LB 162, § 5.

37-417 Lifetime permits; fees; disposition.

Fees received for lifetime permits shall be credited to the State Game Fund and shall not be expended but may be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Income from such investments may be expended by the commission.

Source: Laws 1983, LB 173, § 3; Laws 1995, LB 7, § 32; R.S.Supp.,1996, § 37-202.03; Laws 1998, LB 922, § 127.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

37-418 Permits for scientific, educational, or private wildlife management purposes; when granted.

Permits may be granted by the commission to any properly accredited person to take and collect for strictly scientific, educational, or private wildlife management purposes any of the fauna hereby protected and their nests, eggs, and spawn. The commission shall adopt and promulgate rules and regulations to carry out this section, including, but not limited to, requirements relating to applications, eligibility, species which may be taken, methods of taking, and reporting.

Source: Laws 1929, c. 112, II, § 9, p. 411; C.S.1929, § 37-209; R.S.1943, § 37-209; Laws 1967, c. 217, § 1, p. 592; R.S.1943, (1993), § 37-209; Laws 1998, LB 922, § 128; Laws 2001, LB 130, § 2.

37-419 Hunting, fishing, or fur-harvesting permit; person stationed in Nebraska in military service; certain students; resident permit.

(1) Any person in the military service of the United States, regardless of residence, who has been ordered to active duty at any facility of the Department of Defense or its component services located in the State of Nebraska, may hunt, fish, or harvest fur on the appropriate resident permit upon satisfactory proof that such person has been actually present for duty at such facility for a period of thirty days or more.

(2) Any person enrolled and in actual attendance as a full-time student in any university, college, junior college, or vocational-technical college in this state, regardless of residence, or any high school foreign exchange student in this state, may hunt or fish on the appropriate resident permit upon satisfactory proof that such person has been actually in attendance at any such institution

for a period of thirty days or more or is a high school foreign exchange student.

Source: Laws 1951, c. 107, § 1, p. 515; Laws 1957, c. 139, § 6, p. 467; Laws 1959, c. 150, § 5, p. 572; Laws 1967, c. 216, § 6, p. 583; Laws 1969, c. 291, § 1, p. 1062; Laws 1972, LB 1057, § 1; Laws 1981, LB 72, § 10; Laws 1983, LB 104, § 1; R.S.1943, (1993), § 37-214.01; Laws 1998, LB 922, § 129.

37-420 Hunting or fishing permit; veterans; exempt from payment of fees, when; special permits; limitations.

(1) Any veteran who is a legal resident of the State of Nebraska and who was discharged or separated with a characterization of honorable or general (under honorable conditions) shall be exempt from the payment of any fees provided by the laws of the State of Nebraska and established by the commission pursuant to section 37-327 for the privilege of fishing or hunting in Nebraska if the veteran:

(a) Is rated by the United States Department of Veterans Affairs as fifty percent or more disabled as a result of service in the armed forces of the United States; or

(b) Is receiving a pension from the department as a result of total and permanent disability, which disability was not incurred in the line of duty in the military service.

(2) The exemption described in subsection (1) of this section shall not extend to the privilege of commercial fishing, trapping of fur-bearing animals, or hunting for deer, antelope, wild turkey, or any other species of fish and game on which the open season is limited to a restricted number of permits or to special permits for a restricted area or game management unit.

(3) If disabled persons are unable by reason of physical infirmities to hunt and fish in the normal manner, the commission may issue special permits without cost to those persons to hunt and fish from a vehicle, but such permits shall not authorize any person to shoot from any public highway.

(4) All permits issued without the payment of any fees pursuant to this section shall be perpetual and become void only upon termination of eligibility as provided in this section.

(5) The commission may adopt and promulgate rules and regulations necessary to carry out this section.

(6) Permits issued under subdivision (3) of this section as it existed prior to January 1, 2006, shall not expire as provided in section 37-421.

Source: Laws 1957, c. 143, § 1, p. 479; Laws 1959, c. 155, § 1, p. 582; Laws 1965, c. 198, § 1, p. 600; Laws 1967, c. 216, § 7, p. 583; Laws 1972, LB 1204, § 1; Laws 1973, LB 138, § 1; Laws 1979, LB 434, § 2; Laws 1991, LB 2, § 5; Laws 1993, LB 235, § 11; R.S.1943, (1993), § 37-214.03; Laws 1998, LB 922, § 130; Laws 2005, LB 54, § 6; Laws 2005, LB 162, § 6; Laws 2005, LB 227, § 2.

37-421 Combination hunting and fishing permits; persons eligible; exempt from payment of fees, when; special permits, limitation.

(1) The commission may issue an annual combination fishing and hunting permit upon application and payment of a fee of five dollars to (a) any Nebraska resident who is a veteran, who is sixty-four years of age or older, and who was discharged or separated with a characterization of honorable or general (under honorable conditions) or (b) any Nebraska resident who is sixty-nine years of age or older. A person who is issued a permit under this section shall be exempt from the payment of any additional fees provided by the laws of the State of Nebraska and established by the commission pursuant to section 37-327 for the privilege of fishing or hunting in Nebraska, except that such exemption shall not extend to the privilege of commercial fishing, trapping of fur-bearing animals, or hunting for deer, antelope, wild turkey, or any other species of fish and game on which the open season is limited to a restricted number of permits or to special permits for a restricted area or game management unit.

(2) A permit issued as provided in this section shall expire as provided in section 37-405. Permits issued under this section as it existed before January 1, 2006, shall not expire as provided in section 37-405.

(3) If disabled persons are unable by reason of physical infirmities to hunt and fish in the normal manner, the commission may issue special permits without cost to those persons to hunt and fish from a vehicle, but such permits shall not authorize any person to shoot from any public highway.

(4) The commission may adopt and promulgate rules and regulations necessary to carry out this section.

Source: Laws 1972, LB 1204, § 6; Laws 1973, LB 138, § 2; Laws 1975, LB 79, § 2; Laws 1979, LB 434, § 3; Laws 1993, LB 235, § 12; R.S.1943, (1993), § 37-214.04; Laws 1998, LB 922, § 131; Laws 2005, LB 162, § 7; Laws 2005, LB 227, § 3.

37-421.01 Military deployment; discounted permit; conditions; fee.

(1) Notwithstanding any provision of section 37-407 to the contrary, a Nebraska resident who purchased a hunting, fishing, or combination hunting and fishing permit and who was deployed out of state with a branch of the United States military shall be entitled to receive a discounted permit on a one-time basis upon returning to the state if the resident:

(a) Provides to the commission satisfactory proof of purchase of the original permit and evidence of the resident's deployment out of state during the period of the original permit; and

(b) Was deployed out of state for more than one-half of the period of the original permit.

(2)(a) Notwithstanding any provision of section 37-447, 37-449, 37-450, 37-451, or 37-457 to the contrary, a Nebraska resident who purchased a big game permit and who was deployed out of state with a branch of the United States military for the entire season of the hunt and who was unable to use the permit shall be entitled to receive a discounted permit on a one-time basis upon returning to the state if the resident provides to the commission satisfactory proof of purchase of the original permit and evidence of the resident's deployment. Alternatively, the member of the military may request a refund of the amount paid for a big game permit and the commission shall pay such amount.

(b) For purposes of this subsection, big game means antelope, deer, elk, mountain sheep, and wild turkeys.

(3) The commission shall establish a fee of five dollars for the discounted permits authorized in this section. The commission may authorize electronic issuance of the discounted permits.

(4) The commission may adopt and promulgate rules and regulations that set forth the procedures for applying for, and the issuance of, the discounted permits authorized in this section.

Source: Laws 2005, LB 121, § 1.

37-422 Special daily fishing permits; fee; form; requirements; commission; establish; educational fishing project permits.

(1) The commission may require special daily fishing permits on areas designated by it and subject to intensive fishery management. Such permits may be vended by mechanical or electronic methods. The commission may establish the fee, form, and requirements of such special daily fishing permit, and establish rules and regulations governing seasons, limits, methods of taking, open or closed waters, and such other regulations as it deems necessary on such designated areas. Such special daily fishing permit shall be required of any and all persons fishing on the designated area and shall be the only fishing permit required thereon. The commission may only issue the permits authorized by this section on staffed areas or on portions of staffed areas under its ownership or control which are intensively managed or stocked for a high level of fish production.

(2) An educational fishing project permit may be issued to any instructor of a university, college, or high school and his or her students participating in an educational fishing project. Such persons shall be exempt from the payment of any fees provided by the Game Law for the privilege of fishing in Nebraska while participating in the project. Such exemption shall not extend to the privilege of commercial fishing or to the privilege of fishing for any species of fish on which an open season is limited to a restricted number of permits or to special permits for a restricted area. The commission shall adopt and promulgate rules and regulations necessary to carry out this subsection.

Source: Laws 1967, c. 212, § 1, p. 573; R.S.1943, (1993), § 37-204.02; Laws 1998, LB 922, § 132; Laws 1999, LB 176, § 26.

37-423 Fishing permit; recipient of old age assistance; exempt from payment of fees; condition.

Any person who is a recipient of old age assistance as provided by Chapter 68, article 10, and who is a resident of the State of Nebraska shall be exempt from the payment of any fees provided by the laws of the State of Nebraska for the privilege of fishing in Nebraska if he or she obtains a certificate from the county clerk of the county in which such person resides certifying that he or she is a recipient of old age assistance.

Source: Laws 1951, c. 111, § 1, p. 519; R.S.1943, (1993), § 37-214.02; Laws 1998, LB 922, § 133.

37-424 Special fishing permit for resident who is physically or developmentally disabled; fee.

(1) The commission may issue, regardless of any other requirements or qualifications of the Game Law, special fishing permits to those residents of the State of Nebraska who are severely physically disabled or developmentally disabled and who require assistance fishing. The special permit shall entitle the disabled person and one person assisting the disabled person to take or possess any aquatic organism in compliance with the Game Law. The special permit shall be valid without an aquatic habitat stamp issued under the provisions of sections 37-426 to 37-433. The disabled person shall be considered the holder of the permit. The annual fee for such permit shall be five dollars, regardless of the age of the applicant.

(2) For purposes of this section, severely physically disabled person means a person certified by a physician to have a permanent physical impairment which results in an inability to use fishing equipment unassisted.

(3) For purposes of this section, developmentally disabled person means a person who has a developmental disability as defined in section 83-1205 and whose disability is certified by a physician as resulting in an inability to use fishing equipment unassisted.

(4) The commission shall adopt and promulgate rules and regulations necessary to carry out this section.

Source: Laws 1997, LB 19, § 1; R.S.Supp.,1997, § 37-204.03; Laws 1998, LB 922, § 134.

37-425 Special fishing permits for wards of the state; issuance.

The commission may issue, regardless of any other requirements or qualifications of law, without cost, special fishing permits to wards of the state, on a group basis, for therapeutic purposes, when application has been made to the commission by the head of the appropriate state institution involved.

Source: Laws 1998, LB 922, § 135.

37-426 Taking birds, animals, and aquatic organisms; stamps; when required; exhibit on request; fees.

(1) Except as provided in subsection (4) of this section:

(a) No resident of Nebraska sixteen years of age or older and no nonresident of Nebraska regardless of age shall hunt, harvest, or possess any game bird, upland game bird, game animal, or fur-bearing animal unless, at the time of such hunting, harvesting, or possessing, such person has an unexpired habitat stamp as prescribed by the rules and regulations of the commission prior to the time of hunting, harvesting, or possessing such bird or animal;

(b) No resident or nonresident of Nebraska shall take or possess any aquatic organism requiring a Nebraska fishing permit, including any fish, bullfrog, snapping turtle, tiger salamander, or mussel, unless, at the time of such taking or possessing, such person has an unexpired aquatic habitat stamp as prescribed by the rules and regulations of the commission prior to the time of taking or possessing a fish, bullfrog, snapping turtle, tiger salamander, or mussel; and

(c) No resident of Nebraska sixteen years of age or older and no nonresident of Nebraska regardless of age shall hunt, harvest, or possess any migratory waterfowl unless, at the time of such hunting, harvesting, or possessing, such person has an unexpired Nebraska migratory waterfowl stamp as prescribed by

the rules and regulations of the commission prior to the time of hunting, harvesting, or possessing such migratory waterfowl.

(2)(a) The commission may issue a lifetime habitat stamp upon application and payment of the appropriate fee. The fee for a lifetime habitat stamp shall be twenty times the fee required in subsection (5) of this section for an annual habitat stamp. Payment of such fee shall be made in a lump sum at the time of application. A replacement lifetime habitat stamp may be issued if the original is lost or destroyed. The fee for a replacement shall be not less than one dollar and fifty cents and not more than five dollars, as established by the commission.

(b) The commission may issue a lifetime Nebraska migratory waterfowl stamp upon application and payment of the appropriate fee. The fee for a lifetime Nebraska migratory waterfowl stamp shall be twenty times the fee required in subsection (5) of this section for an annual Nebraska migratory waterfowl stamp. Payment of such fee shall be made in a lump sum at the time of application. A replacement Nebraska lifetime migratory waterfowl stamp may be issued if the original is lost or destroyed. The fee for a replacement shall be not less than one dollar and fifty cents and not more than five dollars, as established by the commission.

(3) The commission may issue a lifetime aquatic habitat stamp upon application and payment of the appropriate fee. The fee for a lifetime aquatic habitat stamp shall be not more than one hundred twenty-five dollars as established by the commission pursuant to section 37-327. Payment of such fee shall be made in a lump sum at the time of application. A lifetime aquatic habitat stamp shall not be made invalid by reason of the holder subsequently residing outside the state. A replacement lifetime aquatic habitat stamp may be issued if the original is lost or destroyed. The fee for a replacement shall not be less than one dollar and fifty cents and not more than five dollars, as established by the commission.

(4) Habitat stamps are not required for holders of limited permits issued under section 37-455. Aquatic habitat stamps are not required (a) when a fishing permit is not required, (b) for holders of permits pursuant to section 37-424, or (c) for holders of lifetime fishing permits or lifetime combination hunting and fishing permits purchased prior to January 1, 2006. Nebraska migratory waterfowl stamps are not required for hunting, harvesting, or possessing any species other than ducks, geese, or brant. For purposes of this section, a showing of proof of the electronic issuance of a stamp by the commission shall fulfill the requirements of this section.

(5) Any person to whom a stamp has been issued shall, immediately upon request, exhibit evidence of issuance of the stamp to any officer. Any person hunting, fishing, harvesting, or possessing any game bird, upland game bird, game animal, or fur-bearing animal or any aquatic organism requiring a fishing permit in this state without evidence of issuance of the appropriate stamp shall be deemed to be without such stamp. A habitat stamp shall be issued upon the payment of a fee of not more than sixteen dollars per stamp. An aquatic habitat stamp shall be issued in conjunction with each fishing permit for a fee of not more than seven dollars and fifty cents per stamp for annual fishing permits, three-day fishing permits, or combination hunting and fishing permits and a fee of not more than one hundred dollars for lifetime fishing or combination hunting and fishing permits. The fee established under section 37-407 for a one-day fishing permit shall include an aquatic habitat stamp. One dollar from the sale of each one-day fishing permit shall be remitted to the State Treasurer for

credit to the Nebraska Aquatic Habitat Fund. A Nebraska migratory waterfowl stamp shall be issued upon the payment of a fee of not more than ten dollars per stamp. The commission shall establish the fees pursuant to section 37-327.

Source: Laws 1976, LB 861, § 7; Laws 1981, LB 72, § 12; Laws 1983, LB 170, § 3; Laws 1991, LB 340, § 1; Laws 1993, LB 235, § 15; Laws 1996, LB 584, § 9; Laws 1997, LB 19, § 3; R.S.Supp.,1997, § 37-216.01; Laws 1998, LB 922, § 136; Laws 1999, LB 176, § 27; Laws 2001, LB 111, § 6; Laws 2002, LB 1003, § 20; Laws 2003, LB 305, § 11; Laws 2003, LB 306, § 3; Laws 2005, LB 162, § 8; Laws 2007, LB299, § 4; Laws 2008, LB1162, § 2.

Effective date July 18, 2008.

37-427 Stamps; nontransferable; expiration.

The habitat stamp, aquatic habitat stamp, or Nebraska migratory waterfowl stamp required by section 37-426 is not transferable and, except for the lifetime habitat stamp, the lifetime aquatic habitat stamp, the lifetime Nebraska migratory waterfowl stamp, and a habitat stamp purchased for a permit which is valid into the next calendar year, expires at midnight on December 31 in the year for which the stamp is issued.

Source: Laws 1976, LB 861, § 8; Laws 1983, LB 174, § 2; Laws 1996, LB 584, § 10; R.S.Supp.,1996, § 37-216.02; Laws 1998, LB 922, § 137; Laws 1999, LB 176, § 28; Laws 2001, LB 111, § 7; Laws 2003, LB 305, § 12; Laws 2005, LB 162, § 9; Laws 2007, LB299, § 5.

37-428 Stamps; unlawful acts; penalty; affirmative defense.

It shall be unlawful: (1) For any person who has a stamp under sections 37-426 to 37-433 to lend or transfer the stamp to another person or for any person to borrow or use the stamp of another; (2) for any person to (a) procure a stamp under an assumed name, (b) falsely state the place of his or her legal residence in procuring the stamp, or (c) make any other false statement in procuring the stamp; (3) for any person to knowingly issue or aid in securing a stamp under sections 37-426 to 37-433 for any person not legally entitled thereto; (4) for any person disqualified for a stamp to take or possess a fish, bullfrog, snapping turtle, tiger salamander, or mussel, to hunt game birds, upland game birds, or game animals, or to harvest fur-bearing animals with or without a stamp during any period when such right has been forfeited or for which his or her stamp has been revoked by the commission; or (5) for anyone to take or possess a fish, bullfrog, snapping turtle, tiger salamander, or mussel, to hunt game birds, migratory waterfowl, upland game birds, or game animals, or to harvest fur-bearing animals without a permit as required by section 37-401 and the appropriate stamp as required by the Game Law. Any person violating any of the provisions of sections 37-426 to 37-433 shall be guilty of a Class V misdemeanor and the court shall require the offender to purchase the required stamp, and any stamp obtained or used in violation of sections 37-426 to 37-433 shall be canceled and confiscated, if appropriate, by the court.

It shall be an affirmative defense to prosecution for any violation of sections 37-426 to 37-433 for which possession is an element of the offense that such possession was not the result of effort or determination or that the actor was

unaware of his or her physical possession or control for a sufficient period to have been able to terminate such possession or control.

Source: Laws 1976, LB 861, § 10; Laws 1977, LB 41, § 6; Laws 1983, LB 174, § 4; Laws 1996, LB 584, § 12; R.S.Supp.,1996, § 37-216.04; Laws 1998, LB 922, § 138; Laws 2003, LB 305, § 13; Laws 2005, LB 162, § 10.

37-429 Stamps; issuance.

The commission shall provide for the issuance of habitat stamps, aquatic habitat stamps, and Nebraska migratory waterfowl stamps in the manner provided in section 37-406.

Source: Laws 1976, LB 861, § 11; Laws 1983, LB 174, § 5; Laws 1996, LB 584, § 13; R.S.Supp.,1996, § 37-216.05; Laws 1998, LB 922, § 139; Laws 1999, LB 176, § 29; Laws 2005, LB 162, § 11.

37-430 Habitat stamps; authorized agents; fees; remit.

Any person, firm, or corporation authorized as an agent to sell the stamps under sections 37-426 to 37-433 and collect the fees therefor shall remit the fees for the stamps to the commission in the manner and at the times prescribed by the rules and regulations of the commission.

Source: Laws 1976, LB 861, § 12; Laws 1983, LB 174, § 6; Laws 1996, LB 584, § 14; R.S.Supp.,1996, § 37-216.06; Laws 1998, LB 922, § 140; Laws 1999, LB 176, § 30.

37-431 Nebraska Habitat Fund; Nebraska Aquatic Habitat Fund; created; use; investment; stamps; fees; disposition; duties of officials; violation; penalty.

(1)(a) The Nebraska Habitat Fund is created. The commission shall remit fees received for habitat stamps and Nebraska migratory waterfowl stamps to the State Treasurer for credit to the Nebraska Habitat 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. No expenditure shall be made from the Nebraska Habitat Fund until the commission has presented a habitat plan to the Committee on Appropriations of the Legislature for its approval.

(b) Fees received for lifetime habitat stamps and lifetime Nebraska migratory waterfowl stamps shall be credited to the Nebraska Habitat Fund and shall not be expended but may be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Income from such investments may be expended by the commission pursuant to section 37-432.

(2)(a) The Nebraska Aquatic Habitat Fund is created. The commission shall remit fees received for aquatic habitat stamps and one dollar of the one-day fishing permit fee as provided in section 37-426 to the State Treasurer for credit to the Nebraska Aquatic Habitat 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. No expenditure shall be made from the Nebraska Aquatic Habitat Fund until the commission has presented a habitat plan to the Committee on Appropria-

tions and the Committee on Natural Resources of the Legislature for their approval.

(b) Fees received for lifetime aquatic habitat stamps shall be credited to the Nebraska Aquatic Habitat Fund and shall not be expended but may be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Income from such investments may be expended by the commission pursuant to section 37-432.

(3) The secretary of the commission and any county clerk or public official designated to sell habitat stamps, aquatic habitat stamps, or Nebraska migratory waterfowl stamps shall be liable upon their official bonds or equivalent commercial insurance policy for failure to remit the money from the sale of the stamps, as required by sections 37-426 to 37-433, coming into their hands. Any agent who receives stamp fees and who fails to remit the fees to the commission within a reasonable time after demand by the commission shall be liable to the commission in damages for double the amount of the funds wrongfully withheld. Any agent who purposefully fails to remit such fees with the intention of converting them is guilty of theft. The penalty for such violation shall be determined by the amount converted as specified in section 28-518.

Source: Laws 1976, LB 861, § 13; Laws 1983, LB 174, § 7; Laws 1996, LB 584, § 15; R.S.Supp.,1996, § 37-216.07; Laws 1998, LB 922, § 141; Laws 1999, LB 176, § 31; Laws 2001, LB 111, § 8; Laws 2004, LB 884, § 19; Laws 2005, LB 162, § 12; Laws 2007, LB299, § 6.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

37-432 Stamps; money received from fees; administered by commission; purposes.

(1) All money received from the sale of habitat stamps, as provided by sections 37-426 to 37-433, shall be administered by the commission for the acquisition on a willing-seller willing-buyer basis only, leasing, development, management, and enhancement of and taking of easements on wildlife lands and habitat areas. Such funds may be used in whole or in part for the matching of federal funds.

(2) All money received from the sale of aquatic habitat stamps, as provided by sections 37-426 to 37-433, shall be administered by the commission and shall be used first for the maintenance and restoration of existing aquatic habitat, if maintenance and restoration is practicable, and second for the enhancement of existing aquatic habitat. Such funds may be used in whole or in part for the matching of federal funds.

(3) All money received from the sale of Nebraska migratory waterfowl stamps, as provided by sections 37-426 to 37-433, shall be administered by the commission for the acquisition on a willing-seller willing-buyer basis only, leasing, development, management, and enhancement of and taking of easements on migratory waterfowl habitat. Such funds may be used in whole or in part for the matching of federal funds.

Source: Laws 1976, LB 861, § 14; Laws 1983, LB 174, § 8; Laws 1996, LB 584, § 16; R.S.Supp.,1996, § 37-216.08; Laws 1998, LB 922, § 142; Laws 2005, LB 162, § 13.

37-433 Violations; penalty; affirmative defense.

Unless otherwise provided in sections 37-426 to 37-433, any person who violates any provision of sections 37-426 to 37-433 or who violates or fails to comply with any regulation thereunder shall be guilty of a Class V misdemeanor.

It shall be an affirmative defense to prosecution for any violation of sections 37-426 to 37-433 for which possession is an element of the offense that such possession was not the result of effort or determination or that the actor was unaware of his or her physical possession or control for a sufficient period to have been able to terminate such possession or control.

Source: Laws 1976, LB 861, § 15; Laws 1977, LB 41, § 7; Laws 1983, LB 174, § 9; Laws 1996, LB 584, § 17; R.S.Supp., 1996, § 37-216.09; Laws 1998, LB 922, § 143.

37-434 Entry permits required; purpose.

For the purpose of supplying additional revenue to better accommodate the increasing public use of the Nebraska state park system by providing improved operation and maintenance, the commission shall establish an entry permit program for areas of the Nebraska state park system which are designated as permit areas by the commission.

Source: Laws 1977, LB 81, § 1; R.S.1943, (1993), § 37-1101; Laws 1998, LB 922, § 144; Laws 1999, LB 176, § 32.

Fees charged by sections 37-1101 et seq. are not violative of equal protection. State v. Sprague, 213 Neb. 581, 330 N.W.2d 739 (1983).

37-435 Entry permits; terms, defined.

For purposes of sections 37-434 to 37-446, unless the context otherwise requires:

- (1) Motor vehicle means any self-propelled vehicle of a type required to be registered and licensed for operation on the highways of the state;
- (2) Permit areas means those areas, or portions of areas, of the Nebraska state park system which are defined in subdivisions (1), (2), and (3) of section 37-338 and which are designated as provided in sections 37-339 and 37-340; and
- (3) Permit means motor vehicle entry permit.

Source: Laws 1977, LB 81, § 2; Laws 1980, LB 723, § 1; R.S.1943, (1993), § 37-1102; Laws 1998, LB 922, § 145; Laws 1999, LB 176, § 33.

The term "permit area", as used in the statute, is not unconstitutionally vague. State v. Sprague, 213 Neb. 581, 330 N.W.2d 739 (1983).

37-436 Permits required; when.

The commission shall provide for the issuance of permits. All motor vehicles entering permit areas shall have a permit except:

- (1) Motor vehicles bearing state licenses;
- (2) Motor vehicles in use for law enforcement or emergency purposes;

(3) Motor vehicles engaged in the servicing, enforcement, administration, repair, maintenance, or construction of facilities or property and motor vehicles engaged in the delivery of commodities or materials to the permit areas;

(4) Motor vehicles being operated on a federal, state, or county highway which crosses a permit area, entering at one point and exiting at another;

(5) Motor vehicles which are traveling directly between the permit boundary and the site within the area where permits are vended; and

(6) Motor vehicles being operated by the holders of easements across permit areas or their agents, employees, or contractors.

Source: Laws 1977, LB 81, § 3; Laws 1978, LB 742, § 2; Laws 1980, LB 723, § 2; Laws 1997, LB 271, § 14; R.S.Supp., 1997, § 37-1103; Laws 1998, LB 922, § 146; Laws 1999, LB 176, § 34.

37-437 Permit privileges.

A permit shall entitle the vehicle for which it is issued access to any permit area and no other right or privilege shall be conveyed. A permit shall not entitle the holder, or any occupant of the vehicle, to any service, facility, or activity for which a separate fee is imposed.

Source: Laws 1977, LB 81, § 4; R.S.1943, (1993), § 37-1104; Laws 1998, LB 922, § 147.

37-438 Annual and temporary permits; fees.

(1) The commission shall devise permits in two forms: Annual and temporary.

(2) The annual permit may be purchased by any person and shall be valid through December 31 in the year for which the permit is issued. The fee for the annual permit for a resident motor vehicle shall be not more than twenty dollars per permit. The fee for the annual permit for a nonresident motor vehicle shall not be more than twenty-five dollars. The commission shall establish such fees by the adoption and promulgation of rules and regulations.

(3) A temporary permit may be purchased by any person and shall be valid until noon of the day following the date of issue. The fee for the temporary permit for a resident motor vehicle shall be not more than four dollars. The fee for the temporary permit for a nonresident motor vehicle shall not be more than five dollars. The commission shall establish such fees by the adoption and promulgation of rules and regulations. The commission may issue temporary permits which are either valid for any area or valid for a single area.

Source: Laws 1977, LB 81, § 5; Laws 1978, LB 742, § 7; Laws 1980, LB 723, § 3; Laws 1981, LB 74, § 1; Laws 1983, LB 199, § 1; Laws 1993, LB 235, § 32; R.S.1943, (1993), § 37-1105; Laws 1998, LB 922, § 148; Laws 1999, LB 176, § 35; Laws 2003, LB 122, § 1; Laws 2005, LB 162, § 14; Laws 2008, LB1162, § 3.
Effective date July 18, 2008.

37-439 Duplicate annual permits; fee.

(1) In addition to the permits authorized in section 37-438, the commission shall design a duplicate annual permit which may be purchased for one-half the fee of an annual permit.

(2) The registered owner of two or more motor vehicles may purchase one duplicate annual permit for each annual permit purchased. The duplicate annual permit shall be used for the purchaser's vehicles. A duplicate annual permit may be purchased at any time during the year upon proof of purchase of an annual permit and in compliance with rules and regulations of the commission. A permit holder who sells his or her vehicle may purchase a duplicate annual permit upon surrendering the original permit or a substantial portion of the permit.

Source: Laws 1983, LB 199, § 4; Laws 1993, LB 235, § 33; R.S.1943, (1993), § 37-1107.01; Laws 1998, LB 922, § 149; Laws 1999, LB 176, § 36.

37-440 Display and issuance of permits; where procured; clerical fee.

(1) The commission shall prescribe the type and design of permits and the method of display of permits for motor vehicles. The commission may provide for the electronic issuance of permits and may enter into contracts to procure necessary services and supplies for the electronic issuance of permits.

(2) The permits may be procured from the central and district offices of the commission, at areas of the Nebraska state park system where commission offices are maintained, from self-service vending stations at designated park areas, from designated commission employees, through Internet sales from the commission's web site, from appropriate offices of county government, and from various private persons, firms, or corporations designated by the commission as permit agents. County offices or private persons, firms, or corporations designated by the commission as permit agents shall be entitled to collect and retain a fee of not less than twenty-five cents and not more than thirty-five cents, as established by the commission pursuant to section 37-327, for each permit as reimbursement for the clerical work of issuing the permits and remitting therefor. The commission shall be entitled to collect and retain a fee of one dollar for each permit sold through its web site as reimbursement for the clerical work and postage associated with issuing the permit.

Source: Laws 1977, LB 81, § 8; Laws 1980, LB 723, § 5; Laws 1993, LB 235, § 34; R.S.1943, (1993), § 37-1108; Laws 1998, LB 922, § 150; Laws 1999, LB 176, § 37; Laws 2002, LB 1003, § 21.

37-441 Commission designate permit areas.

The commission shall evaluate the areas of the Nebraska state park system and designate those areas, or portions of areas, for which a permit shall be required. The commission shall periodically reevaluate the Nebraska state park system and designate additional permit areas or reclassify permit areas as nonpermit areas as conditions and public use warrant.

Source: Laws 1977, LB 81, § 9; Laws 1983, LB 199, § 2; R.S.1943, (1993), § 37-1109; Laws 1998, LB 922, § 151.

37-442 Permit areas; post signs; free permit, employees.

The commission shall post signs at all entrances to permit areas and the text of such signs shall clearly convey the fact that motor vehicles using the area are required to display a permit. The commission may issue free permits for the

private motor vehicles of its employees who are required to reside on a permit area by the terms of their employment.

Source: Laws 1977, LB 81, § 10; R.S.1943, (1993), § 37-1110; Laws 1998, LB 922, § 152.

37-443 Unlawful entry; penalty; owner; prima facie responsible; when.

It is unlawful for a motor vehicle to enter a permit area unless a valid permit is displayed in or on the vehicle in the manner prescribed by the commission. A permit shall be required for entry at any time of the year. A permit shall be nontransferable and valid only for the motor vehicle for which issued. Any person who operates a motor vehicle in violation of this section shall be guilty of a Class V misdemeanor, and the court shall order the confiscation of any permit purchased or used in violation of this section. If the identity of the operator of a motor vehicle in violation of this section cannot be determined, the owner or person in whose name such vehicle is registered shall be held prima facie responsible for such violation and shall be guilty of a Class V misdemeanor.

Source: Laws 1977, LB 81, § 11; Laws 1980, LB 723, § 6; Laws 1983, LB 199, § 3; Laws 1989, LB 167, § 1; R.S.1943, (1993), § 37-1111; Laws 1998, LB 922, § 153; Laws 1999, LB 176, § 38.

The term "permit area", as used in the statute, is not unconstitutionally vague. State v. Sprague, 213 Neb. 581, 330 N.W.2d 739 (1983).

37-444 Entry permit program; commission; rules and regulations; enforce.

(1) The commission may adopt and promulgate rules and regulations as are necessary to administer the entry permit program and to carry out the purposes and intents of sections 37-434 to 37-446.

(2) The commission, its agents and officers, and any other peace officer of this state shall be empowered to enforce the provisions of sections 37-434 to 37-446.

Source: Laws 1977, LB 81, § 12; R.S.1943, (1993), § 37-1112; Laws 1998, LB 922, § 154; Laws 1999, LB 176, § 39.

37-445 Permit fees; remittance to commission; failure to remit; liability; penalty.

The county clerks or permit agents entitled to issue permits as provided by sections 37-434 to 37-446 shall remit the fees for the permits to the commission in the manner and at the times prescribed by the rules and regulations of the commission. Any permit agent who receives permit fees under sections 37-434 to 37-446 and who fails to remit the fees to the commission within a reasonable time after demand by the commission shall be liable to the commission in damages for double the amount of the funds wrongfully withheld. A permit agent who purposefully fails to remit such fees with the intention of converting them is guilty of theft. The penalty for such violation shall be determined by the amount converted as specified in section 28-518.

Source: Laws 1977, LB 81, § 13; R.S.1943, (1993), § 37-1113; Laws 1998, LB 922, § 155; Laws 1999, LB 176, § 40.

37-446 Permit fees; State Park Cash Revolving Fund; disbursement.

The permit fees charged under sections 37-438 and 37-439 shall be credited to the State Park Cash Revolving Fund and shall be disbursed for the administration, improvement, operation, and maintenance of those areas, or portion of areas, of the state park system which are designated as permit areas.

Source: Laws 1977, LB 81, § 14; R.S.1943, (1993), § 37-1114; Laws 1998, LB 922, § 156; Laws 1999, LB 176, § 41.

(b) SPECIAL PERMITS AND LICENSES**37-447 Permit to hunt deer; regulation and limitation by commission; issuance; fee.**

(1) The commission may issue permits for the hunting of deer and prescribe and establish regulations and limitations for the hunting, transportation, and possession of deer. The commission may offer multiple-year permits or combinations of permits at reduced rates. The commission may specify by regulation the information to be required on applications for such permits. Regulations and limitations for the hunting, transportation, and possession of deer may include, but not be limited to, regulations and limitations as to the type, caliber, and other specifications of firearms and ammunition used and specifications for bows and arrows used. Such regulations and limitations may further specify and limit the method of hunting deer and may provide for dividing the state into management units or areas, and the commission may enact different deer hunting regulations for the different management units pertaining to sex, species, and age of the deer hunted.

(2) The number of such permits may be limited as provided by the rules and regulations of the commission, and except as provided in section 37-454, the permits shall be disposed of in an impartial manner. Whenever the commission deems it advisable to limit the number of permits issued for any or all management units, the commission shall, by rules and regulations, determine who shall be eligible to obtain such permits. In establishing eligibility, the commission may give preference to persons who did not receive a permit during the previous year or years.

(3) Such permits may be issued to allow deer hunting in the Nebraska National Forest and other game reserves and such other areas as the commission may designate whenever the commission deems that permitting such hunting will not be detrimental to the proper preservation of wildlife in Nebraska in such forest, reserves, or areas.

(4) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-nine dollars for residents and not more than two hundred fourteen dollars for nonresidents for each permit issued under this section, except that the fee for a statewide buck-only permit shall be two and one-half times the amount of a regular deer permit.

(5) The commission may issue nonresident permits after preference has been given for the issuance of resident permits as provided in rules and regulations adopted and promulgated by the commission. The commission may require a predetermined application period for permit applications in specified management units. Such permits shall be issued after a reasonable period for making application, as established by the commission, has expired. When more valid applications are received for a designated management unit than there are

permits available, such permits shall be allocated on the basis of a random drawing. All valid applications received during the predetermined application period shall be considered equally in any such random drawing without regard to time of receipt of such applications by the commission.

Source: Laws 1945, c. 85, § 1, p. 305; Laws 1947, c. 133, § 1, p. 376; Laws 1949, c. 103, § 1(1), p. 282; Laws 1951, c. 109, § 1, p. 517; Laws 1953, c. 124, § 1, p. 389; Laws 1957, c. 141, § 1, p. 477; Laws 1959, c. 156, § 1, p. 584; Laws 1969, c. 292, § 1, p. 1063; Laws 1972, LB 777, § 3; Laws 1974, LB 767, § 1; Laws 1976, LB 861, § 6; Laws 1979, LB 437, § 1; Laws 1981, LB 72, § 11; Laws 1984, LB 1001, § 1; Laws 1985, LB 557, § 2; Laws 1993, LB 235, § 13; Laws 1994, LB 1088, § 4; Laws 1995, LB 583, § 2; Laws 1995, LB 862, § 1; Laws 1996, LB 584, § 6; Laws 1997, LB 107, § 2; R.S.Supp.,1997, § 37-215; Laws 1998, LB 922, § 157; Laws 1999, LB 176, § 42; Laws 2003, LB 306, § 4; Laws 2005, LB 162, § 15; Laws 2007, LB299, § 7.

37-448 Special deer depredation season; permit; issuance; fee.

(1) Subject to rules and regulations adopted and promulgated by the commission, the secretary of the commission may designate special deer depredation seasons by executive order. The secretary may designate a depredation season whenever he or she determines that deer are causing excessive property damage. The secretary shall specify the number of permits to be issued, shooting hours, the length of the depredation season, and the geographic area in which hunting will be permitted. Each such permit shall give the holder the right to take one deer. Hunting during a special depredation season shall be limited to residents and shall be restricted to firearms which are permissible for use during the regular deer season.

(2) The depredation season may commence not less than five days after the first public announcement that the depredation season has been established. Permits shall be issued beginning not less than three days after the first public announcement of the depredation season and shall be issued in an impartial manner at a location determined by the secretary. The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-five dollars for a special depredation season permit. Fifty percent of the fee shall be paid by the commission to a landowner or operator within the designated area upon satisfactory proof a deer was killed upon his or her farm or ranch during the special depredation season. Receipt of a depredation season permit shall not in any way affect a person's eligibility for a regular season permit.

Source: Laws 1998, LB 922, § 158; Laws 2008, LB1162, § 4.
Effective date July 18, 2008.

37-449 Permit to hunt antelope; regulation and limitation by commission; issuance; fees.

The commission may issue permits for hunting antelope and may establish separate and, when necessary, different regulations therefor within the limitations prescribed in sections 37-447 and 37-452 for hunting deer. The commission may offer multiple-year permits or combinations of permits at reduced rates. The commission may, pursuant to section 37-327, establish and charge a

nonrefundable application fee of not more than seven dollars. The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-nine dollars for residents and not more than one hundred forty-nine dollars and fifty cents for nonresidents for each permit issued under this section. The provisions for the distribution of deer permits and the authority of the commission to determine eligibility of applicants for permits as described in sections 37-447 and 37-452 shall also apply to the distribution of antelope permits.

Source: Laws 1998, LB 922, § 159; Laws 2003, LB 305, § 14; Laws 2003, LB 306, § 5; Laws 2007, LB299, § 8.

37-450 Permit to hunt elk; regulation and limitation by commission; issuance; fee.

The commission may issue permits for hunting elk and may establish separate and, when necessary, different regulations therefor within the limitations prescribed in sections 37-447 and 37-452 for hunting deer. Permits to hunt elk issued pursuant to this section shall not be issued to nonresidents. The commission shall, pursuant to section 37-327, establish and charge a nonrefundable application fee of not more than eight dollars and fifty cents and a fee of not more than one hundred forty-nine dollars and fifty cents for each elk permit issued. A person may obtain only one antlered-elk permit in his or her lifetime except for a limited permit to hunt elk pursuant to section 37-455. The provisions for the distribution of deer permits and the authority of the commission to determine eligibility of applicants for permits as described in sections 37-447 and 37-452 shall also apply to the distribution of elk permits.

Source: Laws 1998, LB 922, § 160; Laws 2003, LB 306, § 6; Laws 2005, LB 162, § 16; Laws 2007, LB299, § 9.

37-451 Permit to hunt mountain sheep; regulation and limitation by commission; issuance; fee.

The commission may issue permits for hunting mountain sheep and may establish separate and, when necessary, different regulations therefor within the limitations prescribed in subsection (1) of section 37-447 and section 37-452 for hunting deer. Such regulations shall include provisions allowing persons who find dead mountain sheep, or any part of a mountain sheep, to turn over to the commission such mountain sheep or part of a mountain sheep. The commission may dispose of such mountain sheep or part of a mountain sheep as it deems reasonable and prudent. Except as otherwise provided in this section, the permits shall be issued to residents of Nebraska. The commission shall, pursuant to section 37-327, establish and charge a nonrefundable application fee of not more than twenty-five dollars for permits issued only to residents. Any number of resident-only permits, as authorized by the commission, shall be awarded by random drawing to eligible applicants. No permit fee shall be charged in addition to the nonrefundable application fee. No more than one additional permit may be authorized and issued pursuant to an auction open to residents and nonresidents. The auction shall be conducted according to rules and regulations prescribed by the commission. Any money derived from the sale of permits by auction shall be used only for perpetuation and management of mountain sheep, elk, and deer. If the commission determines to limit the number of permits issued for any or all management units, the

commission shall by rule and regulation determine eligibility requirements for the permits. A person may obtain only one mountain sheep permit in his or her lifetime.

Source: Laws 1998, LB 922, § 161; Laws 2008, LB1162, § 5.

Effective date July 18, 2008.

37-452 Hunting of antelope, elk, mountain sheep, or deer; age requirements.

(1) No person shall hunt antelope, elk, or mountain sheep unless such person is at least twelve years of age, and any person who is twelve through fifteen years of age shall only hunt antelope, elk, or mountain sheep when supervised by a person nineteen years of age or older having a valid hunting permit.

(2) No person shall hunt deer unless such person is at least ten years of age, and any person who is ten through fifteen years of age shall only hunt deer when supervised by a person nineteen years of age or older having a valid hunting permit.

(3) A person nineteen years of age or older having a valid hunting permit shall not supervise more than two persons while hunting deer, antelope, elk, or mountain sheep at the same time.

Source: Laws 1998, LB 922, § 162; Laws 1999, LB 176, § 43; Laws 2005, LB 162, § 17; Laws 2007, LB299, § 10; Laws 2008, LB690, § 3.

Effective date July 18, 2008.

37-453 Permit to hunt deer, antelope, or elk; individual or joint application; ineligibility of individual, when.

Applications for the special permits provided for in section 37-447 or 37-449 shall be made individually or on a unit basis. If such application is made on a unit basis, not more than two applicants may apply for such permit in one application. If such application is granted, such special permits shall be issued to the persons so applying. If any one of the persons so applying shall be ineligible to receive such special permit, the entire group so applying shall be disqualified. No person applying for such special permit on a unit basis shall also apply individually.

Source: Laws 1953, c. 126, § 1, p. 392; Laws 1959, c. 156, § 2, p. 585; Laws 1985, LB 557, § 4; R.S.1943, (1993), § 37-215.02; Laws 1998, LB 922, § 163; Laws 2002, LB 1003, § 22; Laws 2003, LB 305, § 15.

37-454 Permit to hunt deer, antelope, or elk; issued to disabled person; limitation.

A permit issued to a disabled person to hunt deer, antelope, or elk shall not have a limitation regarding the sex of such animal unless, for management purposes, the commission determines that all permits issued in the management unit in which the application for a permit is made shall have a limitation regarding the sex of the animal.

Source: Laws 1994, LB 1088, § 3; R.S.Supp.,1996, § 37-215.04; Laws 1998, LB 922, § 164.

37-455 Limited deer, antelope, wild turkey, or elk permit; conditions; fee.

(1) The commission may issue a limited permit for deer, antelope, wild turkey, or elk to a person who is a qualifying landowner or leaseholder and his or her immediate family as described in this section. A permit shall be valid during the predetermined period established by the commission pursuant to sections 37-447 to 37-450, 37-452, 37-456, or 37-457. Upon receipt of an application in proper form as prescribed by the rules and regulations of the commission, the commission may issue (a) a limited deer, antelope, or wild turkey permit valid for hunting on all of the land which is owned or leased by the qualifying landowner or leaseholder if such lands are identified in the application or (b) a limited elk permit valid for hunting on the entire elk management unit of which the land of the qualifying landowner or leaseholder included in the application is a part.

(2)(a) The commission shall adopt and promulgate rules and regulations prescribing procedures and forms and create requirements for documentation by an applicant or permittee to determine whether the applicant or permittee is a Nebraska resident and is a qualifying landowner or leaseholder of the described property or is a member of the immediate family of and residing in the same household as such qualifying landowner or leaseholder. Only a person who is a qualifying landowner or leaseholder and such person's immediate family residing in the same household as such qualifying landowner or leaseholder may apply for a limited permit. For purposes of this section, immediate family means and is limited to a husband and wife and their children.

(b) The conditions applicable to permits issued pursuant to sections 37-447 to 37-450, 37-452, 37-456, or 37-457, whichever is appropriate, shall apply to limited permits issued pursuant to this section, except that the commission may adopt and promulgate rules and regulations for species harvest allocation pertaining to the sex and age of the species harvested which are different for a limited permit than for other hunting permits. For purposes of this section, white-tailed deer and mule deer shall be treated as one species.

(3)(a) To qualify for a limited permit to hunt deer or antelope, the applicant shall be a Nebraska resident who owns or leases eighty acres or more of farm or ranch land for agricultural purposes or a member of such person's immediate family residing in the same household. The number of limited permits issued annually per species for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by eighty. An applicant may apply for no more than one permit per species per year. The fee for a limited permit to hunt deer or antelope shall be one-half the fee for the regular permit for such species.

(b) A nonresident of Nebraska who owns three hundred twenty acres or more of farm or ranch land in the State of Nebraska for agricultural purposes or a member of such person's immediate family residing in the same household may apply for a limited deer permit. Only one limited deer permit per three hundred twenty acres may be issued annually under this subdivision. The fee for such a permit to hunt deer shall be one-half the fee for a nonresident permit to hunt deer.

(c) The commission may adopt and promulgate rules and regulations providing for the issuance of an additional limited deer permit to a qualified individual for the taking of a deer without antlers at a fee equal to or less than the fee for the original limited permit.

(4)(a) To qualify for a limited permit to hunt wild turkey, the applicant shall be a Nebraska resident who owns or leases eighty acres or more of farm or ranch land for agricultural purposes or a member of such person's immediate family residing in the same household. The number of limited permits issued annually per season for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by eighty. An applicant may apply for no more than one limited permit per season. The fee for a limited permit to hunt wild turkey shall be one-half the fee for the regular permit to hunt wild turkey.

(b) A nonresident of Nebraska who owns three hundred twenty acres or more of farm or ranch land in the State of Nebraska for agricultural purposes or a member of such person's immediate family residing in the same household may apply for a limited permit to hunt wild turkey during the spring wild turkey season. Only one limited wild turkey permit per three hundred twenty acres may be issued annually under this subdivision. The fee for such a permit to hunt shall be one-half the fee for a nonresident permit to hunt wild turkey.

(5) To qualify for a limited permit to hunt elk, (a) the applicant shall be (i) a Nebraska resident who owns three hundred twenty acres or more of farm or ranch land for agricultural purposes, (ii) a Nebraska resident who leases three hundred twenty acres or more of farm or ranch land for agricultural purposes and resides on such property, or (iii) a member of such owner or lessee's immediate family residing in the same household and (b) the qualifying farm or ranch land of the applicant shall be within an area designated as an elk management zone by the commission in its rules and regulations. An applicant shall not be issued a limited elk permit more than once every three years, and the commission may give preference to a person who did not receive a limited elk permit or specified type of limited elk permit during the previous years. The fee for a limited permit to hunt elk shall be one-fifth the fee for the regular permit to hunt elk.

Source: Laws 1969, c. 761, § 1, p. 2878; Laws 1974, LB 767, § 2; Laws 1975, LB 270, § 1; Laws 1983, LB 170, § 2; Laws 1985, LB 557, § 5; Laws 1993, LB 235, § 14; Laws 1996, LB 584, § 7; Laws 1997, LB 107, § 3; Laws 1997, LB 173, § 3; R.S.Supp.,1997, § 37-215.03; Laws 1998, LB 922, § 165; Laws 2001, LB 111, § 9; Laws 2002, LB 1003, § 23; Laws 2003, LB 305, § 16; Laws 2004, LB 1149, § 1.

37-455.01 Permit to hunt antelope, elk, deer, and wild turkey; auction or lottery permits; issuance.

The commission may issue auction or lottery permits for up to five permits each for antelope and elk and up to twenty-five permits each for deer and wild turkey during the calendar year. Included in that number are single species and combination species permits and shared revenue permits that may be issued by the commission. The shared revenue permits may be issued under agreements with nonprofit conservation organizations and may be issued by auction or lottery, with the commission receiving at least eighty percent of any profit realized. The commission shall by rule and regulation adopt limitations for any such permits that are issued. The auction or lottery shall be conducted according to rules and regulations adopted and promulgated by the commission.

Source: Laws 2005, LB 162, § 18.

37-456 Limited antelope or elk permit; issuance; limitation.

The issuance of limited antelope permits pursuant to section 37-455 in any management unit shall not exceed twenty percent of the regular permits authorized for such antelope management unit. The issuance of limited elk permits pursuant to section 37-455 in any management unit shall not exceed fifty percent of the regular permits authorized for such elk management unit.

Source: Laws 1974, LB 865, § 2; Laws 1975, LB 270, § 2; Laws 1985, LB 557, § 7; Laws 1996, LB 584, § 8; R.S.Supp., 1996, § 37-215.08; Laws 1998, LB 922, § 166.

37-457 Hunting wild turkey; permit required; fee; issuance.

(1) The commission may issue permits for hunting wild turkey and prescribe and establish regulations and limitations for the hunting, transportation, and possession of wild turkey. The commission may offer multiple-year permits or combinations of permits at reduced rates. The number of such permits may be limited as provided by the regulations of the commission, but the permits shall be disposed of in an impartial manner. Such permits may be issued to allow wild turkey hunting in the Nebraska National Forest and other game reserves and such other areas as the commission may designate whenever the commission deems that permitting such hunting would not be detrimental to the proper preservation of wildlife in such forest, reserves, or areas.

(2) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-three dollars for residents and not more than ninety-five dollars for nonresidents for each permit issued under this section.

(3) The commission may issue nonresident permits after preference has been given for the issuance of resident permits as provided in rules and regulations adopted and promulgated by the commission. The commission may require a predetermined application period for permit applications in specified management units.

(4) The provisions of section 37-447 for the distribution of deer permits also may apply to the distribution of wild turkey permits. No permit to hunt wild turkey shall be issued without payment of the fee required by this section.

Source: Laws 1961, c. 172, § 1, p. 513; Laws 1969, c. 292, § 2, p. 1064; Laws 1976, LB 861, § 16; Laws 1993, LB 235, § 17; R.S.1943, (1993), § 37-227; Laws 1998, LB 922, § 167; Laws 1999, LB 176, § 44; Laws 2003, LB 306, § 7; Laws 2005, LB 162, § 19; Laws 2007, LB299, § 11.

37-458 Shooting coyotes from aircraft; permit; conditions; fee; duties.

(1) The commission shall, to aid in the protection of livestock and other domesticated animals, issue a special permit authorizing the holder to use aircraft for the purpose of shooting or attempting to shoot coyotes. Such permit shall be issued only after it is shown that (a) the coyote population is so large in an area as to present a substantial threat to livestock and other domesticated animals and (b) property owners will not be detrimentally affected by such issuance.

(2) The annual fee for the permit shall be not more than eight dollars and fifty cents, as established by the commission pursuant to section 37-327, and the permit shall expire on December 31 following the date of issuance. The form of

such permit and of the application for the permit shall be prescribed by the commission.

(3) The commission shall adopt and promulgate necessary rules and regulations to carry out this section and may designate areas in which the coyote population may present a threat or cause substantial damage to livestock and restrict the issuance of permits only to such areas. The commission, officers and agents of the commission, and any other peace officer of this state shall have the authority to enforce this section and section 37-509.

Source: Laws 1972, LB 1204, § 3; Laws 1978, LB 216, § 2; Laws 1993, LB 235, § 18; R.S.1943, (1993), § 37-233; Laws 1998, LB 922, § 168; Laws 1999, LB 176, § 45; Laws 2003, LB 306, § 8; Laws 2008, LB1162, § 6.
Effective date July 18, 2008.

37-459 Shooting coyotes from aircraft; permitholder; report.

The holder of a permit issued under section 37-458 shall report to the commission, not later than fifteen days after the end of each calendar quarter, the number of coyotes taken during such quarter.

Source: Laws 1972, LB 1204, § 4; R.S.1943, (1993), § 37-234; Laws 1998, LB 922, § 169.

37-460 Beaver; permit to destroy; beaver pelts; restrictions.

Whenever beaver are destroying trees or otherwise damaging property, except as provided in section 37-562, the person whose trees or property is being damaged by beaver may notify the commission by registered or certified mail of such damage. If the commission does not elect to remove the beaver within thirty days after such notice, it shall immediately issue a permit valid for ninety days authorizing the person whose trees or property is being damaged to destroy the beaver or their dens on such property in any manner not otherwise prohibited by law. Beaver pelts taken under the authority of a permit issued under this section shall not be sold or used unless the permitholder also possesses a current and valid fur-harvesting permit.

Source: Laws 1998, LB 922, § 170.

37-461 Muskrats; permit to destroy; violation; penalty.

If any dam, canal, drainage ditch, irrigation ditch, private fish pond, aquaculture facility, artificial waterway, railroad embankment, or other property is being damaged or destroyed by muskrats, the commission may issue a permit to the owner or owners of such dam, canal, ditch, pond, facility, waterway, embankment, or other property to take or destroy such muskrats, and the commission may make and enforce rules in connection with the issuance of such permits as are necessary to prevent the illegal destruction of muskrats by any holder of such a permit. Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1998, LB 922, § 171.

37-462 Taxidermists; permit; fees; renewal; authorizations; records; violations; penalty.

(1) It shall be unlawful for any person to perform taxidermy services on any game for any person other than himself or herself without first obtaining a taxidermist permit from the commission. The permit shall be conspicuously posted at the location where taxidermy services are performed. The application for the permit shall include the applicant's social security number. The annual fee for such permit shall be not more than eight dollars and fifty cents, as established by the commission pursuant to section 37-327. Such permit shall expire on December 31 of the year for which issued.

(2) Original application for a taxidermist permit shall be made to the commission upon such form and containing such information as may be prescribed by the commission. The application shall include the address of the premises where taxidermist services will be provided and a statement of the applicant's qualifications and experience as a taxidermist. Requests for renewals of existing permits shall be made by letter to the commission not later than thirty days preceding the expiration date of the permit.

(3) A permit shall authorize a taxidermist to (a) receive, transport, hold in custody or possession, mount, or otherwise prepare game and return such game to the legal owner or his or her agent from whom received and (b) sell game which he or she has lawfully acquired and mounted. Such mounted specimens may be placed on consignment by the taxidermist for sale and may be held by such consignee for the purpose of sale.

(4) Permitholders shall keep accurate records of operations, on a calendar-year basis, showing the names and addresses of persons from and to whom specimens of game or the nests or eggs of such game were received or delivered, the number and species, and the dates of receipt and delivery. In addition to other records required by this subsection, the permitholder shall maintain proper invoices or other documents confirming his or her lawful acquisition of game being held by him or her, including game which is on consignment for sale. Permitholders shall retain such records not less than one year following the end of the calendar year covered by the records. Such records shall be available for inspection by duly authorized employees or agents of the commission during normal business hours.

(5) Any violation of this section shall constitute a Class III misdemeanor.

Source: Laws 1973, LB 356, § 1; Laws 1977, LB 40, § 175; Laws 1993, LB 235, § 9; Laws 1997, LB 752, § 88; R.S.Supp., 1997, § 37-211.01; Laws 1998, LB 922, § 172; Laws 1999, LB 176, § 46; Laws 2003, LB 306, § 9; Laws 2008, LB1162, § 7.
Effective date July 18, 2008.

37-463 Dealing in raw furs; fur buyer's permit required; annual fee; record; unlawful acts; penalty.

(1) It shall be unlawful for any person, firm, or corporation dealing in raw furs to conduct such business without first obtaining from the commission a fur buyer's permit. If the applicant is an individual, the application shall include the applicant's social security number. The annual fee for this permit shall be not more than one hundred thirty-eight dollars for residents, as established by the commission pursuant to section 37-327. Any resident who has resided in this state continuously for a period of six months before making an application for a permit under this section shall be deemed to be a resident and may be issued a resident permit under this section. The fees for nonresidents of this

state shall be equal to the fees charged for similar permits by the states of their respective residences but not less than five hundred dollars per annum for such nonresidents. Before a fur buyer's permit is issued to a nonresident of this state, the applicant shall execute and deliver to the secretary of the commission a corporate surety bond, running to the State of Nebraska, in the penal sum of one thousand dollars to be approved by the commission, conditioned that the permit holder shall faithfully comply with all the laws of this state. Dealers sending buyers into the field away from their place of business shall provide each such buyer with a separate fur buyer's permit. Every nonresident buyer entering the state or who has buyers in this state shall carry a nonresident fur buyer's permit.

(2) Every resident and nonresident fur buyer shall keep a complete record of all furs bought or sold in a record book to be provided by the commission or any other form of record keeping approved by the commission. Such record shall include, but not be limited to, the number and kind of furs bought or sold, the name and address of the seller or buyer, the date and place of purchase or sale, and the permit number of the seller or fur buyer.

(3) It shall be unlawful for any fur buyer to have raw furs in his, her, or its possession unless the record gives positive evidence of the origin of such furs and unless such record balances at all times. Such record shall be open to inspection by conservation officers at any and all times and shall be made available to such officers upon demand.

(4) Any violation of any of the provisions of this section shall constitute a Class IV misdemeanor, and as a part of the penalty the court shall require the offender to purchase the required permit.

Source: Laws 1929, c. 112, II, § 11, p. 412; C.S.1929, § 37-211; Laws 1937, c. 89, § 3, p. 291; Laws 1941, c. 72, § 2, p. 301; C.S.Supp.,1941, § 37-211; R.S.1943, § 37-211; Laws 1945, c. 78, § 3, p. 289; Laws 1955, c. 131, § 1, p. 378; Laws 1959, c. 150, § 3, p. 570; Laws 1967, c. 216, § 4, p. 580; Laws 1974, LB 811, § 5; Laws 1976, LB 861, § 5; Laws 1977, LB 40, § 174; Laws 1981, LB 72, § 8; Laws 1989, LB 56, § 1; Laws 1993, LB 235, § 8; Laws 1997, LB 752, § 87; R.S.Supp.,1997, § 37-211; Laws 1998, LB 922, § 173; Laws 1999, LB 176, § 47; Laws 2003, LB 306, § 10; Laws 2008, LB1162, § 8.

Effective date July 18, 2008.

37-464 Holding fur after close of season; permit required; violation; penalty.

Except as otherwise provided in the Game Law, it shall be unlawful for any person, other than a person holding a captive wildlife permit, a fur buyer's permit, or a permit issued pursuant to section 37-460, with regard to pelts of beaver taken pursuant to such permits, and officers and employees of the commission, to possess the raw fur or pelt of any fur-bearing animal protected by the Game Law at any time other than during the open season for such fur-bearing animal and ten days immediately thereafter. Any person who by trapping or other lawful means has become the owner of the raw furs or pelts of such fur-bearing animals during the open season thereon and who during the ten days immediately after the close of such open season has been unable to obtain a satisfactory price for such furs or otherwise has been prevented from

lawfully disposing of the same may, during such ten-day period, obtain from the commission a permit to retain possession of such furs for such further period of time as the commission may by rule and regulation designate. All applications for such permits shall be verified under oath, state the number and kind of untanned pelts on hand which it is desired to carry over, be filed with the commission before the expiration of such ten-day period, and be accompanied by the certificate of an employee of the commission or the county sheriff that the applicant, to the personal knowledge of such employee or sheriff, then has on hand the number and kinds of furs for which the permit is applied for. Any person knowingly making or assisting in making a false certificate in connection with such an application shall be guilty of a Class V misdemeanor.

Source: Laws 1929, c. 112, III, § 7, p. 418; C.S.1929, § 37-307; R.S. 1943, § 37-306; Laws 1972, LB 1032, § 227; Laws 1977, LB 40, § 181; Laws 1989, LB 34, § 16; R.S.1943, (1993), § 37-306; Laws 1998, LB 922, § 174; Laws 1999, LB 176, § 48.

37-465 Aquaculture facilities; application for permits; fee.

An application for an aquaculture permit to operate an aquaculture facility shall be made to the commission on a form prescribed by the commission. The application shall include (1) the name, social security number if the applicant is an individual, residence, and place of business of the applicant, (2) the exact description of the land upon which the facility is to be located and the nature of the applicant's title to the land, whether in fee or under lease, and (3) the kind and approximate number of aquatic organisms authorized to be kept or reared in the facility. The annual fee for an aquaculture permit shall be not more than seventy-five dollars, as established by the commission pursuant to section 37-327. The permit shall expire at midnight on December 31 in the year for which the permit is issued.

Source: Laws 1929, c. 112, VII, § 3, p. 438; C.S.1929, § 37-703; R.S. 1943, § 37-703; Laws 1949, c. 100, § 3, p. 276; Laws 1957, c. 139, § 18, p. 473; Laws 1967, c. 216, § 17, p. 590; Laws 1993, LB 235, § 25; Laws 1994, LB 1165, § 15; Laws 1995, LB 718, § 2; Laws 1997, LB 752, § 91; R.S.Supp.,1997, § 37-703; Laws 1998, LB 922, § 175; Laws 1999, LB 176, § 49; Laws 1999, LB 404, § 24; Laws 2003, LB 306, § 11; Laws 2008, LB1162, § 9. Effective date July 18, 2008.

37-466 Aquaculture permit; rights.

A holder of an aquaculture permit may import aquatic organisms, lawfully held in possession in any other state or country, into this state except as provided in sections 37-547 to 37-550.

Source: Laws 1929, c. 112, VII, § 5, p. 439; C.S.1929, § 37-705; R.S. 1943, § 37-705; Laws 1957, c. 139, § 19, p. 473; Laws 1967, c. 216, § 18, p. 591; Laws 1989, LB 34, § 45; Laws 1994, LB 1165, § 16; Laws 1995, LB 718, § 3; R.S.Supp.,1996, § 37-705; Laws 1998, LB 922, § 176; Laws 1999, LB 176, § 50.

37-467 Transferred to section 37-482.01.

37-468 Aquaculturist; activities authorized.

Any resident or nonresident who qualifies as an aquaculturist, after securing an aquaculture permit as provided in section 37-465, may establish and maintain, upon private lands, ponds or tanks for the culture and propagation of aquatic organisms, subject to the restrictions imposed by the Game Law.

Source: Laws 1929, c. 112, VII, § 2, p. 438; C.S.1929, § 37-702; R.S. 1943, § 37-702; Laws 1947, c. 139, § 1, p. 385; Laws 1967, c. 216, § 16, p. 590; Laws 1989, LB 34, § 44; Laws 1993, LB 830, § 8; Laws 1994, LB 1165, § 14; R.S.Supp.,1996, § 37-702; Laws 1998, LB 922, § 178; Laws 1999, LB 176, § 51.

37-469 Permitholder; report required; contents.

A holder of an aquaculture permit shall report to the commission by January 15 for the preceding calendar year on forms provided by the commission. The commission shall adopt and promulgate rules and regulations specifying the requirements for the reports, including, but not limited to, the total number and species of organisms sold or transported during the preceding calendar year.

Source: Laws 1929, c. 112, VII, § 7, p. 440; C.S.1929, § 37-707; R.S. 1943, § 37-707; Laws 1961, c. 174, § 4, p. 518; Laws 1994, LB 1165, § 18; R.S.Supp.,1996, § 37-707; Laws 1998, LB 922, § 179; Laws 1999, LB 176, § 52.

37-470 Aquaculturist; report required; quarantine; when; notice; revocation of permit.

(1) An aquaculturist who knows that aquatic organisms owned or controlled by him or her are affected with prohibited pathogens shall at once report such fact to the commission, stating all facts known to him or her with reference to the prohibited pathogens.

(2) If an aquaculture facility has aquatic organisms affected with prohibited pathogens, the commission may quarantine the aquaculture facility and may order the destruction of the affected aquatic organisms upon a determination that a situation of imminent danger to existing aquatic organisms or human health and safety exists and that no more reasonable means exist to control the situation. A notice shall be posted at the quarantined aquaculture facility and a written notice shall be sent to the owner or operator of the aquaculture facility.

(3) The commission may revoke the aquaculture facility permit of an aquaculture facility if the owner or operator does not comply with this section or a quarantine issued pursuant to this section.

Source: Laws 1994, LB 1165, § 20; R.S.Supp.,1996, § 37-711.01; Laws 1998, LB 922, § 180.

37-471 Aquatic organisms; sale authorized; violation; penalty.

(1) Aquatic organisms propagated or raised under an aquaculture permit may be sold or offered for sale and transported at any time, subject to rules and regulations adopted and promulgated by the commission. The rules and regulations shall include, but not be limited to, tagging and reporting requirements.

(2) Any person violating this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1998, LB 922, § 181; Laws 1999, LB 176, § 53.

37-472 Repealed. Laws 1999, LB 176, § 131.

37-473 Repealed. Laws 1999, LB 176, § 131.

37-474 Repealed. Laws 1999, LB 176, § 131.

37-475 Officers; entry and inspection authorized.

Any officer authorized to enforce the Game Law may, at any time, enter an aquaculture facility for the purpose of inspecting the facility or for the purpose of enforcing the Game Law.

Source: Laws 1929, c. 112, VII, § 11, p. 441; C.S.1929, § 37-711; R.S.1943, § 37-711; Laws 1989, LB 34, § 47; Laws 1994, LB 1165, § 19; R.S.Supp.,1996, § 37-711; Laws 1998, LB 922, § 185; Laws 1999, LB 176, § 54.

37-476 Aquaculture facilities; violations; general penalties.

Except as otherwise specifically provided, any person violating any of the provisions of sections 37-465 to 37-475 shall be guilty of a Class V misdemeanor.

Source: Laws 1929, c. 112, VII, § 12, p. 441; C.S.1929, § 37-712; R.S.1943, § 37-712; Laws 1977, LB 40, § 203; R.S.1943, (1993), § 37-712; Laws 1998, LB 922, § 186; Laws 1999, LB 176, § 55.

37-477 Certain animals kept in captivity; permit required; exceptions; rules and regulations.

(1) No person shall keep in captivity in this state any wild birds, any wild mammals, any nongame wildlife in need of conservation as determined by the commission under section 37-805, or any wildlife determined to be an endangered or threatened species under the Endangered Species Act or section 37-806 without first having obtained a permit to do so as provided by section 37-478 or 37-479.

(2) Except as provided in subsection (3) of this section, no person shall keep in captivity in this state any wolf, any skunk, or any member of the families Felidae and Ursidae. This subsection shall not apply to (a) the species *Felis domesticus*, (b) any zoo, park, refuge, wildlife area, or nature center owned or operated by a city, village, state, or federal agency, or (c) any person who holds a captive wildlife permit issued pursuant to section 37-479 and who raises Canada Lynx (*Lynx canadensis*) or bobcats (*Lynx rufus*) solely for the purpose of producing furs for sale to individuals or businesses or for the purpose of producing breeding stock for sale to persons engaged in fur production.

(3) Any person legally holding in captivity, on March 1, 1986, any animal subject to the prohibition contained in subsection (2) of this section shall be allowed to keep the animal for the duration of its life. Such animal shall not be traded, sold, or otherwise disposed of without written permission from the commission.

(4) The commission shall adopt and promulgate rules and regulations governing the purchase, possession, propagation, sale, and barter of wild birds, wild mammals, and wildlife in captivity.

Source: Laws 1957, c. 151, § 1, p. 490; Laws 1971, LB 733, § 9; Laws 1986, LB 558, § 1; Laws 1987, LB 379, § 1; R.S.1943, (1993), § 37-713; Laws 1998, LB 922, § 187; Laws 1999, LB 176, § 56.

37-478 Captive wildlife auction permit; issuance; fee; prohibited acts.

(1) To conduct an auction in this state of captive wild birds, captive wild mammals, or captive wildlife as specified in subsection (1) of section 37-477, a person shall apply to the commission on a form prescribed by the commission for a captive wildlife auction permit. An applicant for a permit shall specify the dates of the auction and shall apply for a permit for each auction to be held in the state. The application for the permit shall include the applicant's social security number. The fee for such permit shall be not more than sixty-five dollars, as established by the commission pursuant to section 37-327. The commission shall adopt and promulgate rules and regulations specifying application requirements and procedures, reporting and inspection requirements, and other requirements related to auction activities.

(2) A permitholder shall not (a) take wild birds, wild mammals, or other wildlife from the wild in Nebraska or (b) purchase wild birds, wild mammals, or other wildlife from any person other than the commission or a person authorized to propagate and dispose of wild birds, wild mammals, or other wildlife. A permit under this section is not required for an auction of domesticated cervine animals as defined in section 54-701.03.

Source: Laws 1957, c. 151, § 2, p. 490; Laws 1981, LB 72, § 20; Laws 1986, LB 558, § 2; Laws 1993, LB 235, § 26; R.S.1943, (1993), § 37-714; Laws 1998, LB 922, § 188; Laws 1999, LB 176, § 57; Laws 2008, LB1162, § 10.
Effective date July 18, 2008.

37-479 Captive wildlife permit; issuance; fee; prohibited acts.

(1) To purchase, possess, propagate, or sell captive wild birds, captive wild mammals, or captive wildlife as specified in subsection (1) of section 37-477 or to sell parts thereof, except as provided in section 37-505, a person shall apply to the commission on a form prescribed by the commission for a captive wildlife permit. The commission shall adopt and promulgate rules and regulations specifying application requirements and procedures. The permit shall expire on December 31. The application for the permit shall include the applicant's social security number. The annual fee for such permit shall be not more than thirty dollars, as established by the commission pursuant to section 37-327. A holder of a captive wildlife permit shall report to the commission by January 15 for the preceding calendar year on forms provided by the commission. The commission shall adopt and promulgate rules and regulations specifying the requirements for the reports.

(2) A permitholder shall not (a) take wild birds, wild mammals, or wildlife from the wild in Nebraska or (b) purchase wild birds, wild mammals, or wildlife from any person other than the commission or a person authorized to propagate and dispose of wild birds, wild mammals, or wildlife. A permit under this section is not required for possession or production of domesticated cervine animals as defined in section 54-701.03.

Source: Laws 1957, c. 151, § 3, p. 490; Laws 1981, LB 72, § 21; Laws 1987, LB 379, § 2; Laws 1993, LB 235, § 27; Laws 1997, LB 752, § 92; R.S.Supp.,1997, § 37-715; Laws 1998, LB 922, § 189; Laws 1999, LB 176, § 58; Laws 2008, LB1162, § 11.
Effective date July 18, 2008.

37-480 Wild birds and wild mammals; disposition; restrictions.

(1) Wild birds or wild mammals raised and processed by holders of captive wildlife permits for food trade only shall not be required to be marked as specified in rules and regulations of the commission, but any such dressed and packaged wild bird or wild mammal shall be identified with a label listing the contents of the package, the name of the permitholder, and his or her permit number.

(2) The sale, purchase, or barter of any wild bird or the carcass of a wild bird bearing shot marks or external wounds of any kind is prohibited, except that such wild birds may be bought or sold if they are obtained from the holder of a captive wildlife permit, they are shot in a dog trial approved as a training program by the commission, and they are marked, possessed, and transported according to rules and regulations of the commission.

Source: Laws 1957, c. 151, § 4, p. 490; R.S.1943, (1993), § 37-716; Laws 1998, LB 922, § 190; Laws 1999, LB 176, § 59.

37-481 Certain wild animals; keeping in captivity; permit not required; when.

Sections 37-477 to 37-480 shall not be construed to require the obtaining of a permit for the purpose of keeping in captivity wild birds, wild mammals, or wildlife as specified in subsection (1) of section 37-477 or for the purpose of purchasing, possessing, propagating, selling, bartering, or otherwise disposing of any wild birds, wild mammals, or wildlife as specified in subsection (1) of section 37-477 by (1) any zoo, park, refuge, wildlife area, or nature center owned or operated by a city, village, state, or federal agency or (2) any circus licensed by the United States Department of Agriculture.

Source: Laws 1957, c. 151, § 5, p. 491; Laws 1969, c. 296, § 1, p. 1069; Laws 1986, LB 558, § 3; R.S.1943, (1993), § 37-717; Laws 1998, LB 922, § 191; Laws 1999, LB 176, § 60.

37-482 Certain wild animals; keeping in captivity; violations; penalty; officers; entry and inspection authorized.

Any person violating the provisions of sections 37-477 to 37-481 shall be guilty of a Class IV misdemeanor. Any conservation officer or other peace officer authorized to enforce the Game Law may, at any time, enter a facility associated with a captive wildlife auction permit or a captive wildlife permit for the purpose of inspecting the facility or enforcing the Game Law.

Source: Laws 1957, c. 151, § 6, p. 491; Laws 1977, LB 40, § 204; R.S.1943, (1993), § 37-718; Laws 1998, LB 922, § 192; Laws 1999, LB 176, § 61.

37-482.01 Sale of game authorized.

Game lawfully acquired from the holder of a permit under sections 37-465 and 37-479 may be sold in this state. The burden of proof is upon the buyer, seller, or possessor to show by competent and satisfactory evidence that game in his or her possession or sold by him or her was lawfully acquired from such a permitholder.

Source: Laws 1998, LB 922, § 177; R.S.1943, (1998), § 37-467; Laws 1999, LB 176, § 62.

37-483 Recall pen; permit; fee.

The construction, operation, and maintenance of a facility commonly known as a recall pen, also known as a recapture pen, which is used for the recapture of marked game birds originating from the holder of a captive wildlife permit in conjunction with dog training or dog trial activities shall be legal if the person owning or controlling such recall pen, prior to the operation thereof, pays an annual fee of not more than fifteen dollars, as established by the commission pursuant to section 37-327, for each recall pen under his or her ownership or control. The commission shall adopt and promulgate rules and regulations for the issuance of permits for recall pens and for the possession and use of recall pens. Nothing in this section shall authorize the use of recall pens for the trapping of other wild birds.

Source: Laws 1972, LB 1447, § 2; R.S.1943, (1993), § 37-501.01; Laws 1998, LB 922, § 193; Laws 1999, LB 176, § 63; Laws 2003, LB 306, § 12; Laws 2008, LB1162, § 12.
Effective date July 18, 2008.

37-484 Game breeding and controlled shooting area; license; application; fee.

Any person or persons owning, holding, or controlling by lease or otherwise, which possession must be for a term of five or more years, any contiguous tract or tracts of land having an area of not less than one hundred twenty acres and not more than one thousand two hundred eighty acres who desires to establish a game breeding and controlled shooting area to propagate, preserve, and shoot game birds under the regulations as provided in sections 37-484 to 37-496 shall make application to the commission for a license as provided by such sections. Such application shall be made under oath of the applicant or one of its principal officers if the applicant is an association, club, or corporation and shall be accompanied by a license fee of not more than one hundred forty-nine dollars and fifty cents, as established by the commission pursuant to section 37-327. Any controlled shooting area existing on February 18, 1987, shall continue in operation on the existing acreage until such controlled shooting area license is not renewed or canceled. If the applicant is an individual, the application shall include the applicant's social security number.

Source: Laws 1957, c. 152, § 1, p. 492; Laws 1967, c. 223, § 1, p. 598; Laws 1969, c. 297, § 1, p. 1070; Laws 1987, LB 206, § 1; Laws 1993, LB 235, § 29; Laws 1997, LB 752, § 93; R.S.Supp.,1997, § 37-901; Laws 1998, LB 922, § 194; Laws 2003, LB 306, § 13; Laws 2008, LB1162, § 13.
Effective date July 18, 2008.

37-485 License requirements; inspection; issuance.

Upon receipt of the application, the commission shall inspect the area proposed to be licensed described in such application and its premises and facilities. The commission shall also inspect the area where game birds are to be propagated, reared, and liberated and the cover for game birds on such area. The commission shall also ascertain the ability of the applicant to operate a property of this character. If the commission finds (1) that the area is of the size specified in section 37-484, (2) that the area is contiguous, (3) that the area has the proper requirements for the operation of such a property, (4) that the

game birds propagated or released thereon are not likely to be diseased and a menace to other game, (5) that the operation of such property will not work a fraud upon persons who may be permitted to hunt thereon, and (6) that the issuing of the license will otherwise be in the public interest, the commission shall approve such application and issue a game breeding and controlled shooting area license for the operation of such a property on the tract described in such application with the rights and subject to the limitations prescribed in sections 37-484 to 37-496.

Source: Laws 1957, c. 152, § 2, p. 492; Laws 1969, c. 297, § 2, p. 1070; Laws 1989, LB 34, § 49; R.S.1943, (1993), § 37-902; Laws 1998, LB 922, § 195.

37-486 License; expiration.

All game breeding and controlled shooting area licenses shall expire on June 30 of each year at midnight.

Source: Laws 1957, c. 152, § 3, p. 493; Laws 1987, LB 206, § 2; R.S.1943, (1993), § 37-903; Laws 1998, LB 922, § 196.

37-487 Posting of signs; boundaries.

Upon receipt of the license, the licensee shall promptly post such licensed areas at intervals of not more than five hundred feet with signs to be prescribed by the commission. The boundaries of such licensed game breeding and controlled shooting areas shall also be clearly defined by natural boundaries, artificial boundaries, or by signs.

Source: Laws 1957, c. 152, § 4, p. 493; R.S.1943, (1993), § 37-904; Laws 1998, LB 922, § 197.

37-488 Privileges conferred by license; game birds, requirements; marking; fee.

(1) The licensee of any licensed game breeding and controlled shooting area may take or authorize to be taken, within the season fixed and designated and in such numbers as provided in sections 37-484 to 37-496, game birds as specified in rules and regulations of the commission and released on licensed areas during the shooting season as provided in such sections.

(2) All game birds that are released for shooting purposes shall be at least twelve weeks of age before liberation date.

(3) All game birds released for hunting on a controlled shooting area shall be marked by banding, toe clipping, or some other method approved by the commission prior to release. Any game bird killed by a hunter on a controlled shooting area which does not have a band shall be banded prior to being transported from such area. The licensee shall pay to the commission the sum of not less than ten cents and not more than fifteen cents, as established by the commission pursuant to section 37-327, for each band used to mark game birds.

(4) The licensee shall furnish a receipt to each hunter taking game birds on the controlled shooting area which shall indicate the name of the hunter, the

date of the taking, the sex and species of the game birds taken, and the name of the controlled shooting area.

Source: Laws 1957, c. 152, § 5, p. 493; Laws 1974, LB 766, § 1; Laws 1985, LB 446, § 1; Laws 1993, LB 235, § 30; R.S.1943, (1993), § 37-905; Laws 1998, LB 922, § 198.

37-489 Game birds released, propagated, and taken; record; reports.

For the purpose of sections 37-484 to 37-496, at least five hundred game birds shall be released upon such licensed game breeding and controlled shooting areas in a manner satisfactory to the commission. The licensee shall keep a register which shall clearly show the number and kind of game birds released and propagated each year, the date of release, the number and kind of game birds taken, the date when taken, and the disposition made of such game birds. The licensee shall also make such reports under oath as to game birds released, propagated, and taken, at such times and in such manner as may be required by the commission. The commission shall keep an adequate record of the number of game birds released and propagated on each licensed game breeding and controlled shooting area in each year and of the game birds taken.

Source: Laws 1957, c. 152, § 6, p. 494; R.S.1943, (1993), § 37-906; Laws 1998, LB 922, § 199.

37-490 Closed season.

No person shall hunt any upland game birds and mallard ducks upon such breeding and controlled shooting area except between September 1 and April 1 of each year.

Source: Laws 1957, c. 152, § 7, p. 494; Laws 1967, c. 224, § 1, p. 599; Laws 1987, LB 206, § 3; R.S.1943, (1993), § 37-907; Laws 1998, LB 922, § 200.

37-491 Hunting permit; habitat stamp; required; nonresidents, requirements.

Every individual hunting game birds upon a licensed game breeding and controlled shooting area shall secure a hunting permit and a habitat stamp in accordance with the laws of the State of Nebraska, except that nonresidents of the State of Nebraska are not required to secure a hunting permit but are required to secure a habitat stamp and pay a license fee, not less than the cost of a resident hunting permit, as established by the commission pursuant to section 37-327.

Source: Laws 1957, c. 152, § 8, p. 494; Laws 1976, LB 861, § 19; Laws 1993, LB 235, § 31; R.S.1943, (1993), § 37-908; Laws 1998, LB 922, § 201; Laws 2002, LB 1003, § 24.

37-492 Commission; rules and regulations; limitations upon game breeding and controlled shooting areas.

The commission may adopt and promulgate rules and regulations for carrying out, administering, and enforcing the provisions of sections 37-484 to 37-496. The commission shall limit the number of areas proposed for licensing so that the total acreage licensed for game breeding and controlled shooting

areas in any one county does not exceed one percent of the total acreage of the county in which the areas are sought to be licensed. The commission shall not require distances between boundaries of game breeding and controlled shooting areas to be greater than two miles. No license shall be issued for any game breeding and commercial controlled shooting area established on and after July 15, 1998, whose boundary lies within one mile of a game refuge or wildlife management area. No license shall be issued for any area whereon mallard ducks are shot or to be shot if the area lies within three miles of any river or within three miles of any lake with an area exceeding three acres, except that a license may be issued for such area for the shooting of upland game birds only, and the rearing or shooting of mallard ducks thereon is prohibited.

Source: Laws 1957, c. 152, § 10, p. 495; Laws 1969, c. 297, § 3, p. 1071; R.S.1943, (1993), § 37-910; Laws 1998, LB 922, § 202.

37-493 License; refusal to issue or renew; suspension or revocation; grounds; notice; hearing.

The commission may either refuse to issue or refuse to renew or may suspend or may revoke any game breeding and controlled shooting area license if the commission finds that such licensed area or the operator thereof is not complying or does not comply with the provisions of sections 37-484 to 37-496, or that such property or area is operated in violation of other provisions of sections 37-484 to 37-496, or in an unlawful or illegal manner. The commission shall not refuse to issue, refuse to renew, nor suspend or revoke any license for any of these causes, unless the licensee affected has been given at least fifteen days' notice in writing of the reasons for the action of the commission and an opportunity to appear before the commission or a representative thereof in opposition to the action of the commission. Upon the hearing of any such proceeding, the secretary of the commission, or any representative of the commission designated by him or her, may administer oaths and the commission may procure by its subpoena the attendance of witnesses and the production of relevant books and papers. Any district court or any judge of a district court, upon application of either the licensee affected or of the commission, may on order duly entered require the attendance of witnesses and the production of relevant books and papers before the commission or its representative in any such hearing. Upon refusal or neglect to obey the order of the court or judge, the court or judge may compel obedience of the order by proceedings for contempt of court.

Source: Laws 1957, c. 152, § 11, p. 495; R.S.1943, (1993), § 37-911; Laws 1998, LB 922, § 203.

37-494 License; revocation; grounds.

Whenever a license is issued to any person and the holder thereof violates or is found guilty of a violation of any of the provisions of sections 37-484 to 37-496 or of any misrepresentation in obtaining such license, the license so issued to such a person may be revoked by the commission, and the secretary of the commission may, in his or her discretion, refuse to issue any license to such person for the period of one year thereafter.

Source: Laws 1957, c. 152, § 12, p. 496; R.S.1943, (1993), § 37-912; Laws 1998, LB 922, § 204.

37-495 License; available for presentation.

It shall be the duty of every person who has been issued a license under sections 37-484 to 37-496 to have evidence of the same in his or her possession for immediate presentation to the conservation officers and employees of the commission or any other peace officer making demand for same.

Source: Laws 1957, c. 152, § 13, p. 496; Laws 1988, LB 1030, § 39; R.S.1943, (1993), § 37-913; Laws 1998, LB 922, § 205; Laws 1999, LB 176, § 64; Laws 2003, LB 305, § 17.

37-496 License; form and contents; requirements.

Licenses authorized to be issued under sections 37-484 to 37-496 shall be prepared by the commission. They shall be in such form and content as may be prescribed by the commission and be supplied by the commission, subject to such rules and regulations as the commission may prescribe.

Source: Laws 1957, c. 152, § 14, p. 496; R.S.1943, (1993), § 37-914; Laws 1998, LB 922, § 206; Laws 2003, LB 305, § 18.

37-497 Raptors; protection; management; falconry license; captive propagation license; fees.

(1) The commission may take such steps as it deems necessary to provide for the protection and management of raptors.

(2) The commission may issue falconry licenses to permit the taking and possession of raptors for the purpose of practicing falconry. No such license may be issued to an applicant unless he or she is a resident of the state, has paid the fees required in this subsection, and has passed a written and oral examination concerning raptors given by the commission or an authorized representative of the commission. The commission shall charge a fee for each license of not more than seventeen dollars for persons fourteen to seventeen years of age and not more than forty-six dollars for persons eighteen years of age and older, as established by the commission pursuant to section 37-327. If the applicant fails to pass either examination or both of them, he or she shall not be entitled to reapply for a falconry license for a period of six months after the date of the examination. A person less than fourteen years of age shall not be issued a falconry license, and a person from fourteen to seventeen years of age may be issued such a license only if he or she is sponsored by an adult person who has a valid falconry license. All falconry licenses shall be nontransferable and shall expire three years after the date of issuance. If the commission is satisfied as to the competency and fitness of an applicant whose license has expired, a license may be renewed without requiring further examination under such terms and conditions as are established by the commission. Species of raptors which may be taken, captured, or held in possession shall include only those species authorized by the commission. The number of each species of raptors which may be taken, captured, or held in possession shall be subject to regulation by the commission.

(3) The commission may issue captive propagation licenses to permit the captive propagation of raptors. No such license may be issued to an applicant unless he or she is a resident of the state and has paid the fee required in this subsection. The fee for each license shall be not more than two hundred thirty dollars, as established by the commission pursuant to section 37-327. All such licenses shall be nontransferable, shall expire three years after the date of

issuance, and may be renewed under terms and conditions established by the commission. The commission shall authorize the species and the number of each such species which may be taken, captured, acquired, or held in possession. The commission shall adopt and promulgate rules and regulations governing the issuance and conditions of captive propagation licenses.

Source: Laws 1971, LB 733, § 1; Laws 1987, LB 154, § 2; Laws 1990, LB 940, § 1; Laws 1993, LB 235, § 28; R.S.1943, (1993), § 37-720; Laws 1998, LB 922, § 207; Laws 2003, LB 306, § 14; Laws 2008, LB1162, § 14.
Effective date July 18, 2008.

37-498 Raptors; take or maintain; license required; transfer and transportation prohibited; exception.

(1) It shall be unlawful for any person to take or attempt to take or maintain in captivity any raptor, except as otherwise provided by law or by rule or regulation of the commission, unless he or she shall first secure a falconry or captive propagation license as required by section 37-497.

(2) No person shall sell, barter, purchase, or offer to sell, barter, or purchase any raptor, raptor egg, or raptor semen, except as permitted under a falconry or captive propagation license issued under section 37-497 or the rules and regulations adopted and promulgated by the commission. Nothing in this section shall be construed to permit any sale, barter, purchase, or offer to sell, barter, or purchase any raptor, raptor egg, or raptor semen taken from the wild.

(3) No person shall transport any raptor out of this state for any purpose, except (a) for hunting, exhibition, scientific use, or temporary medical or personal care when authorized by the commission in writing and (b) as permitted under a captive propagation license.

Source: Laws 1971, LB 733, § 2; Laws 1987, LB 154, § 3; R.S.1943, (1993), § 37-721; Laws 1998, LB 922, § 208.

37-499 Raptors; licensee; limitations on possession.

Any person who has secured a falconry license, as required by section 37-497, may possess no more than two raptors at any one time, except that persons between the ages of fourteen and seventeen years may possess no more than one raptor at any one time.

Any person who has secured a captive propagation license may possess as many raptors as authorized under his or her license.

Source: Laws 1971, LB 733, § 3; Laws 1987, LB 154, § 4; R.S.1943, (1993), § 37-722; Laws 1998, LB 922, § 209.

37-4,100 Raptors; falconry license; inspection; rules and regulations; revocation of license.

(1) Upon issuance of a falconry license permitting the possession of raptors, an authorized agent of the commission shall inspect the licensee's facilities for keeping raptors and shall make a report as required by the commission.

(2) The commission may establish regulations governing the conditions under which raptors may be kept. Upon issuance of a falconry license permitting possession of raptors, an authorized agent of the commission shall make an

inspection at least every six months to determine the care of raptors and conditions under which they are kept. After each inspection a report shall indicate any mistreatment of any raptor, and if such mistreatment remains uncorrected for a period of forty-eight hours, the commission may revoke the license of the owner of the raptors.

Source: Laws 1971, LB 733, § 4; Laws 1987, LB 154, § 5; R.S.1943, (1993), § 37-723; Laws 1998, LB 922, § 210.

37-4,101 Raptors; falconry licensee; reports required, when.

(1) Any holder of a falconry license who acquires, receives, transfers, barter, releases, or otherwise disposes of any raptor shall submit a written report as required by the commission.

(2) The commission shall furnish forms for the reports required under this section and shall adopt and promulgate rules and regulations governing the submission of such reports. Nothing in this section shall be construed to permit the possession of more raptors than permitted by section 37-499.

Source: Laws 1971, LB 733, § 5; Laws 1987, LB 154, § 6; Laws 1990, LB 940, § 2; R.S.1943, (1993), § 37-724; Laws 1998, LB 922, § 211.

37-4,102 Raptors; capture; rules and regulations; license required.

(1) The commission may establish regulations governing the time, location, and method of capture and may establish any other regulations necessary for conservation of raptor populations.

(2) Persons possessing a falconry license required for possession of raptors may take or trap young-of-the-year raptors, not to exceed two raptors in any one year, but when nestlings are taken a minimum of two nestlings shall be left in the nest. Nothing in this subsection shall be construed to permit the taking of more raptors than is permitted by section 37-499 and authorized under the rules and regulations adopted and promulgated under section 37-497.

(3) Prior to capturing or attempting to capture any raptors, a person shall obtain from the commission a falconry license permitting the possession of raptors.

Source: Laws 1971, LB 733, § 6; Laws 1987, LB 154, § 7; Laws 1990, LB 940, § 3; R.S.1943, (1993), § 37-725; Laws 1998, LB 922, § 212.

37-4,103 Raptors; violations; penalty.

Any person violating any provision of sections 37-497 to 37-4,102 shall be guilty of a Class IV misdemeanor, and, in addition, the court shall require that any raptor or raptors in the possession of the offender be confiscated and the license of the offender be revoked.

Source: Laws 1971, LB 733, § 7; Laws 1977, LB 40, § 206; Laws 1987, LB 154, § 8; R.S.1943, (1993), § 37-726; Laws 1998, LB 922, § 213.

37-4,104 Commercial fishing permit; issuance; fees; expiration; tag requirements.

(1) Individuals shall apply to the commission on forms prescribed by the commission for an annual commercial fishing permit and shall not take or sell fish as prescribed in this section and section 37-543 before receiving such permit.

(2) The commission shall, pursuant to section 37-327, establish and collect fees from residents and nonresidents for all commercial fishing permits as follows:

(a) Not more than ninety-eight dollars for residents and not more than one hundred ninety-five dollars and fifty cents for nonresidents for each commercial fishing permit permitting the legal use of five hundred lineal feet of seine or fraction thereof, and five hundred lineal feet of trammel net or fraction thereof, and ten hoop nets without wings, and permitting the use of one helper if the helper is in the same boat as the person holding the permit;

(b) Not more than twenty-nine dollars for residents and not more than sixty dollars for nonresidents for each additional five hundred lineal feet of seine or trammel net or fraction thereof; and

(c) Not more than three dollars and fifty cents for residents and not more than seven dollars for nonresidents for each additional hoop net, wing net, or fish trap or other device, permitted by the commission and used under the commercial fishing permit.

(3) All commercial fishing permits shall expire at midnight on December 31 following their issuance. All money received by the commission shall be deposited as provided in section 37-323. The commission shall furnish to any permit holder without cost a tag numbered and stamped so as to show the year of issuance and for what issued for each net, seine, or device, and it shall be unlawful to use such net, seine, or device without first having procured such tag and fastened it to such net, seine, or device.

Source: Laws 1998, LB 922, § 214; Laws 2003, LB 306, § 15; Laws 2008, LB1162, § 15.
Effective date July 18, 2008.

37-4,105 Bait dealer's permit; issuance; fees.

It shall be unlawful for individuals, either resident or nonresident, to sell baitfish or amphibians except according to rules and regulations established by the commission. The commission may require a bait dealer's permit for a fee of not more than thirty-seven dollars for residents and not more than two hundred thirty dollars for nonresidents, as established by the commission pursuant to section 37-327.

If such permits are required by the commission, the application shall include the social security number of the applicant.

Source: Laws 1998, LB 922, § 215; Laws 2002, LB 1003, § 25; Laws 2003, LB 306, § 16; Laws 2008, LB1162, § 16.
Effective date July 18, 2008.

37-4,106 Nonresident fish dealer's permit; issuance; fee.

Nonresidents holding a valid nonresident fish dealer's permit may possess, buy, sell, transport, and ship live baitfish, live fish, and other bait species as specified in commission rules and regulations legally obtained from outside this state or from a licensed aquaculture facility in accordance with rules and

regulations adopted and promulgated by the commission. The application for the permit shall include the applicant's social security number. The fee for a nonresident fish dealer's permit shall be not more than seventy-five dollars, as established by the commission pursuant to section 37-327.

Source: Laws 1998, LB 922, § 216; Laws 2002, LB 1003, § 26; Laws 2003, LB 306, § 17; Laws 2008, LB1162, § 17.
Effective date July 18, 2008.

37-4,107 Bullfrogs; fishing permit required; manner of taking.

Bullfrogs may be taken, possessed, transported, and used under regulations setting forth seasons, bag limits, open areas, and manner of taking established by the commission, by the holder of a fishing permit. In taking bullfrogs, an artificial light may be used.

Source: Laws 1957, c. 139, § 8, p. 468; Laws 1973, LB 331, § 4; R.S.1943, (1993), § 37-226; Laws 1998, LB 922, § 217.

37-4,108 Commercial put-and-take fishing; license; issuance; fee; violation; penalty.

(1) No fishing permit shall be required for fishing in any duly licensed commercial put-and-take fishery operating under rules and regulations adopted and promulgated by the commission. The annual fee for licensing such commercial put-and-take fishery shall be not more than seventy-five dollars per year, as established by the commission pursuant to section 37-327, payable in advance, and no person shall operate such an establishment without first obtaining such license from the commission. Before issuing such license the commission shall investigate each such establishment annually and be satisfied that the same is a bona fide commercial put-and-take fishery operating within all applicable state and federal laws.

(2) Any person violating this section shall be guilty of a Class II misdemeanor and shall be fined at least forty dollars.

Source: Laws 1998, LB 922, § 218; Laws 2003, LB 306, § 18; Laws 2008, LB1162, § 18.
Effective date July 18, 2008.

37-4,109 Put-and-take trout fishing; regulations; fees; exception.

The commission may: (1) Establish, by regulation, special public-use areas for put-and-take trout fishing, on state-owned land, (2) stock such special public-use areas with trout, and (3) impose fees for trout fishing on such areas which fees shall be based on the actual cost to the state of providing and stocking such areas, except that no such fees may be imposed within ten miles of any privately owned and stocked trout fishing area which is open to the general public and for which a charge is made for fishing when such privately owned area was established before the establishment of such area by the commission.

Source: Laws 1959, c. 158, § 1, p. 589; Laws 1967, c. 218, § 1, p. 592; R.S.1943, (1993), § 37-425; Laws 1998, LB 922, § 219.

37-4,110 Put-and-take trout fishing; fees; disposition.

All fees received pursuant to section 37-4,109 shall be remitted by the commission to the State Treasurer for credit to the State Game Fund, except that fees received from state park rentals or other state park activities shall be credited to the fund of the park from which such fees were derived.

Source: Laws 1959, c. 158, § 2, p. 589; Laws 1959, c. 152, § 3, p. 578; R.S.1943, (1993), § 37-426; Laws 1998, LB 922, § 220.

37-4,111 Permit to take paddlefish; issuance; fee.

The commission may adopt and promulgate rules and regulations to provide for the issuance of permits for the taking of paddlefish. The commission may, pursuant to section 37-327, establish and charge a fee of not more than thirty-five dollars. All fees collected under this section shall be remitted to the State Treasurer for credit to the State Game Fund.

Source: Laws 2002, LB 1003, § 30; Laws 2007, LB299, § 12.

ARTICLE 5

REGULATIONS AND PROHIBITED ACTS

Cross References

Offenses committed on moving means of transportation, venue for trial of, see section 29-1301.02.
Railroad rights-of-way, hunting upon without permission prohibited, penalty, see section 74-609.01.
Shooting from roadway, see section 39-313.

(a) GENERAL PROVISIONS

- Section
- 37-501. Game and fish; bag and possession limit.
- 37-502. Prohibited acts during closed season.
- 37-503. Game; illegal possession; exception.
- 37-504. Violations; penalties; exception.
- 37-505. Game animals, birds, or fish; possession or sale prohibited; exceptions; violation; penalty.
- 37-506. Illegal activities regarding fish and game; extent of restrictions.
- 37-507. Game bird, game animal, or fish; abandonment or needless waste; penalty.
- 37-508. Game and fish in cold storage; violation; penalty; duty of inspectors to report.
- 37-509. Hunting from aircraft; unlawful; exception; violation; penalty.
- 37-510. Game shipments; prohibited acts; penalties.
- 37-511. Import shipments of fish or game; unlawful, when; violation; penalty.
- 37-512. Transfer of raw fur by carriers; tagging required; penalty.

(b) GAME AND BIRDS

- 37-513. Shooting at wildlife from highway or roadway; trapping in county road right-of-way; violation; penalty.
- 37-514. Hunting wildlife with artificial light; unlawful acts; exception; violation; penalty.
- 37-515. Aircraft or boats; prohibited acts; violation; penalty.
- 37-516. Harassment of game animals and game birds; use of aircraft, vessel, or vehicle; prohibited.
- 37-517. Game animals and game birds; use of aircraft, vessel, or vehicle to spot; radio; prohibited.
- 37-518. Violator; aid or assist; prohibited.
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- 37-520. Authorized personnel; administer and manage wildlife resources.
- 37-521. Violations; penalty; liability to property owner.
- 37-522. Shotgun on highway; restrictions; violation; penalty.
- 37-523. Wild mammal or wild bird; hunt or trap; unlawful in certain areas; violation; penalty.

GAME AND PARKS

- Section
37-524. Wild or nonnative animals; importation, possession, or release; prohibition; violation; penalty.
37-524.01. Wild pigs; animals of the Families Tayassuidae and Suidae; prohibited acts; destruction; when; penalty.
37-525. Training or running of bird dogs or hunting dogs; regulation; violation; penalty.
37-526. Ferrets; use or possession prohibited, when; violation; penalty.
37-527. Hunter orange display required; exception; violation; penalty.
37-528. Repealed. Laws 2004, LB 1149, § 4.
37-529. Permit to kill deer, antelope, or elk; tagging and storage.
37-530. Wildlife species accidentally killed; disposal authorized.
37-531. Wild animals; explosive traps; poison gas; unlawful use; penalty.
37-532. Traps; requirements; violation; penalty.
37-533. Offenses relating to fur-bearing animals; violation; penalty.
37-534. Wild turkeys; tagging and storage of carcasses; regulations.
37-535. Hunting game from aircraft or watercraft; prohibited acts; penalty.

(c) BIRDS

- 37-536. Game birds; prohibited acts; violation; penalty.
37-537. Baiting prohibited; violation; penalty.
37-538. Hunting game birds from vehicle; violation; penalty.
37-539. Game bird nests or eggs; prohibited acts; violation; penalty.
37-540. Protected birds; nest or eggs; prohibited acts.
37-541. Homing pigeon; protection; violation; penalty.

(d) FISH AND AQUATIC ORGANISMS

- 37-542. Fish unlawfully taken; duty of angler.
37-543. Offenses relating to fish; exceptions; rules and regulations; violation; penalty.
37-544. Spear fishing; commission; powers.
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37-549. Fish, mollusks, reptiles, crustaceans, and amphibians; permitted acts.
37-550. Wildlife; shipment in interstate commerce; when permitted.
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37-552. Fish screens; notice; construction; cost; neglect; liability; liquidated damages; penalty.
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37-556. Waters of state; pollution; carcasses; prohibitions; penalty.
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(e) DAMAGE BY WILDLIFE

- 37-559. Destruction of predators; permit required; when.
37-560. Deer, antelope, or elk causing damage to property; removal; disposition of carcass.
37-561. Predatory animals; explosive traps; poison gas; lawful use; exceptions; posting of signs.
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Section

(f) INTERFERENCE WITH PERSON HUNTING, TRAPPING, OR FISHING

- 37-564. Interference with person hunting, trapping, or fishing.
 37-565. Interference with person hunting, trapping, or fishing; injunction.
 37-566. Interference with person hunting, trapping, or fishing; affirmative defense.
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 37-569. Sections; how construed.
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(g) HUNT THROUGH THE INTERNET

- 37-571. Hunt through the Internet, defined.
 37-572. Hunt through the Internet; prohibited acts; confiscation and forfeiture of contraband.
 37-573. Violations; penalty.

(a) GENERAL PROVISIONS

37-501 Game and fish; bag and possession limit.

Except as otherwise provided by the Game Law or rules and regulations of the commission, it shall be unlawful for any person in any one day to take or have in his or her possession at any time a greater number of game birds, game animals, or game fish of any one kind than as established pursuant to section 37-314.

Source: Laws 1929, c. 112, III, § 4, p. 416; C.S.1929, § 37-304; Laws 1933, c. 69, § 1, p. 308; Laws 1937, c. 89, § 7, p. 294; C.S.Supp.,1941, § 37-304; R.S.1943, § 37-303; Laws 1989, LB 34, § 13; R.S.1943, (1993), § 37-303; Laws 1998, LB 922, § 221.

Illegal possession of game birds is penalized. State v. Allen, 159 Neb. 314, 66 N.W.2d 830 (1954).

37-502 Prohibited acts during closed season.

Except as otherwise provided by the Game Law, it shall be unlawful to take any species of wildlife protected by the Game Law except during the open seasons established pursuant to section 37-314.

Source: Laws 1929, c. 112, III, § 5, p. 417; C.S.1929, § 37-305; Laws 1931, c. 71, § 1, p. 191; Laws 1933, c. 67, § 1, p. 305; Laws 1937, c. 89, § 8, p. 294; Laws 1939, c. 42, § 1, p. 200; C.S.Supp.,1941, § 37-305; Laws 1943, c. 94, § 6, p. 325; R.S. 1943, § 37-304; Laws 1945, c. 78, § 4, p. 290; Laws 1945, c. 79, § 1(1), p. 295; Laws 1981, LB 72, § 14; Laws 1989, LB 34, § 14; R.S.1943, (1993), § 37-304; Laws 1998, LB 922, § 222.

37-503 Game; illegal possession; exception.

It shall be unlawful for anyone, except a holder of an aquaculture permit, a captive wildlife auction permit, or a captive wildlife permit, to have in his or her possession, except during the open season thereon, any unmounted game except as provided in sections 37-460 and 37-562 or the rules and regulations of the commission adopted pursuant to such sections.

Source: Laws 1945, c. 79, § 1(2), p. 295; Laws 1994, LB 1165, § 8; R.S.Supp.,1996, § 37-304.01; Laws 1998, LB 922, § 223; Laws 1999, LB 176, § 66.

37-504 Violations; penalties; exception.

(1) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession any elk, deer, antelope, swan, or wild turkey shall be guilty of a Class III misdemeanor.

(2) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession any mountain sheep shall be guilty of a Class II misdemeanor.

(3) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession any quail, pheasant, partridge, Hungarian partridge, wood duck, eider duck, curlew, grouse, mourning dove, or sandhill crane shall be guilty of a Class III misdemeanor.

(4) Any person who unlawfully takes any game or unlawfully has in his or her possession any such game shall be guilty of a Class III misdemeanor.

(5) Any person who, in violation of the Game Law, takes any mourning dove that is not flying shall be guilty of a Class V misdemeanor.

(6) Any person who, in violation of the Game Law, has in his or her possession any protected bird, or destroys or takes the eggs or nest of any such bird, shall be guilty of a Class V misdemeanor.

(7) The provisions of this section shall not render it unlawful for anyone operating a captive wildlife facility or an aquaculture facility, pursuant to the laws of this state, to at any time kill game or fish actually raised thereon or lawfully placed thereon by such person.

(8) A person holding a special permit pursuant to the Game Law for the taking of any game or any birds not included in the definition of game shall not be liable under this section while acting under the authority of such permit.

(9) In addition to the penalties provided in subsections (1), (3), and (4) of this section, any person convicted pursuant to subsection (1) or (3) of this section shall be fined at least one hundred dollars and any person convicted pursuant to subsection (4) of this section shall be fined at least fifty dollars.

Source: Laws 1929, c. 112, III, § 9, p. 419; C.S.1929, § 37-309; Laws 1937, c. 89, § 10, p. 295; Laws 1941, c. 72, § 4, p. 302; C.S.Supp.,1941, § 37-309; Laws 1943, c. 94, § 8, p. 327; R.S. 1943, § 37-308; Laws 1947, c. 134, § 1, p. 377; Laws 1949, c. 104, § 1, p. 283; Laws 1953, c. 123, § 3, p. 387; Laws 1957, c. 139, § 10, p. 469; Laws 1975, LB 142, § 3; Laws 1977, LB 40, § 182; Laws 1981, LB 72, § 16; Laws 1989, LB 34, § 18; Laws 1997, LB 107, § 4; R.S.Supp.,1997, § 37-308; Laws 1998, LB 922, § 224; Laws 1999, LB 176, § 67.

Penalty is prescribed for illegal possession of game birds.
State v. Allen, 159 Neb. 314, 66 N.W.2d 830 (1954).

37-505 Game animals, birds, or fish; possession or sale prohibited; exceptions; violation; penalty.

(1) It shall be unlawful to buy, sell, or barter the meat or flesh of game animals or game birds whether such animals or birds were killed or taken within or outside this state. Except as otherwise provided in this section, it shall be unlawful to buy, sell, or barter other parts of game animals or game birds.

(2) It shall be lawful to buy, sell, or barter only the following parts of legally taken antelope, deer, elk, rabbits, squirrels, and upland game birds: The hides, hair, hooves, bones, antlers, and horns of antelope, deer, or elk, the skins, tails, or feet of rabbits and squirrels, and the feathers or skins of upland game birds.

(3) It shall be lawful to pick up, possess, buy, sell, or barter antlers or horns which have been dropped or shed by antelope, deer, or elk. It shall be unlawful to pick up, possess, buy, sell, or barter mountain sheep or any part of a mountain sheep except (a) as permitted by law or rule or regulation of the commission and (b) for possession of mountain sheep or any part of a mountain sheep lawfully obtained in this state or another state or country.

(4) The commission may provide by rules and regulations for allowing, restricting, or prohibiting the acquisition, possession, purchase, sale, or barter of discarded parts, including, but not limited to, horns and antlers, or parts of dead game animals and upland game birds which have died from natural causes or causes which were not associated with any known illegal acts, which parts are discovered by individuals.

(5) Any domesticated cervine animal as defined in section 54-701.03 or any part of such an animal may be bought, sold, or bartered if the animal or parts are appropriately marked for proof of ownership according to rules and regulations adopted and promulgated by the Department of Agriculture.

(6) It shall be unlawful to buy, sell, or barter any sport fish protected by the Game Law at any time whether the fish was killed or taken within or outside this state, except that game fish lawfully shipped in from outside this state by residents of this state or fish lawfully acquired from a person having an aquaculture permit or, in the case of bullheads, pursuant to section 37-545 may be sold in this state. The burden of proof shall be upon any such buyer, seller, or possessor to show by competent and satisfactory evidence that any game fish in his or her possession or sold by him or her was lawfully shipped in from outside this state or was lawfully acquired from one of such sources.

(7) Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1929, c. 112, V, § 5, p. 427; C.S.1929, § 37-505; Laws 1931, c. 72, § 2, p. 194; Laws 1937, c. 89, § 12, p. 297; C.S.Supp.,1941, § 37-505; R.S.1943, § 37-505; Laws 1945, c. 81, § 1, p. 300; Laws 1945, c. 80, § 2, p. 299; Laws 1959, c. 154, § 2, p. 581; Laws 1961, c. 169, § 7, p. 506; Laws 1961, c. 174, § 2, p. 517; Laws 1963, c. 200, § 2, p. 648; Laws 1967, c. 216, § 12, p. 587; Laws 1972, LB 556, § 1; Laws 1981, LB 72, § 17; Laws 1985, LB 557, § 9; Laws 1989, LB 34, § 28; Laws 1989, LB 166, § 2; Laws 1989, LB 172, § 1; Laws 1991, LB 341, § 1; Laws 1993, LB 235, § 24; Laws 1994, LB 1165, § 10; Laws 1995, LB 718, § 1; Laws 1997, LB 107, § 5; Laws 1997, LB 752, § 90; R.S.Supp.,1997, § 37-505; Laws 1998, LB 922, § 225.

37-506 Illegal activities regarding fish and game; extent of restrictions.

Whenever the possession, use, importation, storage, taxidermy for millinery purposes, sale, or offering or exposing for sale of fish or game is prohibited or

restricted, the prohibition or restriction, when not specifically stated to be otherwise, shall mean any part of such fish or game.

Source: Laws 1976, LB 861, § 2; Laws 1981, LB 73, § 3; Laws 1987, LB 105, § 5; Laws 1994, LB 1165, § 11; R.S.Supp.,1996, § 37-507.01; Laws 1998, LB 922, § 226; Laws 1999, LB 176, § 68.

37-507 Game bird, game animal, or fish; abandonment or needless waste; penalty.

Any person who at any time takes any game bird, game animal, or fish other than baitfish in this state and who intentionally leaves or abandons such bird, animal, or fish or an edible portion thereof resulting in wanton or needless waste or otherwise intentionally allows it or an edible portion thereof to be wantonly or needlessly wasted or fails to dispose thereof in a reasonable and sanitary manner shall be guilty of a Class III misdemeanor.

Source: Laws 1959, c. 150, § 11, p. 575; Laws 1977, LB 40, § 197; R.S.1943, (1993), § 37-525; Laws 1998, LB 922, § 227.

37-508 Game and fish in cold storage; violation; penalty; duty of inspectors to report.

(1) No game or fish, protected by the Game Law, may be placed in cold storage in any licensed cold storage plant, butcher shop, ice cream factory, ice house, or other place used for commercial refrigerating purposes except by the lawful owner of such game or fish in his or her own name, and the same shall be tagged as the commission by rule and regulation may require.

(2) Game and fish legally taken and tagged in states other than Nebraska may be stored within the State of Nebraska as provided for in the rules and regulations of the commission.

(3)(a) Every cold storage plant owner or operator in whose plant game or fish protected by the Game Law is held after the prescribed storage season, as established by the rules and regulations of the commission, and following the close of the open season thereon, (b) every person having in cold storage any such game or fish after such time, and (c) every person who fails to tag game or fish in accordance with the rules and regulations of the commission when placing the same in cold storage shall be guilty of a Class III misdemeanor.

(4) It is hereby made the duty of every food inspector, hotel inspector, and sanitary inspector, in the employ of the state, to immediately report to the commission any violations of this section that come to the attention of such inspector while in the discharge of the duties of such inspector.

Source: Laws 1929, c. 112, III, § 6, p. 418; C.S.1929, § 37-306; Laws 1941, c. 72, § 9, p. 305; C.S.Supp.,1941, § 37-306; Laws 1943, c. 94, § 7, p. 326; R.S.1943, § 37-305; Laws 1945, c. 78, § 5, p. 291; Laws 1957, c. 139, § 9, p. 468; Laws 1989, LB 34, § 15; R.S.1943, (1993), § 37-305; Laws 1998, LB 922, § 228; Laws 1999, LB 176, § 69.

Game legally taken and tagged in other states may be stored in Nebraska. State v. Allen, 159 Neb. 314, 66 N.W.2d 830 (1954).

37-509 Hunting from aircraft; unlawful; exception; violation; penalty.

(1) It shall be unlawful for any person (a) while airborne in any aircraft to shoot or attempt to shoot for the purpose of killing any bird, fish, or other animal, (b) to use any aircraft to harass any bird, fish, or other animal, (c) to knowingly participate in using any aircraft for such purposes unless he or she is the holder of a currently valid permit issued under section 37-458 and engages only in activities permitted by such permit, or (d) to shoot or attempt to shoot any coyote from an aircraft under the authority of a permit issued under section 37-458 unless permission has first been obtained from the landowners or tenants over whose land the aircraft is to be used to shoot or attempt to shoot coyotes.

(2) Any person violating this section shall be guilty of a Class II misdemeanor.

Source: Laws 1972, LB 1204, § 2; Laws 1978, LB 216, § 1; R.S.1943, (1993), § 37-232; Laws 1998, LB 922, § 229.

37-510 Game shipments; prohibited acts; penalties.

Every express company, bus line, or other common carrier, their officers, agents, and servants, and every shipper by any such transportation agency, who (1) transfers or carries from one point to another within the state, (2) takes out of the state, or (3) receives, for the purpose of transferring from this state, any game enumerated in the Game Law, except as permitted in this section, shall be guilty of a Class III misdemeanor. It shall be lawful for any express company, bus line, railroad, or other common carrier to receive for transportation any game enumerated in the Game Law and to transport them from one point to another by express or baggage during the open season on such game when such game is tagged, as required by the rules and regulations of the commission, and a statement of the shipper is forwarded to the commission that the same is not shipped for sale or profit and was not taken contrary to law. Such statement shall state the number of the shipper's license and describe and give the number of each kind of game. A copy thereof shall be attached to the shipment while in transit from one point to another. Any person who transports game in violation of any of the provisions of this section shall be guilty of a Class III misdemeanor.

Source: Laws 1929, c. 112, V, § 6, p. 427; C.S.1929, § 37-506; Laws 1943, c. 94, § 13, p. 330; R.S.1943, § 37-506; Laws 1947, c. 138, § 1, p. 383; Laws 1959, c. 150, § 7, p. 573; Laws 1977, LB 40, § 190; Laws 1989, LB 34, § 29; R.S.1943, (1993), § 37-506; Laws 1998, LB 922, § 230.

Duties of common carrier in transporting wild game birds are prescribed. State v. Allen, 159 Neb. 314, 66 N.W.2d 830 (1954).

37-511 Import shipments of fish or game; unlawful, when; violation; penalty.

Except as otherwise provided in the Game Law, it shall be unlawful for any person, firm, or corporation, acting as common carrier or otherwise, to bring into this state any fish or game from any state during the time that such other state prohibits the transportation of such fish or game from such state to a point without the same. Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1929, c. 112, V, § 7, p. 428; C.S.1929, § 37-507; R.S.1943, § 37-507; Laws 1989, LB 34, § 30; R.S.1943, (1993), § 37-507; Laws 1998, LB 922, § 231.

37-512 Transfer of raw fur by carriers; tagging required; penalty.

Every express company and common carrier, their officers, agents, and servants, and every other person who (1) transfers or carries from one point to another within the state, (2) takes out of the state, or (3) receives, for the purpose of transferring from this state, any raw furs protected by the Game Law, except as permitted in this section, shall be guilty of a Class III misdemeanor. It shall be lawful for any express company, railroad, common carrier, or postmaster to receive raw furs protected by the Game Law for transportation from one point to another by express, baggage, or mail during the open season and ten days thereafter, or such further period as may be specifically granted a shipper by the commission, when such raw fur is accompanied by a tag furnished by the commission and placed upon the package giving the name of the consignee, the number of his or her fur-harvesting permit, and a description of the kind and number of each kind of raw fur in the shipment. A duplicate portion of such tag shall be filled out and sent to the secretary of the commission.

Source: Laws 1929, c. 112, V, § 8, p. 428; C.S.1929, § 37-508; Laws 1933, c. 67, § 2, p. 306; C.S.Supp.,1941, § 37-508; R.S.1943, § 37-508; Laws 1945, c. 78, § 6, p. 291; Laws 1981, LB 72, § 18; Laws 1989, LB 34, § 31; R.S.1943, (1993), § 37-508; Laws 1998, LB 922, § 232.

(b) GAME AND BIRDS

37-513 Shooting at wildlife from highway or roadway; trapping in county road right-of-way; violation; penalty.

(1) It shall be unlawful to shoot at any wildlife from any highway or roadway, which includes that area of land from the center of the traveled surface to the right-of-way on either side. Any person violating this subsection shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

(2)(a) It shall be unlawful to trap any wildlife in the county road right-of-way, except that the commission may allow trapping of raptors within the county road right-of-way in accordance with sections 37-497 to 37-4,103.

(b) For purposes of this subsection, county road right-of-way means the area which has been designated a part of the county road system and which has not been vacated pursuant to law.

Source: Laws 1929, c. 112, V, § 1, p. 426; C.S.1929, § 37-501; Laws 1937, c. 89, § 11, p. 296; Laws 1941, c. 72, § 6, p. 303; C.S.Supp.,1941, § 37-501; Laws 1943, c. 94, § 11, p. 329; R.S. 1943, § 37-501; Laws 1947, c. 137, § 1, p. 382; Laws 1959, c. 150, § 6, p. 572; Laws 1961, c. 169, § 5, p. 503; Laws 1963, c. 204, § 1, p. 656; Laws 1965, c. 203, § 1, p. 606; Laws 1967, c. 220, § 1, p. 594; Laws 1969, c. 294, § 1, p. 1066; Laws 1972, LB 1447, § 1; Laws 1974, LB 765, § 1; Laws 1974, LB 779, § 1; Laws 1975, LB 220, § 1; Laws 1975, LB 142, § 4; Laws 1989, LB 34, § 26; Laws 1989, LB 171, § 1; R.S.1943, (1993), § 37-501; Laws 1998, LB 922, § 233; Laws 2007, LB299, § 13; Laws 2008, LB865, § 1.
Effective date July 18, 2008.

37-514 Hunting wildlife with artificial light; unlawful acts; exception; violation; penalty.

Except as provided in section 37-4,107, it shall be unlawful to hunt any wildlife by projecting or casting the rays of a spotlight, headlight, or other artificial light attached to or used from a vehicle or boat in any field, pasture, woodland, forest, prairie, water area, or other area which may be inhabited by wildlife while having in possession or control, either singly or as one of a group of persons, any firearm or bow and arrow. Nothing in this section shall prohibit the hunting on foot of raccoon with the aid of a handlight or the hunting of species of wildlife not protected by the Game Law in the protection of property by landowners or operators or their regular employees on land under their control on foot or from a motor vehicle with the aid of artificial light. Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least one hundred fifty dollars.

Source: Laws 1998, LB 922, § 234; Laws 1999, LB 176, § 70.

37-515 Aircraft or boats; prohibited acts; violation; penalty.

It shall be unlawful to hunt, drive, or stir up game birds or game animals with or from any aircraft or boat propelled by sail or power. Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1998, LB 922, § 235.

37-516 Harassment of game animals and game birds; use of aircraft, vessel, or vehicle; prohibited.

It shall be unlawful for any person to use any aircraft, vessel, vehicle, snowmobile, or conveyance of any type to molest, chase, drive, or harass any game animal or game bird or to cause any such animal or bird to depart from its habitat areas, fields, waters, woodlands, or grasslands.

Source: Laws 1978, LB 828, § 1; R.S.1943, (1993), § 37-528; Laws 1998, LB 922, § 236.

37-517 Game animals and game birds; use of aircraft, vessel, or vehicle to spot; radio; prohibited.

It shall be unlawful for any person one day before or during the open season to spot, locate, or place under surveillance any game animal or game bird with the aid of any aircraft, vessel, vehicle, snowmobile, or conveyance of any type and convey information about such animal's or bird's location to any person or group of persons by radio or other electronic device.

Source: Laws 1978, LB 828, § 2; R.S.1943, (1993), § 37-529; Laws 1998, LB 922, § 237.

37-518 Violator; aid or assist; prohibited.

It shall be unlawful for any person to aid or assist a person who is in violation of section 37-516 or 37-517.

Source: Laws 1978, LB 828, § 3; Laws 1995, LB 274, § 5; R.S.Supp.,1996, § 37-530; Laws 1998, LB 922, § 238.

37-519 Use of aircraft, vessel, vehicle, weapon, or other equipment; prohibited.

It shall be unlawful for any person to use any aircraft, vessel, vehicle, snowmobile, or other conveyance, firearm, bow and arrow, projectile, device, radio, an electronic device, or other equipment in the commission of any of the acts prohibited under sections 37-516 to 37-518.

Source: Laws 1978, LB 828, § 4; R.S.1943, (1993), § 37-531; Laws 1998, LB 922, § 239.

37-520 Authorized personnel; administer and manage wildlife resources.

Nothing in sections 37-516 to 37-519 shall prohibit authorized personnel of the commission or the United States Department of the Interior in the administration and management of wildlife resources.

Source: Laws 1978, LB 828, § 5; Laws 1995, LB 274, § 6; R.S.Supp.,1996, § 37-532; Laws 1998, LB 922, § 240.

37-521 Violations; penalty; liability to property owner.

Any person violating sections 37-516 to 37-519 shall be guilty of a Class III misdemeanor. In addition, any person who damages crops, fields, livestock, fences, gates, timber, water, or any other property by the use of any aircraft, vessel, vehicle, snowmobile, or other conveyance shall be liable to the property owner.

Source: Laws 1978, LB 828, § 6; Laws 1995, LB 274, § 7; R.S.Supp.,1996, § 37-533; Laws 1998, LB 922, § 241.

37-522 Shotgun on highway; restrictions; violation; penalty.

It shall be unlawful to have or carry, except as permitted by law, any shotgun having shells in either the chamber, receiver, or magazine in or on any vehicle on any highway. Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1998, LB 922, § 242.

37-523 Wild mammal or wild bird; hunt or trap; unlawful in certain areas; violation; penalty.

(1) It shall be unlawful to hunt or trap any form of wild mammal or wild bird within a two-hundred-yard radius of an inhabited dwelling or livestock feedlot, or to trap within a two-hundred-yard radius of any passage used by livestock to pass under any highway, road, or bridge.

(2) This section shall not prohibit any owner, tenant, or operator or his or her guests from hunting or trapping any form of wild mammal or wild bird within such radius if the area is under his or her ownership or control. This section shall not prohibit duly authorized personnel of any county, city, or village health or animal control department from trapping with a humane live box trap or pursuing any form of wild mammal or wild bird, when conducting such activities within the scope of the authorization, within such radius if the area is under the jurisdiction of the county, city, or village.

(3) Any person violating this section shall be guilty of a Class V misdemeanor.

Source: Laws 1967, c. 214, § 1, p. 575; Laws 1974, LB 779, § 2; Laws 1983, LB 24, § 1; R.S.1943, (1993), § 37-526; Laws 1998, LB 922, § 243.

37-524 Wild or nonnative animals; importation, possession, or release; prohibition; violation; penalty.

(1) It shall be unlawful for any person, partnership, limited liability company, association, or corporation to import into the state or possess the animal known as the San Juan rabbit or any other species of wild vertebrate animal, including domesticated cervine animals as defined in section 54-701.03, declared by the commission following public hearing and consultation with the Department of Agriculture to constitute a serious threat to economic or ecologic conditions, except that the commission may authorize by specific written permit the acquisition and possession of such species for educational or scientific purposes. It shall also be unlawful to release to the wild any nonnative bird or nonnative mammal without written authorization from the commission. Any person, partnership, limited liability company, association, or corporation violating the provisions of this subsection shall be guilty of a Class IV misdemeanor.

(2) Following public hearing and consultation with the Department of Agriculture, the commission may, by rule and regulation, regulate or limit the importation and possession of any wild vertebrate animal, including a domesticated cervine animal as defined in section 54-701.03, which is found to constitute a serious threat to economic or ecologic conditions.

Source: Laws 1957, c. 139, § 20, p. 474; Laws 1967, c. 222, § 1, p. 597; Laws 1973, LB 331, § 7; Laws 1977, LB 40, § 205; Laws 1993, LB 121, § 203; Laws 1993, LB 830, § 9; Laws 1995, LB 718, § 5; R.S.Supp.,1996, § 37-719; Laws 1998, LB 922, § 244.

Cross References

Domesticated Cervine Animal Act, possession of certain animals prohibited, see section 54-2324.

37-524.01 Wild pigs; animals of the Families Tayassuidae and Suidae; prohibited acts; destruction; when; penalty.

(1) It shall be illegal to knowingly engage in, sponsor, instigate, assist, or profit from the release, killing, wounding, or attempted killing or wounding of animals of the Families Tayassuidae and Suidae for the purpose of sport, pleasure, amusement, or production of a trophy. The commission shall destroy any feral swine and may authorize any agents, including landowners, to destroy and dispose of any feral swine.

(2) For purposes of this section, feral swine means swine whose reversion from the domesticated state to a wild state is apparent or an otherwise freely roaming swine having no visible tags, marking, or characteristics indicating that it is from a domestic herd, and reasonable inquiry within the area does not identify an owner.

(3) Any person violating subsection (1) of this section is guilty of a Class II misdemeanor.

Source: Laws 2003, LB 305, § 19; Laws 2005, LB 20, § 1.

37-525 Training or running of bird dogs or hunting dogs; regulation; violation; penalty.

(1) Except as provided in section 37-483 and rules and regulations established by the commission, it shall be unlawful for any person to take game birds or game animals during any closed season while training or running a dog.

(2) The commission shall adopt and promulgate rules and regulations which regulate taking game birds or game animals for the purpose of training bird or hunting dogs on public and private land, the licensing of dog training areas, and the administration of novice hunter education activities in which game birds or game animals may be taken. Such rules and regulations may limit dog training to noncommercial activities and shall include, but not be limited to, the following: Administration of a novice hunter education program and the issuance of a permit to conduct such a program, limitations on dog training activities, requirements for dog training areas, possession requirements, open areas, seasons, methods, time periods in which taking is authorized, species to be taken, and requirements for dog trials as specified in section 37-412.

(3) No dog shall be run upon private property under this section at any time without the express permission of the landowner or tenant.

(4) Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1929, c. 112, V, § 13, p. 430; C.S.1929, § 37-513; Laws 1937, c. 89, § 14, p. 298; C.S.Supp.,1941, § 37-513; R.S.1943, § 37-513; Laws 1945, c. 78, § 7, p. 292; Laws 1955, c. 135, § 1, p. 386; Laws 1969, c. 295, § 1, p. 1068; Laws 1972, LB 1447, § 3; R.S.1943, (1993), § 37-513; Laws 1998, LB 922, § 245; Laws 1999, LB 176, § 71; Laws 2002, LB 1003, § 27.

37-526 Ferrets; use or possession prohibited, when; violation; penalty.

It shall be unlawful (1) to hunt rabbits, squirrels, or any fur-bearing animal with or by the aid of a ferret, (2) to place a ferret in any hole or opening in the ground or in any stone, wall, log, or hollow tree where rabbits, squirrels, or any fur-bearing animals may be found or thought to be, or (3) to have a ferret in one's possession or control in a field or forest or in any vehicle going to or from hunting territory. Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1929, c. 112, V, § 12, p. 430; C.S.1929, § 37-512; R.S. 1943, § 37-512; R.S.1943, (1993), § 37-512; Laws 1998, LB 922, § 246.

37-527 Hunter orange display required; exception; violation; penalty.

(1) For purposes of this section, hunter orange means a daylight fluorescent orange color with a dominant wave length between five hundred ninety-five and six hundred five nanometers, an excitation purity of not less than eighty-five percent, and a luminance factor of not less than forty percent.

(2) Any person hunting deer, antelope, wild turkey, elk, or mountain sheep during an authorized firearm season in this state shall display on his or her head, chest, and back a total of not less than four hundred square inches of hunter orange material except as exempted by rules and regulations of the commission.

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

(4) This section shall not apply to archery hunters hunting during a non-center-fire firearm season or in a management unit where a current center-fire firearm season is not open. The commission may adopt and promulgate rules and regulations allowing additional exceptions.

Source: Laws 1972, LB 1216, § 1; R.S.1943, (1993), § 37-215.05; Laws 1998, LB 922, § 247; Laws 1999, LB 176, § 72; Laws 2007, LB299, § 14.

37-528 Repealed. Laws 2004, LB 1149, § 4.

37-529 Permit to kill deer, antelope, or elk; tagging and storage.

The commission shall provide by regulations for the tagging and storage of the carcasses of deer, antelope, or elk after the close of any such limited season in accordance with section 37-508.

Source: Laws 1945, c. 85, § 2, p. 305; Laws 1953, c. 124, § 3, p. 390; Laws 1985, LB 557, § 8; R.S.1943, (1993), § 37-216; Laws 1998, LB 922, § 249.

37-530 Wildlife species accidentally killed; disposal authorized.

Any wildlife species as designated by the commission accidentally killed by a motor vehicle on a public highway in this state, unless seized and confiscated pursuant to sections 37-619 to 37-621, shall, when salvageable, be disposed of as determined by the commission or its designee.

Source: Laws 1983, LB 34, § 1; R.S.1943, (1993), § 37-310; Laws 1998, LB 922, § 250; Laws 2004, LB 1149, § 2.

37-531 Wild animals; explosive traps; poison gas; unlawful use; penalty.

Except as provided in section 37-561, it shall be unlawful to set or place any explosive trap or device, operated by the use of poison gas or by the explosion of gunpowder or other explosives, for the purpose of taking, stunning, or destroying wild animals. Any person who sets or places any such trap or device, except as is permitted in such section, shall be guilty of a Class III misdemeanor.

Source: Laws 1945, c. 83, § 1, p. 302; Laws 1977, LB 40, § 196; R.S.1943, (1993), § 37-523; Laws 1998, LB 922, § 251.

37-532 Traps; requirements; violation; penalty.

It shall be unlawful for any person to set any trap in this state unless the trap is marked in accordance with rules and regulations adopted and promulgated by the commission. Violation of this section shall be a Class III misdemeanor.

Source: Laws 1995, LB 274, § 8; R.S.Supp.,1996, § 37-511.01; Laws 1998, LB 922, § 252.

37-533 Offenses relating to fur-bearing animals; violation; penalty.

It shall be unlawful (1) to mutilate or destroy the house or den of any fur-bearing animal except where such house or den obstructs a public or private ditch or watercourse, (2) to cut down or into any tree containing the den or

nest of any fur-bearing animal for the purpose of harvesting such animal, (3) to use spears or any like device in hunting any fur-bearing animal, or (4) to use explosives, chemicals, or smokers of any kind to drive any fur-bearing animal out of a hole, den, or house. Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1929, c. 112, V, § 11, p. 429; C.S.1929, § 37-511; Laws 1937, c. 89, § 13, p. 298; C.S.Supp.,1941, § 37-511; R.S.1943, § 37-511; Laws 1994, LB 1165, § 12; R.S.Supp.,1996, § 37-511; Laws 1998, LB 922, § 253.

37-534 Wild turkeys; tagging and storage of carcasses; regulations.

The commission shall adopt and promulgate rules and regulations for the tagging and storage of the carcasses of wild turkeys after the close of any such limited season in accordance with section 37-508.

Source: Laws 1961, c. 172, § 2, p. 513; R.S.1943, (1993), § 37-228; Laws 1998, LB 922, § 254.

37-535 Hunting game from aircraft or watercraft; prohibited acts; penalty.

It shall be unlawful to hunt any game from any boat or watercraft while being propelled by sails or electric, gas, or steam power or from any aircraft or hydroplane. Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1998, LB 922, § 255.

(c) BIRDS

37-536 Game birds; prohibited acts; violation; penalty.

It shall be unlawful to use any club, rifle, pistol, revolver, swivel gun, or shotgun larger than ten gauge in hunting any game birds or to trap, snare, net, or attempt to trap, snare, or net any game birds except as otherwise provided in section 37-483. Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1998, LB 922, § 256; Laws 1999, LB 176, § 73.

37-537 Baiting prohibited; violation; penalty.

It shall be unlawful to hunt any game birds by attracting them to the place where hunted by the distribution of grain or other feed, commonly called baiting. Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1998, LB 922, § 257.

37-538 Hunting game birds from vehicle; violation; penalty.

Except as provided in section 37-420 and except for a disabled person holding a special permit to hunt and fish from a vehicle issued under section 37-421, it shall be unlawful to hunt any game birds from a vehicle of any kind. Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1998, LB 922, § 258; Laws 2005, LB 162, § 20.

37-539 Game bird nests or eggs; prohibited acts; violation; penalty.

It shall be unlawful to take or needlessly destroy the nests or eggs of any game birds. Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1998, LB 922, § 259.

37-540 Protected birds; nest or eggs; prohibited acts.

It shall be unlawful (1) for any person to hunt or have in his or her possession, living or dead, any protected bird or part of any such bird or (2) for any person to take or needlessly destroy the nests or eggs of any protected birds or to have in his or her possession the nests or eggs of such birds.

This section shall not be construed to apply to the possession of species lawfully acquired prior to the effective date of protection of a given species or to prohibit importation into the state of species which may be otherwise lawfully imported into the state or the United States or lawfully taken, acquired, or removed from another state if the person engaging therein demonstrates by substantial proof that such species was lawfully taken or removed from such state.

Source: Laws 1929, c. 112, III, § 8, p. 419; C.S.1929, § 37-308; Laws 1937, c. 89, § 9, p. 295; C.S.Supp.,1941, § 37-308; R.S.1943, § 37-307; Laws 1953, c. 123, § 2, p. 387; Laws 1957, c. 144, § 1, p. 480; Laws 1971, LB 183, § 1; Laws 1973, LB 331, § 5; Laws 1975, LB 142, § 2; Laws 1989, LB 34, § 17; R.S.1943, (1993), § 37-307; Laws 1998, LB 922, § 260; Laws 1999, LB 176, § 74.

37-541 Homing pigeon; protection; violation; penalty.

Any person, other than the owner thereof, who shall knowingly shoot, kill, maim, or injure any Antwerp or homing pigeon, commonly called Carrier Pigeon, or who shall entrap, catch, detain, or remove any mark, band, or other means of identification from such pigeon, shall be guilty of a Class V misdemeanor.

Source: Laws 1971, LB 811, § 1; Laws 1977, LB 40, § 183; R.S.1943, (1993), § 37-309; Laws 1998, LB 922, § 261.

(d) FISH AND AQUATIC ORGANISMS**37-542 Fish unlawfully taken; duty of angler.**

All fish which cannot lawfully be taken shall be returned to the water at once with as little injury as possible, if taken, and before removing or attempting to remove such fish from the hook it shall be the duty of the angler to first wet his or her hands.

Source: Laws 1929, c. 112, III, § 3, p. 415; C.S.1929, § 37-303; Laws 1937, c. 89, § 6, p. 294; C.S.Supp.,1941, § 37-303; R.S.1943, § 37-302; R.S.1943, (1993), § 37-302; Laws 1998, LB 922, § 262.

37-543 Offenses relating to fish; exceptions; rules and regulations; violation; penalty.

(1) It shall be unlawful for any person to take any fish, except as provided in this section, by means other than fishing with hook and line.

(2) It shall be unlawful for any person to use, while fishing in this state in any lake, pond, or reservoir or in their inlets, outlets, and canals within one-half mile of such lake, pond, or reservoir, more than two lines, and neither line shall have more than two hooks. This subsection shall not apply to ice fishing.

(3) It shall be unlawful for any person to take any fish by snagging fish externally by hook and line, except in the Missouri River, as provided by rules and regulations of the commission.

(4) It shall be unlawful for any person to use, while fishing in any waters in this state, a line having more than five hooks thereon or lines having more than fifteen hooks in the aggregate. One hook means a single, double, or treble pointed hook, and all hooks attached as a part of an artificial bait or lure shall be counted as one hook.

(5) Nongame fish may be taken by spearing or by bow and arrow as provided by rules and regulations of the commission.

(6) Sport fish may be taken by bow and arrow as provided by rules and regulations of the commission.

(7) The commission may by rules and regulations allow, control, regulate, or prohibit the use of seines, nets, and other devices and methods in the taking of fish. The commission may adopt rules and regulations as to the method of taking, bag limits, size limits, possession, transporting, or selling of all species of fish.

(8) Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1929, c. 112, V, § 2, p. 426; C.S.1929, § 37-502; Laws 1931, c. 72, § 1, p. 193; Laws 1939, c. 40, § 1, p. 197; Laws 1941, c. 72, § 7, p. 304; C.S.Supp.,1941, § 37-502; R.S.1943, § 37-502; Laws 1945, c. 80, § 1, p. 298; Laws 1955, c. 134, § 1, p. 384; Laws 1957, c. 147, § 1, p. 484; Laws 1959, c. 159, § 1, p. 590; Laws 1961, c. 169, § 6, p. 504; Laws 1963, c. 205, § 1, p. 658; Laws 1963, c. 206, § 1, p. 661; Laws 1965, c. 204, § 1, p. 608; Laws 1967, c. 216, § 9, p. 585; Laws 1975, LB 489, § 3; Laws 1981, LB 73, § 1; Laws 1993, LB 235, § 22; R.S.1943, (1993), § 37-502; Laws 1998, LB 922, § 263; Laws 1999, LB 176, § 75; Laws 2001, LB 130, § 3.

Nebraska, without consent of Iowa, could forbid use of nets, traps and seines west of the middle of the channel of the Missouri River. *Miller v. McLaughlin*, 118 Neb. 174, 224 N.W. 18 (1929).

The section of the former statute which, as amended in 1927, prescribed the legal methods for catching fish in Nebraska, was

constitutional as applied to the waters of the Missouri River between the middle of the main channel and the Nebraska bank. *Miller v. McLaughlin*, 281 U.S. 261 (1930), affirming 118 Neb. 174, 224 N.W. 18 (1929).

37-544 Spear fishing; commission; powers.

The commission may adopt and promulgate rules and regulations to open specified waters to underwater, powered spear fishing and limit or control such powered spear fishing.

Source: Laws 1998, LB 922, § 264.

37-545 Fish; privately owned pond; removal by owner; commercial fishing permits; violation; penalty.

When authorized by the commission and when necessary for proper fish management, the owner of any privately owned pond may remove fish therefrom by methods other than hook and line and in any quantity. The commission shall adopt and promulgate rules and regulations which authorize the use of commercial fishing permits, equipment, and methods authorized in sections 37-4,104 and 37-543. Nongame fish and bullheads seined or taken pursuant to this section may be sold by the commercial fishing permitholder. Such sale of bullheads shall not be deemed a violation of section 37-505. The removal of fish in accordance with this section shall not be deemed a violation of section 37-507, 37-543, or 37-556, except that the owner of a privately owned pond which is privately stocked and which does not connect by inflow or outflow with other water outside such land shall be exempt from any regulation or control.

Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1961, c. 174, § 6, p. 521; Laws 1987, LB 629, § 1; Laws 1989, LB 166, § 1; R.S.1943, (1993), § 37-503.05; Laws 1998, LB 922, § 265; Laws 1999, LB 176, § 76.

37-546 Offenses relating to baitfish; violation; penalty.

(1) It shall be unlawful (a) to take baitfish except for use as bait or (b) for any person except an aquaculturist or bait dealer to buy, sell, barter, offer to buy, sell, or barter, or have in his or her possession baitfish for any purpose whatsoever except for use as bait. No baitfish shall be taken from reservoirs, lakes, or bayous except as provided in rules and regulations of the commission.

(2) The commission may adopt and promulgate rules and regulations pertaining to the taking, transportation, possession, buying, selling, and bartering of baitfish.

(3) Any person violating this section or the rules and regulations adopted and promulgated under this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1929, c. 112, V, § 3, p. 426; C.S.1929, § 37-503; Laws 1943, c. 94, § 12, p. 330; R.S.1943, § 37-503; Laws 1957, c. 148, § 1, p. 486; Laws 1961, c. 174, § 1, p. 516; Laws 1967, c. 216, § 10, p. 586; Laws 1973, LB 331, § 6; Laws 1981, LB 73, § 2; Laws 1993, LB 235, § 23; Laws 1994, LB 1165, § 9; Laws 1997, LB 752, § 89; R.S.Supp.,1997, § 37-503; Laws 1998, LB 922, § 266; Laws 1999, LB 176, § 77.

37-547 Wildlife; legislative intent.

It is the intent of the Legislature to prevent the release or importation into the State of Nebraska of any live wildlife which may cause economic or ecologic harm or be injurious to human beings, agriculture, horticulture, forestry, or wildlife or wildlife resources of the state. It is further the intent of the Legislature to prevent the commercial exploitation or exportation of any dead or live wildlife taken from the wild.

Source: Laws 1993, LB 830, § 10; R.S.1943, (1993), § 37-535; Laws 1998, LB 922, § 267; Laws 1999, LB 176, § 78.

37-548 Wildlife; prohibited acts; violation; penalty; release, importation, commercial exploitation, and exportation permits; fees; commission; powers and duties.

(1) It shall be unlawful for any person to import into the state or release to the wild any live wildlife including the viable gametes, eggs or sperm, except those which are approved by rules and regulations of the commission or as otherwise provided in the Game Law. It shall be unlawful to commercially exploit or export from the state any dead or live wildlife taken from the wild except those which are exempted by rules and regulations of the commission. Any person violating this subsection shall be guilty of a Class III misdemeanor.

(2) The commission shall adopt and promulgate rules and regulations to carry out subsection (1) of this section. In adopting such rules and regulations, the commission shall be governed by the Administrative Procedure Act. Such rules and regulations shall include a listing of (a) the wildlife which may be released or imported into the state and (b) the wildlife taken from the wild which may be commercially exploited or exported from the state. The rules and regulations for release, importation, commercial exploitation, and exportation of species other than commercial fish and bait fish shall include, but not be limited to, requirements for annual permits for release or importation or for commercial exploitation or exportation, permit fees, the number of individual animals of a particular species that may be released, imported, collected, or exported under a permit, and the manner and location of release or collection of a particular species. The rules and regulations may be amended, modified, or repealed from time to time, based upon investigation and the best available scientific, commercial, or other reliable data.

(3) The commission shall establish permit fees as required by subsection (2) of this section to cover the cost of permit processing and enforcement of the permits and research into and management of the ecological effects of release, importation, commercial exploitation, and exportation. The commission shall remit the fees to the State Treasurer for credit to the Wildlife Conservation Fund.

(4) The commission may determine that the release, importation, commercial exploitation, or exportation of wildlife causes economic or ecologic harm by utilizing the best available scientific, commercial, and other reliable data after consultation, as appropriate, with federal agencies, other interested state and county agencies, and interested persons and organizations.

(5) The commission shall, upon its own recommendation or upon the petition of any person who presents to the commission substantial evidence as to whether such additional species will or will not cause ecologic or economic harm, conduct a review of any listed or unlisted species proposed to be removed from or added to the list published pursuant to subdivision (2)(a) of this section. The review shall be conducted pursuant to subsection (4) of this section.

(6) The commission shall, upon its own recommendation or upon the petition of any person who presents to the commission substantial evidence that commercial exploitation or exportation will cause ecologic or economic harm or significant impact to a wildlife population, conduct a review of any listed or unlisted species proposed to be added to or removed from the list published

pursuant to subdivision (2)(b) of this section. The review shall be conducted pursuant to subsection (4) of this section.

Source: Laws 1993, LB 830, § 11; R.S.1943, (1993), § 37-536; Laws 1998, LB 922, § 268; Laws 1999, LB 176, § 79; Laws 2007, LB299, § 15.

Cross References

Administrative Procedure Act, see section 84-920.

37-549 Fish, mollusks, reptiles, crustaceans, and amphibians; permitted acts.

Subsection (1) of section 37-548 shall not apply to:

(1) The importation by a person engaged in the business of buying for the purpose of selling, canning, preserving, processing, or handling for shipments or sale for immediate or future consumption fish, oysters, clams, crabs, shrimp, prawns, lobsters, or other commercial edible aquatic products;

(2) The buying, selling, bartering, importing, exporting, or otherwise disposing of any wildlife produced at any municipal, state, or federal museum, zoo, park, refuge, or wildlife area; and

(3) The importation of fish, mollusks, reptiles, crustaceans, and amphibians intended for exhibition, aquarium, or other totally contained purposes.

This section shall not be construed to allow the importation or possession of a species otherwise protected or regulated by the Game Law.

Source: Laws 1993, LB 830, § 12; R.S.1943, (1993), § 37-537; Laws 1998, LB 922, § 269; Laws 1999, LB 176, § 80.

37-550 Wildlife; shipment in interstate commerce; when permitted.

Nothing in section 37-548 shall be construed to prevent the continuous shipment in interstate commerce of legally possessed live wildlife species or eggs of such species for breeding or stocking purposes when such shipment legally originates outside of this state and legally terminates outside of this state.

Source: Laws 1993, LB 830, § 13; R.S.1943, (1993), § 37-538; Laws 1998, LB 922, § 270; Laws 1999, LB 176, § 81.

37-551 Fish protection; irrigation waters; screens; duty of commission.

For the purpose of protecting the game fish in the streams or rivers and reservoirs of this state whose waters are used for purposes of irrigation, the commission may provide and cause to be placed and maintained, at the mouth of every irrigation ditch designated by it and which opens into such stream or river or reservoir containing trout, bass, crappie, and pickerel in this state, a workable woven wire fish screen having a mesh no larger than one inch.

Source: Laws 1929, c. 112, IV, § 7, p. 423; C.S.1929, § 37-407; R.S. 1943, § 37-407; R.S.1943, (1993), § 37-407; Laws 1998, LB 922, § 271.

37-552 Fish screens; notice; construction; cost; neglect; liability; liquidated damages; penalty.

The commission, upon ascertaining what ditch or ditches are practicable to be screened, shall give notice in writing to the person, firm, or corporation owning, operating, or controlling such ditch or ditches. The notice shall set forth the size of the woven screen necessary to be set in place at the mouth of the ditch or ditches. The mesh of such screen shall be no larger than one inch and shall be so placed and maintained at the mouth of each irrigation ditch designated by the commission as to prevent the passage of fish therein except such as may pass through the meshes of the screen. The screens shall be provided by the commission at cost to the person, firm, or corporation owning, operating, or controlling the ditch or ditches to be screened. For each day's failure to keep such screen in repair and for each day's neglect after the twentieth day to comply with the written notice, the commission may recover the sum of five dollars per day as liquidated damages for the loss to the state on account of the fish thereby lost or destroyed, and the offending party shall further be guilty of a Class III misdemeanor.

Source: Laws 1929, c. 112, IV, § 8, p. 424; C.S.1929, § 37-408; R.S. 1943, § 37-408; Laws 1989, LB 34, § 22; R.S.1943, (1993), § 37-408; Laws 1998, LB 922, § 272.

37-553 Fishway through dam; obligation of owner; commission; powers and duties; violation; penalty.

(1) It shall be the duty of every person who owns or controls any dam or other obstruction across any watercourse within the jurisdiction of the state, where such impounded water is returned to the bed of the stream, to make such provision as may be necessary to ensure that sufficient water is returned at all times to the bed of the stream or river below such dam or obstruction as to preserve fish life in such stream. This section shall not apply under conditions of unusual circumstances resulting from natural causes which make the fulfillment impracticable. Every person owning or controlling such dam shall open and close gates or locks at a rate slow enough to protect the water below from a sudden flushing or sudden decrease in water flow which would be detrimental to the fish and their habitat.

(2) The commission shall have supervision over the enforcement of this section and shall investigate all complaints made under this section.

(3) Any person, firm, or corporation violating this section shall be guilty of a Class V misdemeanor.

Source: Laws 1929, c. 112, IV, § 6, p. 423; C.S.1929, § 37-406; Laws 1941, c. 72, § 11, p. 306; C.S.Supp.,1941, § 37-406; Laws 1943, c. 93, § 1(1), p. 320; R.S.1943, § 37-406; R.S.1943, (1993), § 37-406; Laws 1998, LB 922, § 273.

37-554 Explosives or poison; use in waters prohibited; penalties; exceptions; permit.

(1) Any person who (a) explodes, causes to be exploded, or aids or abets in the explosion of any dynamite, giant powder, bomb, or other explosive in any lake, river, stream, pond, bay, bayou, or other waters in this state with the intent thereby to stun, take, or possess any fish therein, (b) places or aids or abets in placing any bomb or explosive in any waters of this state for the purpose of exploding the same with such intent, or (c) places or aids or abets in placing lime or other poisonous or noxious substance in any of the waters of

this state with such intent, shall be guilty of a Class IV felony. This subsection shall not prohibit the commission from using or authorizing the use by written agreement of chemicals and other substances for fish management purposes.

(2) It shall be unlawful to explode or cause to be exploded for any purpose any giant powder, dynamite, or other explosives in any lake, river, stream, pond, bay, bayou, or other waters of this state without first obtaining from the commission an order permitting it to be done, except that this shall not apply when, to safeguard public or private property from damage by ice gorges, immediate use of explosives is necessitated. Whenever, in the course of removing any obstruction in any waters within this state or in constructing any foundation for dams, bridges, or other structures, any person desires to explode any giant powder, dynamite, or other explosive in any such waters, he or she shall, before doing so, file a verified application with the commission setting forth his or her plans and objects, the time or times when he or she desires to use the explosive, and the necessity for using it. If it reasonably appears that the use of explosives in such waters is necessary to the advancement of a useful work or project, the commission shall grant leave for the use thereof, designating the place or places and period within which the explosives may be used and prescribing such precautions as will save the fish from injury. If any such person disregards such order, he or she shall be deemed to have violated this subsection. Any person, association, or corporation guilty of violating this subsection shall be guilty of a Class II misdemeanor, and every day that any such unlawful act continues or is permitted to continue shall constitute a separate offense and be punishable as such.

Source: Laws 1929, c. 112, V, § 15, p. 431; C.S.1929, § 37-515; R.S. 1943, § 37-515; Laws 1955, c. 136, § 1, p. 387; Laws 1967, c. 216, § 14, p. 588; Laws 1993, LB 31, § 15; R.S.1943, (1993), § 37-515; Laws 1998, LB 922, § 274.

37-555 Waters of state; pollution prohibited; violation; penalty.

It shall be unlawful for any person, association, or corporation to dump or drain any refuse from any factory, slaughterhouse, gas plant, garage, repair shop, or other place whatsoever or any refuse, junk, dross, litter, trash, lumber, or leavings into or near any of the waters of this state or into any bayou, drain, ditch, or sewer which discharges such refuse or any part thereof into any of the waters of this state. It shall be unlawful to place, leave, or permit to escape any such refuse in such manner that it or any part of it is through the action of the elements or otherwise carried into any of the waters of this state. For purposes of this section, refuse means and includes oils, tars, creosote, blood, offal, decayed matter, and all other substances which are injurious to aquatic life.

Any person, association, or corporation violating this section shall, upon conviction thereof, be guilty of a Class II misdemeanor, and every day that any such unlawful act continues or is permitted to continue shall constitute a separate offense and be punishable as such.

Source: Laws 1929, c. 112, V, § 16, p. 432; C.S.1929, § 37-516; Laws 1931, c. 73, § 1, p. 196; C.S.Supp.,1941, § 37-516; R.S.1943, § 37-516; Laws 1965, c. 205, § 1, p. 610; Laws 1977, LB 40, § 191; Laws 1989, LB 34, § 34; R.S.1943, (1993), § 37-516; Laws 1998, LB 922, § 275.

Feeding of livestock along a small stream outside of an incorporated city will not be enjoined in absence of evidence showing that a nuisance is thereby created. *Vana v. Grain Belt Supply Co.*, 143 Neb. 118, 8 N.W.2d 837 (1943).

37-556 Waters of state; pollution; carcasses; prohibitions; penalty.

It shall be unlawful for any person to place the carcass of any dead animal, fish, or bird in or near any of the waters of this state or leave such carcass where the whole or any part thereof may be washed or carried into any of the waters of this state. Any person guilty of violating this section shall be guilty of a Class II misdemeanor, and every day that any such unlawful act continues or is permitted to continue shall constitute a separate offense and be punishable as such.

Source: Laws 1929, c. 112, V, § 17, p. 432; C.S.1929, § 37-517; R.S. 1943, § 37-517; Laws 1977, LB 40, § 192; R.S.1943, (1993), § 37-517; Laws 1998, LB 922, § 276; Laws 1999, LB 176, § 82.

37-557 Hatching boxes and nursery ponds; disturbing prohibited; exception; violation; penalty.

It shall be unlawful for any person or persons to injure, disturb, or destroy any hatching box, hatching house, or nursery pond used for hatching or propagating fish or to injure, disturb, or destroy any spawn or fry, or fish in any hatching box, hatching house, nursery pond, or stream. The commission may take or cause to be taken any of the fish named in this section for the purpose of propagation or stocking the waters of this state. Any person violating any provision of this section shall be guilty of a Class III misdemeanor.

Source: Laws 1929, c. 112, V, § 18, p. 432; C.S.1929, § 37-518; R.S. 1943, § 37-518; Laws 1977, LB 40, § 193; R.S.1943, (1993), § 37-518; Laws 1998, LB 922, § 277.

37-558 Draining harmful matter into waters stocked by commission prohibited; penalty.

It shall be unlawful for any person, association, or corporation to place, run, or drain any matter harmful to fish into any of the waters of this state that have been stocked by the commission. Any person violating this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1937, c. 89, § 19, p. 301; C.S.Supp.,1941, § 37-517; R.S.1943, § 37-520; Laws 1977, LB 40, § 195; R.S.1943, (1993), § 37-520; Laws 1998, LB 922, § 278.

(e) DAMAGE BY WILDLIFE

37-559 Destruction of predators; permit required; when.

(1) Any farmer or rancher owning or operating a farm or ranch may destroy or have destroyed any predator preying on livestock or poultry or causing other agricultural depredation on land owned or controlled by him or her without a permit issued by the commission.

(2) This section shall not be construed to allow such farmer or rancher to destroy or have destroyed species which are protected by the provisions of sections 37-314 and 37-501 to 37-503, the Nongame and Endangered Species Conservation Act, the federal Endangered Species Act, the federal Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661 et seq., the federal Bald

and Golden Eagle Protection Act, as amended, 16 U.S.C. 668 et seq., the federal Migratory Bird Treaty Act, as amended, 16 U.S.C. 703 et seq., or rules and regulations adopted and promulgated pursuant to such provisions.

Source: Laws 1998, LB 922, § 279.

37-560 Deer, antelope, or elk causing damage to property; removal; disposition of carcass.

The commission is authorized, when written request has been filed by the property owner, to remove by any means at any time any deer, antelope, or elk causing damage to real or personal property. If it is necessary to kill any such deer, antelope, or elk to remove the same, the carcass thereof shall first be offered for human consumption. If human consumption is not possible, such carcass may be sold or disposed of in any other manner. The commission may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1949, c. 103, § 1(2), p. 282; Laws 1953, c. 124, § 2, p. 390; Laws 1969, c. 293, § 1, p. 1066; Laws 1985, LB 557, § 3; Laws 1996, LB 1044, § 94; R.S.Supp., 1996, § 37-215.01; Laws 1998, LB 922, § 280; Laws 1999, LB 176, § 83; Laws 2001, LB 130, § 4.

37-561 Predatory animals; explosive traps; poison gas; lawful use; exceptions; posting of signs.

(1) It shall be lawful to use any device which (a) is operated by the explosion of small amounts of gunpowder or other explosives, (b) is designed to discharge poison into the mouth of a wolf, coyote, fox, wildcat, or other predatory animals upon the grabbing or seizing of the bait attached to such device by such predatory animals, (c) does not discharge any ball, slug, shot, or other missile, and (d) does not endanger the life and limb of any human being or animal, other than a predatory animal, during the legal trapping season for fur-bearing animals. Such device may be used at any time by any agency of the commission or of the federal government or by persons having the written permission of the commission. Such lawful device when used shall be set not less than two hundred yards from any federal, state, or approved county highway and not less than one thousand yards from any school or from any inhabited dwelling without written permission of the resident of the dwelling. Such device shall not be used on another person's property without the written permission of the owner or operator.

(2) It shall be unlawful to use any of such devices unless the user shall, in addition to the other requirements of this section, post the land upon which the devices are emplaced with signs at least eighteen inches square and with block letters at least two inches in height and displaying the words DANGER, CYANIDE GUNS IN USE or with the official signs furnished for such a purpose by the United States Department of Agriculture. Such signs shall be placed at all entrances to the area where such devices are set, and a post shall be set by each such device displaying at least two of such signs in a manner so that such signs are plainly legible from all directions.

Source: Laws 1945, c. 83, § 2, p. 302; Laws 1963, c. 207, § 1, p. 663; Laws 1967, c. 221, § 1, p. 596; R.S.1943, (1993), § 37-524; Laws 1998, LB 922, § 281.

37-562 Beaver or muskrat; destruction authorized, when; reports; fees.

It shall be lawful for any officer or employee of any public power, irrigation, or drainage district organized under the laws of this state to kill or destroy or to have trapped any beaver or muskrat which may be found to be destroying or damaging any dams, ditches, or other works needed and useful in the operation of such district. Such district may cause such trapping to occur if, within thirty days after notice in writing is given to the secretary of the commission of such destruction or damage and the location thereof, the commission fails, neglects, or refuses to cause the beaver or muskrat doing such destruction or damage to be removed from the place where such destruction or damage is occurring or to take such other steps as may be effective to prevent further damage to the works of such district. Before any such district has such beaver or muskrat trapped, it shall submit to the secretary of the commission the names and addresses of the trappers to do the trapping. If no written objection is received, stating the reasons for such objection, from the secretary within five days after the receipt of the names, they shall be deemed to be approved. No trapper who has been objected to in writing by the commission shall trap under this section. The district shall report to the commission every thirty days the number of beaver or muskrat killed or destroyed and shall forward with such report a fee of up to three dollars, as established by the commission pursuant to section 37-327, for each beaver so killed or destroyed. Under such circumstances, no permit shall be required to so kill or destroy such beaver or muskrat, but fees shall be paid for beaver killed as provided in this section.

Source: Laws 1945, c. 79, § 1(3), (4), (5), p. 295; Laws 1961, c. 173, § 1, p. 514; Laws 1981, LB 72, § 15; Laws 1993, LB 235, § 19; R.S.1943, (1993), § 37-304.02; Laws 1998, LB 922, § 282; Laws 2003, LB 306, § 19.

37-563 Nuisance birds; commission; powers.

The commission may adopt, promulgate, and publish rules and regulations for the control of individual nuisance birds or populations of such birds to reduce or avert depredation upon ornamental or shade trees, agricultural crops, livestock, or wildlife or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance. Such rules and regulations shall specify the species which may be controlled, the circumstances under which control is to be permitted, and the control methods which may be employed.

Source: Laws 1998, LB 922, § 283.

(f) INTERFERENCE WITH PERSON HUNTING, TRAPPING, OR FISHING**37-564 Interference with person hunting, trapping, or fishing.**

(1) No person shall knowingly and intentionally interfere or attempt to interfere with another person who is not trespassing and who is lawfully hunting or trapping any game bird, game animal, fur-bearing animal, or other wild mammal or bird or engaged in activity associated with hunting or trapping.

(2) No person shall knowingly and intentionally interfere or attempt to interfere with another person who is not trespassing and who is lawfully fishing or engaged in activity associated with fishing.

(3) For purposes of this section, (a) activity associated with hunting, trapping, or fishing shall mean travel, camping, or other acts that are preparatory to or in conjunction with hunting, trapping, or fishing on lands or waters upon which hunting, trapping, or fishing may lawfully occur and that are done by a hunter, a trapper, or an angler or by a member of a hunting, trapping, or fishing party and (b) interfere shall mean (i) disturbing, scaring, chasing, or otherwise driving away by any means any game bird, game animal, fur-bearing animal, other wild mammal or bird, or game fish, but shall not include releasing a non-fur-bearing animal, except a coyote, from a trap, (ii) impeding or obstructing a person who is hunting, trapping, or fishing, (iii) impeding or obstructing a person who is engaged in an activity associated with hunting, trapping, or fishing, (iv) affecting the condition or location of personal property intended for use in hunting, trapping, or fishing, and (v) intentionally placing himself or herself into the line of fire for the purpose of interfering with lawful hunting or trapping.

Source: Laws 1995, LB 274, § 2; R.S.Supp.,1996, § 37-529.01; Laws 1998, LB 922, § 284.

37-565 Interference with person hunting, trapping, or fishing; injunction.

A court may enjoin conduct described in section 37-564 upon petition by a person affected or by a person who may reasonably be affected by such conduct upon a showing that such conduct is threatened or that it has occurred on a particular premises in the past and that it is not unreasonable to expect such conduct will be repeated.

Source: Laws 1995, LB 274, § 3; R.S.Supp.,1996, § 37-529.02; Laws 1998, LB 922, § 285.

37-566 Interference with person hunting, trapping, or fishing; affirmative defense.

It shall be an affirmative defense in any action brought for violation of section 37-564 that the person against whom such action is brought was not trespassing at the time of the alleged intentional interference or attempted interference and was engaged in a lawful activity in conflict with hunting, trapping, or fishing or activity associated with hunting, trapping, or fishing described in such section.

Source: Laws 1995, LB 274, § 4; R.S.Supp.,1996, § 37-529.03; Laws 1998, LB 922, § 286.

37-567 Interference with person hunting, trapping, or fishing; aiding or assisting prohibited.

It shall be unlawful for any person to aid or assist a person who is in violation of section 37-564.

Source: Laws 1998, LB 922, § 287.

37-568 Interference with person hunting, trapping, or fishing; prohibited acts.

It shall be unlawful for any person to use any aircraft, vessel, vehicle, snowmobile, or other conveyance, firearm, bow and arrow, projectile, device,

radio, an electronic device, or other equipment in the commission of any of the acts prohibited under section 37-564 or 37-567.

Source: Laws 1998, LB 922, § 288.

37-569 Sections; how construed.

Nothing in sections 37-564 to 37-568 shall prohibit authorized personnel of the commission or the United States Department of the Interior in the administration and management of wildlife resources.

Source: Laws 1998, LB 922, § 289.

37-570 Interference with person hunting, trapping, or fishing; violation; penalty; use of aircraft, vessel, or vehicle; destruction of property; liability.

Any person violating section 37-564 shall be guilty of a Class III misdemeanor. In addition, any person who damages crops, fields, livestock, fences, gates, timber, water, or any other property by the use of any aircraft, vessel, vehicle, snowmobile, or other conveyance shall be liable to the property owner.

Source: Laws 1978, LB 828, § 7; R.S.1943, (1993), § 37-534; Laws 1998, LB 922, § 290.

(g) HUNT THROUGH THE INTERNET

37-571 Hunt through the Internet, defined.

For purposes of sections 37-571 to 37-573, hunt through the Internet means to hunt living wildlife in real time using Internet services to remotely control actual firearms and to remotely discharge live ammunition.

Source: Laws 2007, LB504, § 2.

37-572 Hunt through the Internet; prohibited acts; confiscation and forfeiture of contraband.

(1) No person shall hunt through the Internet.

(2) No person shall host hunting through the Internet or otherwise enable another person to hunt through the Internet.

(3) Any conservation officer or any person specifically employed or designated by the United States Fish and Wildlife Service may offer to host or otherwise enable another person to hunt through the Internet for the sole purpose of obtaining evidence of a violation of this section.

(4) Any firearm, computer, equipment, appliance, or conveyance used in violation of this section is contraband and shall be confiscated and forfeited to the state upon seizure by law enforcement authorities.

Source: Laws 2007, LB504, § 3.

37-573 Violations; penalty.

(1) Any person who violates subsection (1) of section 37-572 is guilty of a Class II misdemeanor, shall pay a fine of not less than two hundred fifty dollars for a first offense and not less than five hundred dollars for each subsequent offense, and shall not hunt, fish, or trap in this state for a period of not less than one year from the date of sentencing.

(2) Any person who violates subsection (2) of section 37-572 is guilty of a Class II misdemeanor and shall pay a fine of not less than two hundred fifty dollars for a first offense and not less than five hundred dollars for each subsequent offense. Each unlawful transaction, offer, or transfer of wildlife for any consideration, or possession of contraband described in section 37-572 with the intent to transact, offer, or transfer wildlife for any consideration in connection with hunting through the Internet is a separate offense. Any person who violates subsection (2) of section 37-572 shall not hunt, fish, or trap for a period of not less than one year from the date of sentencing.

Source: Laws 2007, LB504, § 4.

ARTICLE 6 ENFORCEMENT

Cross References

Conservation officers, additional powers and duties, see sections 2-32,101, 29-215, 29-829, 48-235, 60-646, and 69-2429.
State-owned motor vehicles of enforcement officers, distinctive marking not required, see section 81-1021.

Section

- 37-601. Jurisdiction of courts; duty of prosecuting attorneys.
- 37-602. Prosecutions; when and where brought; limitation.
- 37-603. Conservation officers; powers.
- 37-604. Enforcement of Game Law; duties; fees and mileage.
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- 37-607. Conservation and peace officers; duty to arrest; powers.
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- 37-609. Resisting officer or employee of commission; penalty.
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- 37-611. Separate offense, defined.
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- 37-617. Suspension, revocation, or conviction; court; commission; duties.
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- 37-620. Contraband; evidence; seizure and confiscation.
- 37-621. Contraband; disposition.
- 37-622. Contraband; illegal possession; complaints and search warrants.
- 37-623. Illegally used nets, traps, ferrets, and devices; seizure and confiscation; destruction; return of guns, legal fish nets, or other hunting and fishing equipment; when made.
- 37-624. Commission; powers; use of federal personnel.

37-601 Jurisdiction of courts; duty of prosecuting attorneys.

All prosecutions for violations of the Game Law shall be brought in the name of the State of Nebraska before any court having jurisdiction thereof. It shall be the duty of all prosecuting attorneys in their respective jurisdictions to prosecute all persons charged with violations of the Game Law.

Source: Laws 1929, c. 112, VI, § 1, p. 433; C.S.1929, § 37-601; R.S. 1943, § 37-601; Laws 1972, LB 1032, § 228; R.S.1943, (1993), § 37-601; Laws 1998, LB 922, § 291; Laws 1999, LB 176, § 84.

37-602 Prosecutions; when and where brought; limitation.

Prosecutions shall be brought before a court of competent jurisdiction in the county within which the offense was committed. If the offense charged is that of having sold, having transported, or having in possession game, wild mammals, wild birds, fish, or raw furs in violation of law, prosecutions may be brought in any county through which or into which any such game, wild mammals, wild birds, fish, or raw furs have been transported or brought. All prosecutions shall be commenced within eighteen months from the time the offense charged was committed.

Source: Laws 1929, c. 112, VI, § 2, p. 433; C.S.1929, § 37-602; R.S. 1943, § 37-602; Laws 1972, LB 1032, § 229; R.S.1943, (1993), § 37-602; Laws 1998, LB 922, § 292; Laws 1999, LB 176, § 85.

37-603 Conservation officers; powers.

All full-time conservation officers are hereby made peace officers of the state with the powers of sheriffs.

Source: Laws 1929, c. 112, VI, § 3, p. 433; C.S.1929, § 37-603; R.S. 1943, § 37-603; Laws 1961, c. 175, § 1, p. 522; Laws 1961, c. 176, § 1, p. 526; Laws 1971, LB 315, § 1; Laws 1972, LB 1291, § 1; Laws 1981, LB 204, § 57; Laws 1988, LB 1030, § 36; Laws 1989, LB 34, § 35; R.S.1943, (1993), § 37-603; Laws 1998, LB 922, § 293.

37-604 Enforcement of Game Law; duties; fees and mileage.

It shall be the duty of all conservation officers, sheriffs, deputy sheriffs, and other peace officers to make prompt investigation of and arrests for any violations of the Game Law observed or reported by any person and to cause a complaint to be filed before a court having jurisdiction thereof in case there seems just ground for such complaint and evidence procurable to support the same. Upon the filing of such a complaint it shall be the duty of such officer to render assistance in the prosecution of the party complained against. Sheriffs, deputy sheriffs, and other peace officers making arrests and serving warrants under this section shall receive fees and mileage under the provisions of the statutes of the state with mileage to be computed at the rate provided for county sheriffs in section 33-117. Conservation officers shall serve writs and processes, civil and criminal, when such writs and processes pertain to enforcement of duties imposed by law on the commission. Any officer or person purporting to enforce the laws of this state or rules and regulations adopted and promulgated pursuant thereto shall on the demand of any person apprehended by him or her exhibit to such person his or her written commission of authority as such enforcement officer.

Source: Laws 1998, LB 922, § 294; Laws 1999, LB 176, § 86.

A search warrant would obviously not be required to authorize service on plaintiff's lake property of writs and process. *Kuester v. State*, 191 Neb. 680, 217 N.W.2d 180 (1974).

37-605 Arrests or summons; hearing; failure to appear; violation; penalty.

It shall be the duty of any conservation officer to make arrests or issue a summons, or both, or otherwise notify any resident of this state to appear at a place specified in such summons or notice and at a time likewise specified at least five days after such arrest unless the person arrested shall demand an

earlier hearing or, if such person so desires, at an immediate hearing or a hearing within twenty-four hours thereafter at a convenient hour before a magistrate within the township or county wherein such offense was committed. Any resident refusing to give written promise to appear or any nonresident refusing to give a guaranteed arrest bond or similar written instrument shall be taken immediately by such officer before the nearest or most accessible magistrate. Any person who willfully violates his or her written promise to appear shall be guilty of a Class III misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested.

Source: Laws 1998, LB 922, § 295.

A search warrant would obviously not be required to authorize service on plaintiff's lake property of writs and process. *Kuester v. State*, 191 Neb. 680, 217 N.W.2d 180 (1974).

37-606 Corporate offenders; how served; prosecution of agents or employees.

In case of a violation of the Game Law by a corporation, the warrant of arrest may be served on the president, secretary, or manager in this state or on any general or local agent thereof in the county where the action may properly be brought, and upon the return of such warrant so served, the corporation shall be deemed in court and subject to the jurisdiction thereof, and any fine imposed may be collected by execution against the property of such corporation. This section shall not be deemed to exempt from prosecution any agent or employee whose personal guilt is supported by probable cause.

Source: Laws 1929, c. 112, VI, § 13, p. 436; C.S.1929, § 37-613; R.S. 1943, § 37-613; Laws 1989, LB 34, § 42; R.S.1943, (1993), § 37-613; Laws 1998, LB 922, § 296.

37-607 Conservation and peace officers; duty to arrest; powers.

It shall be the duty of every conservation officer and any other peace officer to arrest any person whom he or she has reason to believe has committed a violation of the Game Law and, with or without a warrant, to open, enter, and examine all camps, wagons, cars, stages, tents, packs, warehouses, stores, outhouses, stables, barns and other places, boxes, barrels, and packages where he or she has reason to believe any game, fish, or raw furs, taken or held in violation of the Game Law, are to be found and to seize the same, except that a dwelling house actually occupied can be entered only upon authority of a search warrant.

Source: Laws 1998, LB 922, § 297; Laws 1999, LB 176, § 87.

37-608 Rules and regulations; enforcement; arrest and detention authorized.

Any law enforcement official, including any conservation officer, may enforce sections 37-305 to 37-313, the rules and regulations established under the authority of sections 60-680 and 60-6,190, and federal orders restricting access to federal lands under a memorandum of understanding or cooperative agreement with a federal agency. When a violation has occurred in or on any area under the ownership or control of the commission or federal lands as authorized under this section, any conservation officer may arrest and detain any person committing such violation or committing any misdemeanor or felony as

provided by the laws of this state or federal orders as authorized under this section until a legal warrant can be obtained.

Source: Laws 1998, LB 922, § 298; Laws 2002, LB 1003, § 31.

37-609 Resisting officer or employee of commission; penalty.

It shall be unlawful for any person to resist or obstruct any officer or any employee of the commission in the discharge of his or her lawful duties. Any person willfully resisting such officer or employee shall be guilty of a Class V misdemeanor.

Source: Laws 1929, c. 112, VI, § 4, p. 434; C.S.1929, § 37-604; Laws 1937, c. 89, § 15, p. 299; C.S.Supp.,1941, § 37-604; R.S.1943, § 37-604; Laws 1977, LB 40, § 199; R.S.1943, (1993), § 37-604; Laws 1998, LB 922, § 299.

37-610 False representation as officer or employee of commission; penalty.

It shall be unlawful for any person to falsely represent himself or herself to be an officer or employee of the commission or to assume to so act without having been duly appointed or employed as such. Any person willfully representing himself or herself to be such officer or employee shall be guilty of a Class V misdemeanor.

Source: Laws 1929, c. 112, VI, § 5, p. 434; C.S.1929, § 37-605; Laws 1937, c. 89, § 16, p. 299; C.S.Supp.,1941, § 37-605; R.S.1943, § 37-605; Laws 1957, c. 139, § 13, p. 471; Laws 1961, c. 175, § 2, p. 523; Laws 1977, LB 40, § 200; R.S.1943, (1993), § 37-605; Laws 1998, LB 922, § 300.

37-611 Separate offense, defined.

(1) Each individual animal of any species of wildlife taken in violation of the Game Law, (2) each individual animal of any species of wildlife shipped, offered or received for shipment, transported, bought, sold, bartered, or had in possession contrary to the Game Law, and (3) each seine, net, or other device, including ferrets, used or attempted to be used in violation of the Game Law, shall constitute a separate offense.

Source: Laws 1929, c. 112, VI, § 11, p. 436; C.S.1929, § 37-611; R.S. 1943, § 37-611; Laws 1989, LB 34, § 40; R.S.1943, (1993), § 37-611; Laws 1998, LB 922, § 301.

37-612 Accessories; penalties.

Any person who makes any use of or has in his or her possession or who aids or abets in the taking of any game or raw fur taken contrary to any of the provisions of the Game Law, with knowledge of such fact or of facts sufficient in law to charge him or her with such knowledge, shall be deemed a principal in the unlawful taking, transporting, or possession of such game or raw fur and shall be subject to the same penalties therefor as the person who took the game or raw fur, unlawfully had the game or raw fur in his or her possession, or unlawfully transported the game or raw fur.

Source: Laws 1929, c. 112, VI, § 12, p. 436; C.S.1929, § 37-612; R.S. 1943, § 37-612; Laws 1967, c. 216, § 15, p. 590; Laws 1989, LB 34, § 41; R.S.1943, (1993), § 37-612; Laws 1998, LB 922, § 302.

37-613 Wildlife; prohibited acts; liquidated damages; schedule; disposition.

(1) Any person who sells, purchases, takes, or possesses contrary to the Game Law any wildlife shall be liable to the State of Nebraska for the damages caused thereby. Such damages shall be:

- (a) Five thousand dollars for each mountain sheep;
- (b) One thousand five hundred dollars for each elk or moose or each individual animal of a threatened or endangered species of wildlife;
- (c) Seven hundred fifty dollars for each deer, antelope, bear, swan, or paddlefish;
- (d) One hundred dollars for each wild turkey;
- (e) Seventy-five dollars for each other game bird, other game animal, fur-bearing animal, other than raccoons, or the raw pelts thereof, or nongame wildlife in need of conservation as designated by the commission pursuant to section 37-805;
- (f) Fifty dollars for each wild bird not otherwise listed in this section;
- (g) Fifty dollars for each game fish measuring more than twelve inches in length;
- (h) Twenty-five dollars for each raccoon;
- (i) Twenty dollars for each other game fish; and
- (j) Twenty dollars for any other species of game not otherwise listed in this subsection.

(2) Such damages may be collected by the commission by civil action. In every case of conviction for any of such offenses, the court or magistrate before whom such conviction is obtained shall further enter judgment in favor of the State of Nebraska and against the defendant for liquidated damages in the amount set forth in this section and collect such damages by execution or otherwise. Failure to obtain conviction on a criminal charge shall not bar a separate civil action for such liquidated damages. Damages collected pursuant to this section shall be remitted to the secretary of the commission who shall remit them to the State Treasurer for credit to the State Game Fund.

Source: Laws 1929, c. 112, VI, § 14, p. 437; C.S.1929, § 37-614; R.S. 1943, § 37-614; Laws 1949, c. 105, § 1, p. 285; Laws 1957, c. 139, § 17, p. 472; Laws 1989, LB 34, § 43; Laws 1989, LB 43, § 1; R.S.1943, (1993), § 37-614; Laws 1998, LB 922, § 303; Laws 1999, LB 176, § 88; Laws 2001, LB 130, § 5.

37-614 Revocation and suspension of permits; grounds.

(1) When a person pleads guilty to or is convicted of any violation listed in this subsection, the court shall, in addition to any other penalty, revoke and require the immediate surrender of all permits to hunt, fish, and harvest fur held by such person and suspend the privilege of such person to hunt, fish, and harvest fur and to purchase such permits for a period of not less than one nor more than three years. The court shall consider the number and severity of the violations of the Game Law in determining the length of the revocation and suspension. The violations shall be:

- (a) Carelessly or purposely killing or causing injury to livestock with a firearm or bow and arrow;

(b) Purposely taking or having in his or her possession a number of game animals, game fish, game birds, or fur-bearing animals exceeding twice the limit established pursuant to section 37-314;

(c) Taking any species of wildlife protected by the Game Law during a closed season in violation of section 37-502;

(d) Resisting or obstructing any officer or any employee of the commission in the discharge of his or her lawful duties in violation of section 37-609; and

(e) Being a habitual offender of the Game Law.

(2) When a person pleads guilty to or is convicted of any violation listed in this subsection, the court may, in addition to any other penalty, revoke and require the immediate surrender of all permits to hunt, fish, and harvest fur held by such person and suspend the privilege of such person to hunt, fish, and harvest fur and to purchase such permits for a period of not less than one nor more than three years. The court shall consider the number and severity of the violations of the Game Law in determining the length of the revocation and suspension. The violations shall be:

(a) Hunting, fishing, or fur harvesting without a permit in violation of section 37-411;

(b) Hunting from a vehicle, aircraft, or boat in violation of section 37-513, 37-514, 37-515, 37-535, or 37-538;

(c) Trapping wildlife in the county right-of-way in violation of section 37-513; and

(d) Knowingly taking any wildlife on private land without permission in violation of section 37-722.

(3) When a person pleads guilty to or is convicted of any violation of the Game Law or the rules and regulations of the commission not listed in subsection (1) or (2) of this section, the court may, in addition to any other penalty, revoke and require the immediate surrender of all permits to hunt, fish, and harvest fur held by such person and suspend the privilege of such person to hunt, fish, and harvest fur and to purchase such permits for a period of one year.

Source: Laws 1998, LB 922, § 304; Laws 1999, LB 176, § 89; Laws 2007, LB299, § 16.

37-615 Revoked or suspended permit; unlawful acts; violation; penalty.

It shall be unlawful for any person to take any species of wildlife protected by the Game Law while his or her permits are revoked. It shall be unlawful for any person to apply for or purchase a permit to hunt, fish, or harvest fur in Nebraska while his or her permits are revoked and while the privilege to purchase such permits is suspended. Any person who violates this section shall be guilty of a Class III misdemeanor and in addition shall be suspended from hunting, fishing, and fur harvesting or purchasing permits to hunt, fish, and harvest fur for a period of not less than two nor more than five years as the court directs. The court shall consider the number and severity of the violations of the Game Law in determining the length of the suspension.

Any person whose privilege or permit to hunt, fish, or harvest fur in another state has been suspended or revoked as a result of a conviction shall not be eligible to obtain a permit to hunt, fish, or harvest fur if the conviction would

constitute grounds for suspension or revocation under sections 37-614 to 37-617 until the period of suspension or revocation in the other state has expired.

Source: Laws 1998, LB 922, § 305.

37-616 Certain deaths and injuries; suspension or revocation of permits.

The court shall automatically suspend the privilege to hunt, fish, and harvest fur and to purchase permits to hunt, fish, and harvest fur in the State of Nebraska of a person who is convicted of the intentional or negligent killing or injuring of any other person with a firearm or bow and arrow while hunting, fishing, or fur harvesting and shall automatically revoke all permits to hunt, fish, and harvest fur in the State of Nebraska held by a person who is convicted of the intentional or negligent killing or injuring of any other person with a firearm or bow and arrow while hunting, fishing, or fur harvesting. The suspension or revocation shall be for a period of not less than ten years after such conviction.

Source: Laws 1998, LB 922, § 306.

37-617 Suspension, revocation, or conviction; court; commission; duties.

The court shall notify the commission of any suspension, revocation, or conviction under sections 37-614 to 37-616. The commission shall notify permit agents of any suspension or revocation under sections 37-614 to 37-616 and the date such suspension or revocation expires.

Source: Laws 1998, LB 922, § 307; Laws 1999, LB 176, § 90.

37-618 Suspension or revocation in other jurisdiction; effect; violation; penalty.

Any person whose privilege to hunt, fish, or harvest fur has been suspended or revoked in any jurisdiction within the United States or Canada shall be prohibited from obtaining a permit for such activity in this state during the period of suspension or revocation in the prosecuting jurisdiction if the offense for which the privilege is suspended or revoked is an offense under the Game Law. If such person has previously obtained a permit for such activity, the permit shall become invalid and shall be suspended for the same period as determined in the prosecuting jurisdiction. The person shall immediately return the permit to the commission. No person shall possess a permit which has been suspended or revoked under this section. Any person who violates the provisions of this section shall be guilty of a Class I misdemeanor.

Source: Laws 1998, LB 922, § 308.

37-619 Game and raw furs illegally acquired or possessed; contraband; seizure and confiscation.

All game taken and all game and raw furs bought, sold, bartered, shipped, or had in possession contrary to any of the provisions of the Game Law shall be and the same are declared to be contraband and shall be seized and confiscated by any conservation officer, other peace officer, or other employee of the commission.

Source: Laws 1929, c. 112, VI, § 6, p. 434; C.S.1929, § 37-606; R.S. 1943, § 37-606; Laws 1957, c. 139, § 14, p. 471; Laws 1961, c.

175, § 3, p. 523; Laws 1988, LB 1030, § 37; Laws 1989, LB 34, § 36; R.S.1943, (1993), § 37-606; Laws 1998, LB 922, § 309; Laws 1999, LB 176, § 91.

Pheasants legally killed in another state are not subject to confiscation. *State v. Allen*, 159 Neb. 314, 66 N.W.2d 830 (1954).

37-620 Contraband; evidence; seizure and confiscation.

The possession by any person of any fish under lawful size as designated in the Game Law shall be evidence that the same was taken within the state. Possession within this state of the carcass of any game animal or game bird which has shot marks upon it shall be evidence that the same was taken in this state, and the burden of proving otherwise shall be upon the party in whose possession it is found. Whenever the contents of any box, barrel, package, or receptacle consist partly of contraband and partly of legal game or raw furs, the entire contents of such box, barrel, package, or other receptacle shall be seized and confiscated. Whenever a person has in his or her possession any game in excess of the number permitted by law, all game in his or her possession may be seized and confiscated.

Source: Laws 1929, c. 112, VI, § 7, p. 435; C.S.1929, § 37-607; R.S. 1943, § 37-607; Laws 1957, c. 139, § 15, p. 471; Laws 1989, LB 34, § 37; R.S.1943, (1993), § 37-607; Laws 1998, LB 922, § 310.

Question as to whether court erred as to burden of proof raised but not decided. *State v. Allen*, 159 Neb. 314, 66 N.W.2d 830 (1954).

37-621 Contraband; disposition.

Contraband game and fish seized and confiscated in accordance with the Game Law or coming into the possession of the commission by other means shall be turned over to the nearest hospital or state institution or otherwise disposed of as directed by the commission, and all contraband hides and furs shall be sold and the proceeds paid into the State Game Fund.

Source: Laws 1929, c. 112, VI, § 8, p. 435; C.S.1929, § 37-608; R.S. 1943, § 37-608; Laws 1957, c. 139, § 16, p. 472; Laws 1989, LB 34, § 38; R.S.1943, (1993), § 37-608; Laws 1998, LB 922, § 311.

Pheasants legally taken in another state were not contraband. *State v. Allen*, 159 Neb. 314, 66 N.W.2d 830 (1954).

37-622 Contraband; illegal possession; complaints and search warrants.

Whenever any conservation officer or other peace officer of the state has reason to believe that any person has in his or her possession any game, aquatic organisms, raw fur, nets, or devices contrary to law, the officer may file or cause to be filed a sworn complaint to such effect before any magistrate having jurisdiction and may procure a search warrant and execute such warrant.

Source: Laws 1929, c. 112, VI, § 9, p. 435; C.S.1929, § 37-609; Laws 1941, c. 72, § 10, p. 306; C.S.Supp.,1941, § 37-609; R.S.1943, § 37-609; Laws 1961, c. 175, § 4, p. 524; Laws 1988, LB 1030, § 38; Laws 1994, LB 1165, § 13; R.S.Supp.,1996, § 37-609; Laws 1998, LB 922, § 312; Laws 1999, LB 176, § 92.

37-623 Illegally used nets, traps, ferrets, and devices; seizure and confiscation; destruction; return of guns, legal fish nets, or other hunting and fishing equipment; when made.

Every device, net, and trap and every ferret possessed, used, or attempted to be used by any person in taking any game contrary to the Game Law is hereby declared to be a public nuisance and subject to seizure and confiscation by any conservation officer or other person charged with the enforcement of the Game Law. Ferrets and every device, net, and trap, the use of which is wholly prohibited, shall be destroyed upon seizure. All guns and nets while being used illegally shall be seized upon the arrest of the person so using them, but all guns, legal fish nets, or other hunting or fishing equipment, used illegally which are seized for evidence upon arrest, shall be returned by the court to the person from whom such guns, legal fish nets, or other hunting or fishing equipment was seized following disposition of the case.

Source: Laws 1929, c. 112, VI, § 10, p. 435; C.S.1929, § 37-610; Laws 1931, c. 72, § 3, p. 194; Laws 1937, c. 89, § 17, p. 299; C.S.Supp.,1941, § 37-610; R.S.1943, § 37-610; Laws 1945, c. 78, § 8, p. 293; Laws 1957, c. 150, § 1, p. 488; Laws 1959, c. 150, § 9, p. 574; Laws 1961, c. 175, § 5, p. 524; Laws 1961, c. 177, § 1, p. 527; Laws 1963, c. 204, § 2, p. 657; Laws 1977, LB 40, § 201; Laws 1987, LB 629, § 2; Laws 1989, LB 34, § 39; R.S.1943, (1993), § 37-610; Laws 1998, LB 922, § 313; Laws 1999, LB 176, § 93.

37-624 Commission; powers; use of federal personnel.

(1) The commission may enter into a memorandum of agreement for cooperative law enforcement with the United States Fish and Wildlife Service.

(2) Special agents and refuge officers of the United States Fish and Wildlife Service who are certified as federal law enforcement officers may be credentialed as conservation officers of the commission. The secretary, under the direction of the commission acting in official session, may credential such officers. Training requirements under section 81-1414 shall not apply to an officer credentialed under this subsection.

(3) Nothing in this section shall authorize special agents and refuge officers of the United States Fish and Wildlife Service who are credentialed as conservation officers pursuant to subsection (2) of this section to enforce any other laws of the State of Nebraska while exercising the authority specified in such subsection, nor shall any evidence discovered in the course of such agents' or officers' duties in enforcement of the Game Law or rules and regulations adopted and promulgated by the commission, which is evidence of a violation of any other laws of the State of Nebraska, be admissible in a subsequent prosecution for such violation.

Source: Laws 1992, LB 339, § 1; R.S.1943, (1996), § 81-805.04; Laws 1998, LB 922, § 314; Laws 2001, LB 130, § 6.

GAME AND PARKS

ARTICLE 7

RECREATIONAL LANDS

(a) RESERVES AND SANCTUARIES

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(a) RESERVES AND SANCTUARIES

37-701 Reserves, refuges, and sanctuaries; how established; acquisition of land.

When a notice is posted on each corner and on all roads leading thereinto, indicating that such property is a reserve, refuge, or sanctuary, every school section and other tract of educational land within the state, title to which is vested in the State of Nebraska, all that portion of the State of Nebraska embraced within the boundaries of the Niobrara and Bessey divisions of the Nebraska National Forest, and every state-owned lake, pond, or marsh, except lakes and marshes state owned because meandered, is hereby declared to be a game reserve, bird refuge, and wild fowl sanctuary. Other game reserves, bird refuges, wild fowl sanctuaries, or reservations may be established by the commission in any county where deemed necessary for the protection and propagation of game, or as a refuge or sanctuary for song and insectivorous birds or wild fowl. The commission with the approval of the Governor may acquire land for such purposes, either by purchase, lease, gift, or other devise.

Source: Laws 1929, c. 112, IV, § 1, p. 420; C.S.1929, § 37-401; R.S. 1943, § 37-401; Laws 1957, c. 145, § 1, p. 481; R.S.1943, (1993), § 37-401; Laws 1998, LB 922, § 315.

37-702 Sanctuaries on rivers; how established; discontinuance; procedure.

When the owners in freehold of both banks of any river in Nebraska for a distance of five miles or more along the river sign a petition to the commission requesting that such river along their lands and on lands adjacent to the river and within one-half mile thereof be made a game and wild fowl sanctuary, the commission upon receiving the promises in writing of such owners to refrain from all shooting or molesting of game upon such proposed sanctuary and further, to the best of their ability, to prevent others from shooting or molesting game thereon may accept such area as a game and wild fowl sanctuary and cause the same to be plainly posted as such and to be protected from violators. The commission may further expend reasonable sums to feed wild fowl upon such sanctuaries. A sanctuary so established may not, without the consent of the commission, be withdrawn by the owners for a period of five years after it is established, and unless the owners of more than one-half of the river banks on both sides of the river running through any such sanctuary sign a petition for vacating the same and file such petition with the commission during the first half of the fifth year of such sanctuary or thereafter in the first half of the fifth year of any added five-year period, such sanctuary shall continue as such unless terminated for good cause by the commission.

Source: Laws 1929, c. 112, IV, § 2, p. 421; C.S.1929, § 37-402; R.S. 1943, § 37-402; Laws 1989, LB 34, § 19; R.S.1943, (1993), § 37-402; Laws 1998, LB 922, § 316.

37-703 Reserves, refuges, and sanctuaries; signs; form; where placed; defacing prohibited; penalty.

At each section corner and in full sight of the traveled highway at each game reserve, bird refuge, or wild fowl sanctuary, there shall be placed by the commission a conspicuous, permanent sign as follows:

State of Nebraska

Game and Bird Sanctuary

Hunting or Molesting Game or Bird Life

Prohibited and Punished

Nebraska Game and Parks Commission

or with such other notice as the commission may deem advisable. Anyone removing or defacing any such sign shall be deemed guilty of a Class III misdemeanor.

Source: Laws 1929, c. 112, IV, § 3, p. 421; C.S.1929, § 37-403; R.S. 1943, § 37-403; Laws 1989, LB 34, § 20; R.S.1943, (1993), § 37-403; Laws 1998, LB 922, § 317.

37-704 Sanctuaries; rules and regulations; Missouri River sanctuaries; power of commission.

The commission may adopt and promulgate such rules and regulations for the protection of game or wild fowl sanctuaries as it may find necessary to protect game, wild fowl, or song birds thereon or to make effective rules and regulations in conjunction with other states over the Missouri River for the protection of wild fowl thereon and fish therein. Such rules and regulations shall be adopted and promulgated pursuant to the Administrative Procedure Act.

Source: Laws 1929, c. 112, IV, § 4, p. 421; C.S.1929, § 37-404; R.S. 1943, § 37-404; Laws 1989, LB 34, § 21; R.S.1943, (1993), § 37-404; Laws 1998, LB 922, § 318.

Cross References

Administrative Procedure Act, see section 84-920.

37-705 Reserves, sanctuaries, and closed waters; prohibited acts; penalty; exceptions.

(1) Anyone who takes any fish from waters closed by the commission as provided in the Game Law, who takes any game upon any reserve or sanctuary, who goes thereon with a gun or dog, who permits a dog to run thereon, who otherwise intentionally disturbs game or birds thereon and causes them to depart from such reserve or sanctuary, who goes upon any wild fowl sanctuary to fish or for any other purpose during the open season on wild fowl, or who violates any provision of sections 37-701 to 37-704 or any rule or regulation of the commission relating to game reserves or sanctuaries adopted and promulgated by authority of law shall be guilty of a Class III misdemeanor.

(2) Nothing in this section shall (a) render unlawful the keeping at farm homes, located on the reserves or sanctuaries provided for in the Game Law, such dogs as ordinarily are kept on farms, (b) render unlawful the possession of firearms by residents on such reserves or sanctuaries when such firearms are not used to disturb or molest wild fowl or game thereon or prevent such residents from destroying predators as provided in section 37-559 thereon, (c) prevent members, officers, or employees of the commission from going upon sanctuaries at any time to enforce the Game Law, to obtain evidence to enforce

it, or otherwise to protect game and fish thereon, or (d) make it unlawful to retrieve lawfully killed game birds from any such reserve or sanctuary.

Source: Laws 1929, c. 112, IV, § 10, p. 425; C.S.1929, § 37-410; Laws 1943, c. 94, § 9, p. 328; R.S.1943, § 37-410; Laws 1977, LB 40, § 185; Laws 1989, LB 34, § 23; Laws 1989, LB 168, § 1; R.S.1943, (1993), § 37-410; Laws 1998, LB 922, § 319.

37-706 Game refuges; establishment; description.

(1) For the better protection of birds and the establishment of breeding places therefor, the following area within the State of Nebraska is hereby set aside, designated, and established as a state game refuge: All that portion of the State of Nebraska on the North Platte River and for one hundred ten yards back of the banks of said stream on the land side in Garden County, Nebraska.

(2) For the better protection of birds and the establishment of breeding and resting places therefor, the following areas within the State of Nebraska are hereby set aside, designated, and established as state game refuges: (a) All that portion of the State of Nebraska on the Platte River and for one hundred ten yards on each side of the banks of said stream from the west line of Dodge County and Saunders County east and southeast to the bridge across said Platte River, west of Venice, Nebraska, on U.S. Route No. 30A and State Route No. 92; (b) all that portion of the State of Nebraska embracing the channel or channels of the Niobrara River and for one hundred ten yards back from the banks of such stream on the land side in Boyd and Holt Counties, extending from the west line of Boyd and Holt Counties on the west to State Highway No. 11 on the east; and (c) all that portion of the State of Nebraska on the North Platte River, and for one hundred ten yards on each side of the banks of the stream in sections twenty-one, twenty-six, twenty-seven, twenty-eight, thirty-four, thirty-five, and thirty-six, township fourteen north, range thirty, west of the sixth principal meridian, Lincoln County, Nebraska.

(3) For purposes of sections 37-701 to 37-708, the banks of said stream means the banks of the river which are the elevation of ground which confines the water at a level not exceeding flood stage.

Source: Laws 1925, c. 107, § 1, p. 295; C.S.1929, § 37-412; R.S.1943, § 37-412; Laws 1947, c. 135, § 1, p. 379; Laws 1965, c. 200, § 1, p. 603; R.S.1943, (1993), § 37-412; Laws 1998, LB 922, § 320; Laws 1999, LB 176, § 94; Laws 2004, LB 826, § 3.

Game Refuge Act was sustained as constitutional against contention that it was special law for protection of game and fish. Bauer v. State Game, Forestation and Parks Com., 138 Neb. 436, 293 N.W. 282 (1940).

37-706.01 Legislative intent.

It is the intent of the Legislature to preserve the state game refuges described in section 37-706.

Source: Laws 2004, LB 826, § 2.

37-707 Game refuges; boundaries; marking; Department of Natural Resources; duties; access to property; when.

(1) The commission is directed to place suitable signs showing the boundaries of the refuges, as designated in section 37-706, using the map adopted by the Department of Natural Resources pursuant to this section, on all roads leading into such refuges.

(2)(a) The Department of Natural Resources shall adopt and promulgate rules and regulations determining the boundaries of the state game refuges. The department's determination shall be based on the definitions in sections 37-701 to 37-708 and shall include maps showing such boundaries.

(b) The department shall make the initial boundary determinations for the state game refuge in Garden County by March 1, 2005. The department shall make the initial boundary determinations for the remaining state game refuges by January 1, 2006.

(c) Until the initial determinations are made pursuant to subdivision (a) of this subsection, the boundaries that have been determined and maintained by the commission shall remain in effect.

(d) The department shall update any boundary determination required by subdivision (a) of this subsection whenever it determines that there has been a substantial change in the location of the banks of said stream used for locating such boundary.

(e) To the extent necessary to fulfill their obligations under sections 37-701 to 37-708 and pursuant to notice as provided in subdivision (f) of this subsection, the department and the commission shall have access at all reasonable times to all properties to which access is needed to fulfill such obligations. Entry upon such properties for the purposes set forth in such sections shall not be considered trespass.

(f) Notice of intent to enter upon property for the purposes of subdivision (2)(e) of this section shall be satisfied by publishing such notice at least once each week for three consecutive weeks in a legal newspaper published or of general circulation in the county or counties in which such property and such game refuge are located.

Source: Laws 1939, c. 43, § 2, p. 202; C.S.Supp.,1941, § 37-429; R.S. 1943, § 37-419; Laws 1947, c. 135, § 3, p. 380; R.S.1943, (1993), § 37-419; Laws 1998, LB 922, § 321; Laws 2004, LB 826, § 4.

Game Refuge Act was sustained as constitutional against contention that it was special law for protection of game and fish. *Bauer v. State Game, Forestation and Parks Com.*, 138 Neb. 436, 293 N.W. 282 (1940).

37-708 Game refuges; prohibited acts; exceptions.

(1) It shall be unlawful within the boundaries of the state game refuges designated in section 37-706 for any person (a) to hunt or chase with dogs any game birds, game animals, or other birds or animals of any kind or description whatever, (b) to carry firearms of any kind, or (c) from October 15 through January 15 each year to operate a motorboat as defined in section 37-1204.

(2) This section shall not prevent highway or railroad transport of firearms or dogs across the refuge, retrieval of game birds lawfully killed from such refuge, or the taking of fur-bearing animals by the use of traps during lawful open seasons on the refuge.

(3) This section shall not prevent the commission from issuing such permits as may be necessary for the killing of animal or bird predators that may endanger game birds or game animals or the domestic property of adjacent landowners or from issuing permits as provided in sections 37-447 to 37-452 for the taking of deer from such refuges whenever the number of deer on such

refuges is deemed detrimental to habitat conditions on the refuges or to adjacent privately owned real or personal property.

(4) This section shall not prevent the owners of land or dwellings or their relatives or invitees from operating any motorboat within the boundaries of the refuge for purposes of access by the most direct route to and from such land or dwellings.

Source: Laws 1939, c. 43, § 3, p. 202; C.S.Supp.,1941, § 37-430; R.S. 1943, § 37-420; Laws 1947, c. 135, § 4, p. 380; Laws 1965, c. 202, § 1, p. 605; Laws 1993, LB 235, § 20; R.S.1943, (1993), § 37-420; Laws 1998, LB 922, § 322.

Game Refuge Act was sustained as constitutional against fish. Bauer v. State Game, Forestation and Parks Com., 138 contention that it was special law for protection of game and Neb. 436, 293 N.W. 282 (1940).

37-708.01 Rule or regulation; validity; review of other orders or acts; procedure.

(1) The validity of any rule or regulation adopted by the Department of Natural Resources pursuant to sections 37-701 to 37-708 may be determined pursuant to section 84-911.

(2) Any person aggrieved by any other order or act of the department or commission pursuant to its authority under sections 37-701 to 37-708 may, within thirty days after notice thereof, file a petition in the district court of the county in which the aggrieved person resides or, if the aggrieved person is not a resident of Nebraska, in the district court of Lancaster County, for review. The court shall summarily hear the petition as a case in equity without a jury and may order only declaratory or prospective injunctive relief with regard to such order or act.

(3) Except as provided in subsection (1) of this section, the appeal procedures described in the Administrative Procedure Act shall not apply to actions taken pursuant to sections 37-701 to 37-708.

(4) The appeal procedures described in sections 61-206 and 61-207 do not apply to actions taken pursuant to sections 37-701 to 37-708.

Source: Laws 2004, LB 826, § 5.

Cross References

Administrative Procedure Act, see section 84-920.

37-709 Game refuges; violation; penalty.

Any person who violates any of the provisions of section 37-708 shall be guilty of a Class III misdemeanor.

Source: Laws 1939, c. 43, § 4, p. 202; C.S.Supp.,1941, § 37-431; R.S. 1943, § 37-421; Laws 1947, c. 135, § 5, p. 380; Laws 1977, LB 40, § 187; Laws 1993, LB 235, § 21; R.S.1943, (1993), § 37-421; Laws 1998, LB 922, § 323.

37-710 State Wild Game Preserve; creation; extent; location; acquisition; purpose.

The commission is hereby authorized to create within Scotts Bluff, Banner, and Morrill Counties, Nebraska, or any one or more of such counties, a state wild game preserve to be known as the State Wild Game Preserve, to be composed of a tract of land of not less than four thousand acres nor more than

ten thousand acres which shall have been procured by the state within the boundaries of any one or more of such counties. Any land so selected and procured shall be chiefly rough in its topography and shall include an ample amount of natural shelter as provided by canyons and timber, water supply, and native grasses such as are characteristic of the Wildcat Hills in such counties. The commission is authorized to acquire such premises and, when so procured, shall enclose such tract with a good and sufficient fence and shall keep and maintain the fence in a good and sufficient state of repair.

Source: Laws 1927, c. 30, § 1, p. 146; C.S.1929, § 37-415; R.S.1943, § 37-415; R.S.1943, (1993), § 37-415; Laws 1998, LB 922, § 324.

37-711 State Wild Game Preserve; typical specimens of wild game animals and birds; collection, preservation, and distribution.

After enclosing the State Wild Game Preserve with a fence, it shall be the duty of the commission to collect, maintain, and perpetuate typical specimens of wild game animals and birds indigenous to the State of Nebraska in its pioneer history, to place the same in charge of a capable caretaker, and to maintain such animals in its discretion as to number, kind, and species, and as to quality of care, to the end that the intentions of section 37-710 may be carried out. The commission shall furnish wild game to public parks of the state whenever the commission has the same on hand available for distribution.

Source: Laws 1927, c. 30, § 2, p. 146; C.S.1929, § 37-416; R.S.1943, § 37-416; R.S.1943, (1993), § 37-416; Laws 1998, LB 922, § 325.

37-712 State Wild Game Preserve; firearms, hunting, and fishing prohibited.

Except as provided in section 37-713, it shall be unlawful for any person to carry firearms, hunt, or fish within the limits of the State Wild Game Preserve.

Source: Laws 1927, c. 30, § 3, p. 147; C.S.1929, § 37-417; R.S.1943, § 37-417; Laws 1961, c. 169, § 4, p. 503; R.S.1943, (1993), § 37-417; Laws 1998, LB 922, § 326.

37-713 State Wild Game Preserve; special permits for taking surplus wild game animals; issuance.

Whenever the number of wild game animals on the State Wild Game Preserve increases beyond the practical carrying capacity of the land involved, and no disposal of such animals to the public parks of the State of Nebraska is practical, the commission is hereby authorized to issue special permits for the taking of such surplus animals and to provide by regulation fees for such special permits and regulate methods and conditions of taking. Such special permits shall be distributed by an impartial manner, by lot.

Source: Laws 1959, c. 150, § 10, p. 575; R.S.1943, (1993), § 37-401.01; Laws 1998, LB 922, § 327.

(b) NATURAL AREAS

37-714 Terms, defined.

For purposes of sections 37-714 to 37-721:

(1) Natural area means an area of land or water, whether publicly or privately owned, which retains to some degree its primeval character, though it need not be completely natural and undisturbed, or has natural flora, fauna, or ecological features of scientific or educational interest;

(2) Participating cooperators means any nonprofit conservation organizations or public agencies which enter into agreements pursuant to section 37-718; and

(3) Register means the Nebraska Natural Areas Register created pursuant to section 37-716.

Source: Laws 1989, LB 251, § 3; R.S.1943, (1993), § 37-1402; Laws 1998, LB 922, § 328.

37-715 Legislative findings.

The Legislature hereby finds and declares that the protection of natural diversity promotes the quality of life for Nebraska residents and their descendants and the protection of natural areas maintains species and their genetic diversity for economic development and human benefit. The Legislature further finds and declares that specific knowledge of the status and location of natural heritage resources and their recognition can prevent needless conflict with economic development and voluntary cooperation of landowners is an effective and cost-efficient means to protect significant natural resources.

Source: Laws 1989, LB 251, § 2; R.S.1943, (1993), § 37-1401; Laws 1998, LB 922, § 329.

37-716 Nebraska Natural Areas Register; created; registration; criteria.

(1) The commission shall create and maintain a state register of those natural areas which possess significant natural heritage resources which shall be known as the Nebraska Natural Areas Register. The commission shall adopt and promulgate policies, rules, and regulations to carry out the registration of natural areas. The natural areas included in the register shall substantially satisfy at least one of the following criteria:

(a) The natural area shall possess an exemplary or rare plant community maintaining itself under prevailing natural conditions typical of Nebraska;

(b) The natural area shall be a habitat supporting a rare, threatened, or endangered species, a species in need of conservation, or other animal or plant species of concern;

(c) The natural area shall support a relict flora or fauna persisting from an earlier period; or

(d) The natural area shall serve as a seasonal haven for concentrations of birds or other animals.

(2) Natural areas which are candidates for inclusion in the register shall be identified by the commission based on available evidence and standards prescribed by the commission. Interested parties may propose possible natural areas to the commission for review of the national and statewide significance of their natural heritage features. Natural areas which meet the established standards may be considered as eligible for the register.

Source: Laws 1989, LB 251, § 4; R.S.1943, (1993), § 37-1403; Laws 1998, LB 922, § 330.

37-717 Inclusion in register; nomination; priorities.

(1) At least once each year, the commission shall meet with interested parties to review the status, distribution, and significance of the animal and plant species and natural areas within Nebraska. After completing the review, the sites may be nominated for inclusion in the register and submitted with nomination documents for consideration by the commission. Nomination of natural areas for inclusion in the register shall be based on one or more of the following priorities:

- (a) Rareness of the natural heritage features on a national, statewide, or ecological region scale;
- (b) Excellence and completeness of the natural heritage features found in the natural area;
- (c) Degree to which a natural area or its natural heritage features are threatened with incompatible use;
- (d) Degree of protection afforded to similar features elsewhere in the state or ecological region; and
- (e) Viability of the natural features in the natural area.

(2) Following approval of nominated natural areas by the commission, the natural area shall be added to the register. No privately owned lands may be nominated for registration without prior notice to the owner or registered without voluntary consent of the owner.

Source: Laws 1989, LB 251, § 5; R.S.1943, (1993), § 37-1404; Laws 1998, LB 922, § 331.

37-718 Contracts and agreements authorized.

The commission may enter into contracts, memoranda of understanding, or cooperative agreements with the participating cooperators to jointly conduct or act as the agent for the commission in landowner contact and other operations relating to the register.

Source: Laws 1989, LB 251, § 6; R.S.1943, (1993), § 37-1405; Laws 1998, LB 922, § 332.

37-719 Commission; participating cooperators; powers.

The commission and participating cooperators may provide to the owners of registered natural areas:

- (1) Recognition for their participation in the register by appropriate publicity and the presentation of certificates or plaques;
- (2) Advice on the proper management of the registered natural area to protect the biological features for which the area was registered; and
- (3) Assistance in management or monitoring activities to maintain the natural heritage features of the registered natural area. Such activities may include, but shall not be limited to, taking a census of the population, vegetation control, and prescribed burning.

Source: Laws 1989, LB 251, § 7; R.S.1943, (1993), § 37-1406; Laws 1998, LB 922, § 333.

37-720 Agreement; landowner's rights.

A voluntary agreement between a landowner and the commission or the participating cooperators to register a natural area shall not affect a landowner's property rights or use of the land. The landowner may withdraw from the agreement by notifying the commission. No state or local governmental agency may require landowner consent to the agreement as a condition of any permit or penalize any landowner in any way for failure to give or for withdrawal of such consent.

Source: Laws 1989, LB 251, § 8; R.S.1943, (1993), § 37-1407; Laws 1998, LB 922, § 334.

37-721 Natural area; use; hearing required.

The maintenance of a registered natural area in its natural state is hereby declared to be the highest, best, and most important use of the natural area. No entity of local or state government may undertake any activities or use the registered natural area in any way that would negatively impact the values of the natural area without first conducting a public hearing on such negative impact and filing with the secretary of the commission a statement justifying the negative impact on the natural area of such activities or use.

Source: Laws 1989, LB 251, § 9; Laws 1990, LB 826, § 2; R.S.1943, (1993), § 37-1408; Laws 1998, LB 922, § 335.

(c) PRIVATELY OWNED LANDS

37-722 Hunting, fishing, trapping, fur harvesting on private lands; unlawful except by permission; replevin of animals or pelts.

It shall be unlawful for anyone to take any wildlife upon any private lands without permission of the owner. It shall be unlawful for anyone to trap or otherwise harvest fur-bearing animals upon the lands of another without his or her consent. Animals and the pelts thereof taken contrary to this section may be replevied by the owner of the lands. For purposes of this section, owner means the actual owner of the land and any tenant or agent in possession or charge thereof for him or her.

Source: Laws 1929, c. 112, V, § 10, p. 429; C.S.1929, § 37-510; R.S. 1943, § 37-510; Laws 1967, c. 216, § 13, p. 588; Laws 1981, LB 72, § 19; Laws 1989, LB 34, § 33; R.S.1943, (1993), § 37-510; Laws 1998, LB 922, § 336.

Persons who hunt on private property without permission are not posted. State v. Blevins, 3 Neb. App. 111, 523 N.W.2d 701 subject to prosecution under this section even if the property is (1994).

37-723 Hunting; privately owned land; posting.

In the interest of providing access to more private property for the privilege of hunting and in protecting the property rights of the landowners and tenants of farms and ranches, it shall be lawful to post private property as provided in section 37-724.

Source: Laws 1963, c. 199, § 1, p. 646; R.S.1943, (1993), § 37-213.02; Laws 1998, LB 922, § 337.

37-724 Hunting; privately owned land; posting; where placed.

The landowner or tenant who is the principal operator of a farm or ranch may post such property to allow for hunting, by written permission only, in the following ways:

(1) With signs reading Hunting By Written Permission Only. The signs shall be at least eleven by fourteen inches with letters at least one and one-half inches high and shall be placed at each field entrance and at intervals of not more than four hundred forty yards and at all property corners. The name and address of the owner or tenant shall be on each sign; or

(2) By placing identifying red paint marks on trees or posts in the following manner:

(a) The identifying red paint marks shall be vertical lines of at least eight inches in length and three inches in width on trees or on any post which is not metal, or if metal posts are used, the identifying red paint marks shall completely surround the post and extend down at least eight inches from the top of the metal post. The bottom edge of the identifying red paint marks shall be not less than three feet and not more than five feet off the ground;

(b) The identifying red paint marks shall be readily visible to any person approaching the property; and

(c) The identifying red paint marks shall be placed at each field entrance and shall not be more than one hundred yards apart.

Source: Laws 1963, c. 199, § 2, p. 646; Laws 1973, LB 284, § 1; R.S.1943, (1993), § 37-213.03; Laws 1998, LB 922, § 338; Laws 1999, LB 176, § 95; Laws 2002, LB 1003, § 32.

37-725 Hunting; privately owned land; posting; written consent; contents.

The operator of property which has been posted as provided in section 37-724 shall have the privilege of permitting or denying hunting on such property, except that when consent for persons other than members of the family is extended, it shall be written consent. Each written permit shall be for such time as the operator shall designate and shall bear the date and the signature of the farm or ranch operator.

Source: Laws 1963, c. 199, § 3, p. 646; R.S.1943, (1993), § 37-213.04; Laws 1998, LB 922, § 339.

37-726 Hunting; privately owned land; posting; apprehension of violator; arrest and prosecution.

Anyone who is apprehended by a conservation officer or other peace officer hunting upon the private property of another which has been legally posted as provided in section 37-724 shall be subject to arrest and prosecution without the signing of a complaint by the operator of the property.

Source: Laws 1963, c. 199, § 4, p. 647; R.S.1943, (1993), § 37-213.05; Laws 1998, LB 922, § 340; Laws 1999, LB 176, § 96.

37-727 Hunting; privately owned land; violations; penalty.

Any person violating the provisions of sections 37-724 to 37-726 shall be guilty of a Class III misdemeanor.

Source: Laws 1963, c. 199, § 5, p. 647; Laws 1977, LB 40, § 178; R.S.1943, (1993), § 37-213.06; Laws 1998, LB 922, § 341.

37-728 Fishing; privately owned land; statement required; false statement; penalty.

Whenever an invitee takes fish in any body of water which is entirely upon privately owned land and which is entirely privately stocked and the invitee wishes to remove the fish from the premises, the owner or operator by consent of the owner shall furnish to such invitee a written statement setting forth the name of the owner, the name of the invitee, the number of fish taken, and that such fish were taken in a body of water which is entirely upon privately owned land and which is entirely privately stocked. Any person who makes or exhibits to a conservation officer or other peace officer a false statement of the facts required by this section shall be guilty of a Class V misdemeanor.

Source: Laws 1959, c. 149, § 3, p. 566; Laws 1977, LB 40, § 177; R.S.1943, (1993), § 37-213.01; Laws 1998, LB 922, § 342; Laws 1999, LB 176, § 97.

(d) RECREATION LIABILITY

37-729 Terms, defined.

For purposes of sections 37-729 to 37-736:

- (1) Land includes roads, water, watercourses, private ways, and buildings, structures, and machinery or equipment thereon when attached to the realty;
- (2) Owner includes tenant, lessee, occupant, or person in control of the premises;
- (3) Recreational purposes includes, but is not limited to, any one or any combination of the following: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, waterskiing, winter sports, and visiting, viewing, or enjoying historical, archaeological, scenic, or scientific sites, or otherwise using land for purposes of the user; and
- (4) Charge means the amount of money asked in return for an invitation to enter or go upon the land.

Source: Laws 1965, c. 193, § 8, p. 590; R.S.1943, (1993), § 37-1008; Laws 1998, LB 922, § 343.

Spectating at a youth football game is not a recreational purpose under this section. *Iodence v. City of Alliance*, 270 Neb. 59, 700 N.W.2d 562 (2005).

Subsection (3) of this section is not unconstitutionally vague. *Dykes v. Scotts Bluff Cty. Ag. Socy., Inc.*, 260 Neb. 375, 617 N.W.2d 817 (2000).

The viewing of livestock exhibits at a county fair is not a recreational purpose under subsection (3) of this section. *Dykes v. Scotts Bluff Cty. Ag. Socy., Inc.*, 260 Neb. 375, 617 N.W.2d 817 (2000).

Recreation Liability Act does not apply to independent indoor recreational facilities, including indoor swimming pools. *Cassio v. Creighton University*, 233 Neb. 160, 446 N.W.2d 704 (1989).

Recreation Liability Act, the provisions of which apply to urban as well as rural areas, is not limited to private persons; governmental subdivisions are "owners" within meaning of

section 37-1003. *Gallagher v. Omaha Public Power Dist.*, 225 Neb. 354, 405 N.W.2d 571 (1987).

A city park which provides camping, picnic, and sports facilities is a recreational facility within the meaning of the act. *Garreans v. City of Omaha*, 216 Neb. 487, 345 N.W.2d 309 (1984).

In order to constitute a charge within the meaning of the act, money must be paid for the right to enter the facility. *Garreans v. City of Omaha*, 216 Neb. 487, 345 N.W.2d 309 (1984).

The term "owner", as used in the Recreation Liability Act, sections 37-1001 et seq., includes a political subdivision as well as a private person. The term "recreational purposes", as used in the Recreation Liability Act, sections 37-1001 et seq., is broad enough to include the normal activities afforded by public parks. *Watson v. City of Omaha*, 209 Neb. 835, 312 N.W.2d 256 (1981).

37-730 Limitation of liability; purpose of sections.

The purpose of sections 37-729 to 37-736 is to encourage owners of land to make available to the public land and water areas for recreational purposes by limiting their liability toward persons entering thereon and toward persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.

Source: Laws 1965, c. 193, § 1, p. 589; R.S.1943, (1993), § 37-1001; Laws 1998, LB 922, § 344.

The purpose of the Recreation Liability Act is to encourage owners of land to make available to the public land and water areas for recreational purposes by limiting their liability toward persons entering thereon and toward persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon. The Legislature did not intend for a court to look to the subjective intent of an injured plaintiff in using public land to determine whether or not the Recreation Liability Act would bar an action. *Veskerna v. City of West Point*, 254 Neb. 540, 578 N.W.2d 25 (1998).

In order to facilitate the purpose of the Recreation Liability Act, a landowner need allow only some members of the public, including the plaintiff, to use his or her land without charge. *McIntosh v. Omaha Public Schools*, 249 Neb. 529, 544 N.W.2d 502 (1996).

The Recreation Liability Act does not require a landowner to fully dedicate his or her property to the public before the landowner comes under the protection of the act. *Holden v. Schwer*, 242 Neb. 389, 495 N.W.2d 269 (1993).

Provisions of Recreation Liability Act apply to urban as well as rural areas. Evidence required a finding that the entire area owned by the defendant was covered by act and had been made available, directly or indirectly, to the plaintiff. *Gallagher v. Omaha Public Power Dist.*, 225 Neb. 354, 405 N.W.2d 571 (1987).

A municipality is an owner within the meaning of the Recreation Liability Act. *Bailey v. City of North Platte*, 218 Neb. 810, 359 N.W.2d 766 (1984).

37-731 Landowner; duty of care.

Subject to section 37-734, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes.

Source: Laws 1965, c. 193, § 2, p. 589; R.S.1943, (1993), § 37-1002; Laws 1998, LB 922, § 345.

No duty of reasonable care will be judicially imposed where Legislature has decided there shall be no duty to keep premises safe. *Thies v. City of Omaha*, 225 Neb. 817, 408 N.W.2d 306 (1987).

Owner owes no duty of care to keep premises safe except for willful or malicious failure to guard or warn, and where owner

charges a fee for entry as provided by section 37-1005. *Thies v. City of Omaha*, 225 Neb. 817, 408 N.W.2d 306 (1987).

A city park which provides camping, picnic, and sports facilities is a recreational facility within the meaning of the act. *Garreans v. City of Omaha*, 216 Neb. 487, 345 N.W.2d 309 (1984).

37-732 Landowner; invitee; permittee; liability; limitation.

Subject to section 37-734, an owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby (1) extend any assurance that the premises are safe for any purpose, (2) confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed, or (3) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

Source: Laws 1965, c. 193, § 3, p. 589; R.S.1943, (1993), § 37-1003; Laws 1998, LB 922, § 346.

Evidence required a finding that the entire area owned by the defendant was covered by act and had been made available, directly or indirectly, to the plaintiff. *Gallagher v. Omaha Public Power Dist.*, 225 Neb. 354, 405 N.W.2d 571 (1987).

Recreation Liability Act is not limited to private persons; governmental subdivisions are "owners" within meaning of this section. *Gallagher v. Omaha Public Power Dist.*, 225 Neb. 354, 405 N.W.2d 571 (1987).

37-733 Land leased to state; duty of landowner.

Unless otherwise agreed in writing, an owner of land leased to the state for recreational purposes owes no duty of care to keep that land safe for entry or use by others or to give warning to persons entering or going upon such land of any hazardous conditions, uses, structures, or activities thereon. An owner who leases land to the state for recreational purposes shall not by giving such lease (1) extend any assurance to any person using the land that the premises are safe for any purpose, (2) confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed, or (3) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of a person who enters upon the leased land. The provisions of this section shall

apply whether the person entering upon the leased land is an invitee, licensee, trespasser, or otherwise.

Source: Laws 1965, c. 193, § 4, p. 590; R.S.1943, (1993), § 37-1004; Laws 1998, LB 922, § 347.

37-734 Landowner; liability.

Nothing in sections 37-729 to 37-736 limits in any way any liability which otherwise exists (1) for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity or (2) for injury suffered in any case where the owner of land charges the person or persons who enter or go on the land.

Source: Laws 1965, c. 193, § 5, p. 590; R.S.1943, (1993), § 37-1005; Laws 1998, LB 922, § 348; Laws 2005, LB 3, § 1.

The term "rental paid" is unconstitutionally vague, and accordingly, the last sentence of this section is invalid. *Teters v. Scottsbluff Public Schools*, 256 Neb. 645, 592 N.W.2d 155 (1999).

A finding that an owner of property protected by this act did not act willfully or maliciously as described in this section is a

finding of fact which will not be disturbed unless clearly wrong. *Thies v. City of Omaha*, 225 Neb. 817, 408 N.W.2d 306 (1987).

In order for action to be willful or wanton, the evidence must show that one acted with actual knowledge that a danger existed and that he intentionally failed to act to prevent the harm which was reasonably likely to result. *Gallagher v. Omaha Public Power Dist.*, 225 Neb. 354, 405 N.W.2d 571 (1987).

37-735 Sections, how construed.

Nothing in sections 37-729 to 37-736 creates a duty of care or ground of liability for injury to person or property.

Source: Laws 1965, c. 193, § 6, p. 590; R.S.1943, (1993), § 37-1006; Laws 1998, LB 922, § 349.

Because the Recreation Liability Act is in derogation of common law, the act is to be strictly construed. *Dykes v. Scotts Bluff Cty. Ag. Socy., Inc.*, 260 Neb. 375, 617 N.W.2d 817 (2000).

37-736 Obligation of person entering upon and using land.

Nothing in sections 37-729 to 37-736 limits in any way the obligation of a person entering upon or using the land of another for recreational purposes to exercise due care in his or her use of such land in his or her activities thereon.

Source: Laws 1965, c. 193, § 7, p. 590; R.S.1943, (1993), § 37-1007; Laws 1998, LB 922, § 350.

ARTICLE 8

NONGAME AND ENDANGERED SPECIES CONSERVATION ACT

Section

- 37-801. Act, how cited.
- 37-802. Terms, defined.
- 37-803. Legislative intent.
- 37-804. Legislative declarations.
- 37-805. Commission; develop conservation programs; unlawful acts.
- 37-806. Endangered or threatened species; how determined; commission; powers and duties; unlawful acts; exceptions; local law, regulation, or ordinance; effect.
- 37-807. Commission; establish conservation programs; agreements authorized; Governor and state agencies; duties; public meeting; when required.
- 37-808. Commission; issue regulations.
- 37-809. Violations; penalties; conservation or peace officer; powers and duties; regulations.

Section

37-810. Act; how construed.

37-811. Wildlife Conservation Fund; created; use; investment.

37-801 Act, how cited.

Sections 37-801 to 37-811 shall be known and may be cited as the Nongame and Endangered Species Conservation Act.

Source: Laws 1975, LB 145, § 1; Laws 1984, LB 466, § 1; R.S.1943, (1993), § 37-430; Laws 1998, LB 922, § 351.

37-802 Terms, defined.

For purposes of the Nongame and Endangered Species Conservation Act, unless the context otherwise requires, the definitions found in sections 37-203 to 37-236, 37-238, 37-239, 37-241, and 37-243 to 37-247 and the following definitions are used:

(1) Endangered species means any species of wildlife or wild plants whose continued existence as a viable component of the wild fauna or flora of the state is determined to be in jeopardy or any species of wildlife or wild plants which meets the criteria of the Endangered Species Act;

(2) Extirpated species means any species of wildlife or wild plants which no longer exists or is found in Nebraska;

(3) Nongame species means any species of mollusks, crustaceans, or vertebrate wildlife not legally classified as game bird, game animal, game fish, fur-bearing animal, threatened species, or endangered species by statute or regulation of this state;

(4) Person means an individual, corporation, partnership, limited liability company, trust, association, or other private entity or any officer, employee, agent, department, or instrumentality of the federal government, any state or political subdivision thereof, or any foreign government;

(5) Species means any subspecies of wildlife or wild plants and any other group of wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature;

(6) Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct; and

(7) Threatened species means any species of wild fauna or flora which appears likely to become endangered, either by determination of the commission or by criteria provided by the Endangered Species Act.

Source: Laws 1975, LB 145, § 2; Laws 1984, LB 466, § 3; Laws 1987, LB 150, § 2; Laws 1993, LB 121, § 202; R.S.1943, (1993), § 37-431; Laws 1998, LB 922, § 352.

37-803 Legislative intent.

The Legislature finds and declares:

(1) That it is the policy of this state to conserve species of wildlife for human enjoyment, for scientific purposes, and to insure their perpetuation as viable components of their ecosystems;

(2) That species of wildlife and wild plants normally occurring within this state which may be found to be threatened or endangered within this state shall

be accorded such protection as is necessary to maintain and enhance their numbers;

(3) That this state shall assist in the protection of species of wildlife and wild plants which are determined to be threatened or endangered elsewhere pursuant to the Endangered Species Act by prohibiting the taking, possession, transportation, exportation from this state, processing, sale or offer for sale, or shipment within this state of such endangered species and by carefully regulating such activities with regard to such threatened species. Exceptions to such prohibitions, for the purpose of enhancing the conservation of such species, may be permitted as set forth in the Nongame and Endangered Species Conservation Act; and

(4) That any funding for the conservation of nongame, threatened, and endangered species shall be made available to the commission from General Fund appropriations, the Wildlife Conservation Fund, or other sources of revenue not deposited in the State Game Fund.

Source: Laws 1975, LB 145, § 3; Laws 1984, LB 466, § 4; R.S.1943, (1993), § 37-432; Laws 1998, LB 922, § 353; Laws 2007, LB299, § 17.

37-804 Legislative declarations.

The Legislature hereby declares that nongame, threatened, and endangered species have need of special protection and that it is in the public interest to preserve, protect, perpetuate, and enhance such species of this state through preservation of a satisfactory environment and an ecological balance. The purpose of section 37-811 and section 77-27,119.01 is to provide a means by which such protection may be financed through a voluntary checkoff designation on state income tax return forms. The intent of the Legislature is that the program of income tax checkoff is supplemental to any funding and in no way is intended to take the place of the funding that would otherwise be appropriated for such purpose.

Source: Laws 1984, LB 466, § 2; Laws 1989, LB 258, § 1; R.S.1943, (1993), § 37-432.01; Laws 1998, LB 922, § 354.

37-805 Commission; develop conservation programs; unlawful acts.

(1) The commission shall conduct investigations of nongame wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine conservation measures necessary to enable such nongame wildlife to sustain itself successfully. On the basis of such determinations the commission shall develop a list of nongame wildlife in need of conservation, issue proposed regulations not later than two years from August 24, 1975, and develop conservation programs designed to insure the continued ability of nongame wildlife in need of conservation to perpetuate itself successfully. The commission shall conduct continuing investigations of nongame wildlife.

(2) The commission shall establish such proposed limitations relating to the taking, possession, transportation, exportation from this state, processing, sale or offer for sale, or shipment as may be necessary to conserve such nongame wildlife.

(3) Except as provided in regulations issued by the commission, it shall be unlawful for any person to take, possess, transport, export, process, sell or offer for sale, or ship nongame wildlife in need of conservation pursuant to this section. Subject to the same exception, it shall further be unlawful for any person, other than a common or contract motor carrier under the jurisdiction of the Public Service Commission or the Interstate Commerce Commission knowingly to transport, ship, or receive for shipment nongame wildlife in need of conservation pursuant to this section.

Source: Laws 1975, LB 145, § 4; R.S.1943, (1993), § 37-433; Laws 1998, LB 922, § 355.

37-806 Endangered or threatened species; how determined; commission; powers and duties; unlawful acts; exceptions; local law, regulation, or ordinance; effect.

(1) Any species of wildlife or wild plants determined to be an endangered species pursuant to the Endangered Species Act shall be an endangered species under the Nongame and Endangered Species Conservation Act, and any species of wildlife or wild plants determined to be a threatened species pursuant to the Endangered Species Act shall be a threatened species under the Nongame and Endangered Species Conservation Act. The commission may determine that any such threatened species is an endangered species throughout all or any portion of the range of such species within this state.

(2) In addition to the species determined to be endangered or threatened pursuant to the Endangered Species Act, the commission shall by regulation determine whether any species of wildlife or wild plants normally occurring within this state is an endangered or threatened species as a result of any of the following factors:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, sporting, scientific, educational, or other purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence within this state.

(3)(a) The commission shall make determinations required by subsection (2) of this section on the basis of the best scientific, commercial, and other data available to the commission.

(b) Except with respect to species of wildlife or wild plants determined to be endangered or threatened species under subsection (1) of this section, the commission may not add a species to nor remove a species from any list published pursuant to subsection (5) of this section unless the commission has first:

(i) Provided public notice of such proposed action by publication in a newspaper of general circulation in each county in that portion of the subject species' range in which it is endangered or threatened or, if the subject species' range extends over more than five counties, in a newspaper of statewide circulation distributed in the county;

(ii) Provided notice of such proposed action to and allowed comment from the Department of Agriculture, the Department of Environmental Quality, and the Department of Natural Resources;

(iii) Provided notice of such proposed action to and allowed comment from each natural resources district and public power district located in that portion of the subject species' range in which it is endangered or threatened;

(iv) Notified the Governor of any state sharing a common border with this state, in which the subject species is known to occur, that such action is being proposed;

(v) Allowed at least sixty days following publication for comment from the public and other interested parties;

(vi) Held at least one public hearing on such proposed action in each game and parks commissioner district of the subject species' range in which it is endangered or threatened;

(vii) Submitted the scientific, commercial, and other data which is the basis of the proposed action to scientists or experts outside and independent of the commission for peer review of the data and conclusions. If the commission submits the data to a state or federal fish and wildlife agency for peer review, the commission shall also submit the data to scientists or experts not affiliated with such an agency for review. For purposes of this section, state fish and wildlife agency does not include a postsecondary educational institution; and

(viii) For species proposed to be added under this subsection but not for species proposed to be removed under this subsection, developed an outline of the potential impacts, requirements, or regulations that may be placed on private landowners, or other persons who hold state-recognized property rights on behalf of themselves or others, as a result of the listing of the species or the development of a proposed program for the conservation of the species as required in subsection (1) of section 37-807.

The inadvertent failure to provide notice as required by subdivision (3)(b) of this section shall not prohibit the listing of a species and shall not be deemed to be a violation of the Administrative Procedure Act or the Nongame and Endangered Species Conservation Act.

(c) When the commission is proposing to add or remove a species under this subsection, public notice under subdivision (3)(b)(i) of this section shall include, but not be limited to, (i) the species proposed to be listed and a description of that portion of its range in which the species is endangered or threatened, (ii) a declaration that the commission submitted the data which is the basis for the listing for peer review and developed an outline if required under subdivision (b)(viii) of this subsection, and (iii) a declaration of the availability of the peer review, including an explanation of any changes or modifications the commission has made to its proposal as a result of the peer review, and the outline required under subdivision (b)(viii) of this subsection, if applicable, for public examination.

(d) In cases when the commission determines that an emergency situation exists involving the continued existence of such species as a viable component of the wild fauna or flora of the state, the commission may add species to such lists after having first published a public notice that such an emergency situation exists together with a summary of facts which support such determination.

(4) In determining whether any species of wildlife or wild plants is an endangered or threatened species, the commission shall take into consideration those actions being carried out by the federal government, by other states, by other agencies of this state or political subdivisions thereof, or by any other person which may affect the species under consideration.

(5) The commission shall issue regulations containing a list of all species of wildlife and wild plants normally occurring within this state which it determines, in accordance with subsections (1) through (4) of this section, to be endangered or threatened species and a list of all such species. Each list shall refer to the species contained therein by scientific and common name or names, if any, and shall specify with respect to each such species over what portion of its range it is endangered or threatened.

(6) Except with respect to species of wildlife or wild plants determined to be endangered or threatened pursuant to the Endangered Species Act, the commission shall, upon the petition of an interested person, conduct a review of any listed or unlisted species proposed to be removed from or added to the lists published pursuant to subsection (5) of this section, but only if the commission publishes a public notice that such person has presented substantial evidence which warrants such a review.

(7) Whenever any species of wildlife or wild plants is listed as a threatened species pursuant to subsection (5) of this section, the commission shall issue such regulations as are necessary to provide for the conservation of such species. The commission may prohibit, with respect to any threatened species of wildlife or wild plants, any act prohibited under subsection (8) or (9) of this section.

(8) With respect to any endangered species of wildlife, it shall be unlawful, except as provided in subsection (7) of this section, for any person subject to the jurisdiction of this state to:

- (a) Export any such species from this state;
- (b) Take any such species within this state;
- (c) Possess, process, sell or offer for sale, deliver, carry, transport, or ship, by any means whatsoever except as a common or contract motor carrier under the jurisdiction of the Public Service Commission or the Interstate Commerce Commission, any such species; or
- (d) Violate any regulation pertaining to the conservation of such species or to any threatened species of wildlife listed pursuant to this section and promulgated by the commission pursuant to the Nongame and Endangered Species Conservation Act.

(9) With respect to any endangered species of wild plants, it shall be unlawful, except as provided in subsection (7) of this section, for any person subject to the jurisdiction of this state to:

- (a) Export any such species from this state;
- (b) Possess, process, sell or offer for sale, deliver, carry, transport, or ship, by any means whatsoever, any such species; or
- (c) Violate any regulation pertaining to such species or to any threatened species of wild plants listed pursuant to this section and promulgated by the commission pursuant to the act.

(10) Any endangered species of wildlife or wild plants which enters this state from another state or from a point outside the territorial limits of the United States and which is being transported to a point within or beyond this state may be so entered and transported without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(11) The commission may permit any act otherwise prohibited by subsection (8) of this section for scientific purposes or to enhance the propagation or survival of the affected species.

(12) Any law, regulation, or ordinance of any political subdivision of this state which applies with respect to the taking, importation, exportation, possession, sale or offer for sale, processing, delivery, carrying, transportation other than under the jurisdiction of the Public Service Commission, or shipment of species determined to be endangered or threatened species pursuant to the Nongame and Endangered Species Conservation Act shall be void to the extent that it may effectively (a) permit that which is prohibited by the act or by any regulation which implements the act or (b) prohibit that which is authorized pursuant to an exemption or permit provided for in the act or in any regulation which implements the act. The Nongame and Endangered Species Conservation Act shall not otherwise be construed to void any law, regulation, or ordinance of any political subdivision of this state which is intended to conserve wildlife or wild plants.

Source: Laws 1975, LB 145, § 5; R.S.1943, (1993), § 37-434; Laws 1998, LB 922, § 356; Laws 2002, LB 1003, § 33.

Cross References

Administrative Procedure Act, see section 84-920.

37-807 Commission; establish conservation programs; agreements authorized; Governor and state agencies; duties; public meeting; when required.

(1) The commission shall establish such programs, including acquisition of land or aquatic habitat or interests therein, as are necessary for the conservation of nongame, threatened, or endangered species of wildlife or wild plants. Acquisition for the purposes of this subsection shall not include the power to obtain by eminent domain.

(2) In carrying out programs authorized by this section, the commission shall consult with other states having a common interest in particular species of nongame, endangered, or threatened species of wildlife or wild plants and may enter into agreements with federal agencies, other states, political subdivisions of this state, or private persons with respect to programs designed to conserve such species including, when appropriate, agreements for administration and management of any area established under this section or utilized for conservation of such species.

(3) The Governor shall review other programs administered by him or her and utilize such programs in furtherance of the purposes of the Nongame and Endangered Species Conservation Act. All other state agencies shall, in consultation with and with the assistance of the commission, utilize their authorities in furtherance of the purposes of the act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 37-806 and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued

existence of such endangered or threatened species or result in the destruction or modification of habitat of such species which is determined by the commission to be critical. For purposes of this subsection, state agency means any department, agency, board, bureau, or commission of the state or any corporation whose primary function is to act as, and while acting as, an instrumentality or agency of the state, except that state agency shall not include a natural resources district or any other political subdivision.

(4) The commission shall provide notice and hold a public meeting prior to the implementation of conservation programs designed to reestablish threatened, endangered, or extirpated species of wildlife or wild plants through the release of animals or plants to the wild. The purpose of holding such a public meeting shall be to inform the public of programs requiring the release to the wild of such wildlife or wild plants and to solicit public input and opinion. The commission shall set a date and time for the public meeting to be held at a site convenient to the proposed release area and shall publish a notice of such meeting in a legal newspaper published in or of general circulation in the county or counties where the proposed release is to take place. The notice shall be published at least twenty days prior to the meeting and shall set forth the purpose, date, time, and place of the meeting.

Source: Laws 1975, LB 145, § 6; Laws 1984, LB 1106, § 22; Laws 1987, LB 150, § 3; Laws 1991, LB 772, § 3; R.S.1943, (1993), § 37-435; Laws 1998, LB 922, § 357.

As the Department of Water Resources is a state agency within the meaning of the Nongame and Endangered Species Act, the issuance of a permit through its director would qualify as an "action" taken by a state agency. Therefore, the director may not issue permits which would jeopardize the continued existence of an endangered or threatened species, or result in the destruction or modification of their habitat. *Central Platte NRD v. City of Fremont*, 250 Neb. 252, 549 N.W.2d 112 (1996).

Before authorizing a diversion project, the Department of Water Resources must consult with the Game and Parks Commission and must obtain an opinion as to whether the project will jeopardize threatened or endangered species. However, the opinion, merely by being issued, does not impose affirmative requirements upon an application. *Central Platte NRD v. State of Wyoming*, 245 Neb. 439, 513 N.W.2d 847 (1994).

If the director of the state Department of Water Resources, pursuant to subsection (3) of this section, considers and relies

on the opinion of the state Game and Parks Commission in making his or her decision about diversion of unappropriated waters, the applicant is affected by the statute and thus is entitled to challenge its constitutionality. This section does not violate the provisions of Article XV, sections 4, 5, and 6, of the Constitution of Nebraska. In re Applications A-10627 et al., 243 Neb. 419, 499 N.W.2d 548 (1993).

This section places two separate and distinct duties upon state departments and agencies, that of consultation with the Game and Parks Commission and, once done, an independent duty to insure that the actions they take or authorize do not jeopardize the continued existence of an endangered species or its habitat. Both the Department of Water Resources and the various natural resources districts are state departments or agencies within the meaning of this act. *Little Blue N.R.D. v. Lower Platte North N.R.D.*, 210 Neb. 862, 317 N.W.2d 726 (1982).

37-808 Commission; issue regulations.

The commission shall issue such regulations as are necessary to carry out the purposes of the Nongame and Endangered Species Conservation Act in accordance with the Administrative Procedure Act.

Source: Laws 1975, LB 145, § 7; R.S.1943, (1993), § 37-436; Laws 1998, LB 922, § 358.

Cross References

Administrative Procedure Act, see section 84-920.

37-809 Violations; penalties; conservation or peace officer; powers and duties; regulations.

(1) Any person who violates the provisions of subsection (3) of section 37-805 or any regulations issued in implementation thereof or whoever fails to procure or violates the terms of any permit issued pursuant to section 37-805 shall be guilty of a Class II misdemeanor.

(2) Any person who violates the provisions of subsection (8) of section 37-806 or any regulations issued pursuant to subsection (7) of section 37-806 or whoever fails to procure any permit required by subsection (11) of section 37-806 or violates the terms of any such permit shall be guilty of a Class I misdemeanor.

(3) Any conservation officer or any peace officer of this state or any municipality or county within this state shall have authority to conduct searches as provided by law, and to execute a warrant to search for and seize any equipment other than equipment owned or operated by any common or contract motor carrier under the jurisdiction of the Public Service Commission or the Interstate Commerce Commission, business records, wildlife, wild plants, or other contraband taken, used, or possessed in connection with any violation of the Nongame and Endangered Species Conservation Act. Any such officer or agent may, without a warrant, arrest any person whom he or she has probable cause to believe is violating, in his or her presence or view, the act or any regulation or permit provided for in the act. Any officer or agent who has made an arrest of a person in connection with any such violation may search such person or business records at the time of arrest and may seize any wildlife, wild plants, records, or property taken or used in connection with any such violation.

(4) Equipment other than equipment owned or operated by any common or contract motor carrier under the jurisdiction of the Public Service Commission or the Interstate Commerce Commission, wildlife, wild plants, records, or other contraband seized under the provisions of subsection (3) of this section shall be held by an officer or agent of the commission pending disposition of court proceedings, and thereafter be forfeited to this state for destruction or disposition as the commission may deem appropriate. Prior to forfeiture, the commission may direct the transfer of wildlife or wild plants so seized to a qualified zoological, botanical, educational, or scientific institution for safekeeping, with the costs thereof to be assessable to the defendant. The commission shall issue regulations to implement this subsection.

Source: Laws 1975, LB 145, § 8; Laws 1977, LB 40, § 188; R.S.1943, (1993), § 37-437; Laws 1998, LB 922, § 359.

37-810 Act; how construed.

The Nongame and Endangered Species Conservation Act shall not be construed to apply retroactively to or prohibit importation into this state of wildlife or wild plants which may be lawfully imported into the United States or lawfully taken and removed from another state, or prohibit entry into this state or the possession, transportation, exportation, processing, sale or offer for sale, or shipment of any wildlife or wild plants which have been determined to be an endangered or threatened species in this state but not in the state where originally taken if the person engaging in such activity demonstrates by substantial evidence that such wildlife or wild plants were lawfully taken and lawfully removed from such state. This section shall not be construed to permit the possession, transportation by a person other than a common or contract motor carrier under the jurisdiction of the Public Service Commission or the Interstate Commerce Commission, exportation, processing, sale or offer for sale, or shipment within this state of species of wildlife or wild plants deter-

mined, pursuant to the Endangered Species Act, to be an endangered or threatened species, except as permitted by subsection (11) of section 37-806.

Source: Laws 1975, LB 145, § 9; R.S.1943, (1993), § 37-438; Laws 1998, LB 922, § 360.

37-811 Wildlife Conservation Fund; created; use; investment.

There is hereby created the Wildlife Conservation Fund. The fund shall be used to assist in carrying out the Nongame and Endangered Species Conservation Act, to pay for research into and management of the ecological effects of the release, importation, commercial exploitation, and exportation of wildlife species pursuant to section 37-548, and to pay any expenses incurred by the Department of Revenue or any other agency in the administration of the income tax designation program required by section 77-27,119.01. Money shall be transferred into such fund from the General Fund by the State Treasurer in an amount to be determined by the Tax Commissioner which shall be equal to the total amount of contributions designated pursuant to section 77-27,119.01. Any money in the Wildlife Conservation Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Money remaining in the Nongame and Endangered Species Conservation Fund on September 1, 2007, shall be transferred to the Wildlife Conservation Fund on such date.

Source: Laws 1984, LB 466, § 7; Laws 1989, LB 258, § 2; Laws 1994, LB 1066, § 23; R.S.Supp.,1996, § 37-439; Laws 1998, LB 922, § 361; Laws 1999, LB 176, § 98; Laws 2007, LB299, § 18.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**ARTICLE 9
FEDERAL ACTS**

Section

- 37-901. Wildlife-restoration projects; cooperation with federal government; hunters' fees; expenditure.
- 37-902. Migratory bird reservations; federal establishment; state's consent.
- 37-903. Fish restoration and management projects; cooperation with federal government; state's consent.
- 37-904. Land and water conservation; cooperation with federal government; state's consent.
- 37-905. Land and Water Conservation Fund; created; use; investment.
- 37-906. Land and Water Conservation Fund; federal funds; allocation; reallocation; manner; restriction.
- 37-907. State assents to Federal Water Projects Recreation Act; Game and Parks Commission; powers.
- 37-908. Youth conservation corps projects; Game and Parks Commission; powers and duties; compliance with federal law; funds; use.
- 37-909. Youth Conservation Corps Fund; created; funds available; use; investment.
- 37-910. State assents to Intermodal Surface Transportation Efficiency Act; Game and Parks Commission; powers.
- 37-911. Recreational Trails Fund; created; use.
- 37-912. Chicago and Northwestern Railroad; acceptance of gift; authorized; commission; powers and duties; section, how construed.
- 37-913. Cowboy Trail Fund; created; investment.

Section

37-914. National Trails System Act; commission; railroad right-of-way; acquisition; uses; conditions.

37-901 Wildlife-restoration projects; cooperation with federal government; hunters' fees; expenditure.

The State of Nebraska hereby assents to the provisions of an Act of Congress entitled An Act to provide that the United States shall aid the states in wildlife-restoration projects, and for other purposes, approved September 2, 1937, (Public Law No. 415, 75th Congress), and the Game and Parks Commission is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife-restoration projects, as defined in the Act of Congress, in compliance with the act and with rules and regulations promulgated by the Secretary of the Interior thereunder. No funds accruing to the State of Nebraska from permit or license fees paid by hunters shall be diverted for any other purpose than the administration of the Game and Parks Commission.

Source: Laws 1939, c. 41, § 1, p. 199; C.S.Supp.,1941, § 37-427; R.S. 1943, § 37-422; Laws 1957, c. 139, § 12, p. 470; R.S.1943, (1993), § 37-422; Laws 1998, LB 922, § 362.

37-902 Migratory bird reservations; federal establishment; state's consent.

Consent of the State of Nebraska is given to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land or water, or of land and water, in the State of Nebraska, as the United States may deem necessary for the establishment of migratory bird reservations in accordance with the Act of Congress approved February 18, 1929, entitled An Act to more effectively meet the obligations of the United States under the Migratory Bird Treaty with Great Britain by lessening the dangers threatening migratory game birds from drainage and other causes by the acquisition of areas of land and of water to furnish in perpetuity reservations for the adequate protection of such birds; and authorizing appropriations for the establishment of such areas, their maintenance and improvement and for other purposes, reserving, however, to the State of Nebraska full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection, and control thereof by the United States under the terms of the Act of Congress.

Source: Laws 1929, c. 118, § 1, p. 455; C.S.1929, § 37-422; R.S.1943, § 37-423; R.S.1943, (1993), § 37-423; Laws 1998, LB 922, § 363.

37-903 Fish restoration and management projects; cooperation with federal government; state's consent.

The State of Nebraska hereby assents to the provisions of an Act of Congress entitled An Act to provide that the United States shall aid the states in fish restoration and management projects, and for other purposes, approved August 9, 1950, (Public Law No. 681, 81st Congress), and the Game and Parks Commission is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative fish restoration and management projects, as defined in the Act of Congress, in compliance with such act and with rules and regulations promulgated by the Secretary of the Interior thereunder. No funds accruing to the State of Nebraska

ka from permit fees paid for fishing shall be diverted for any other purpose than the administration of the Game and Parks Commission.

Source: Laws 1951, c. 108, § 1, p. 516; R.S.1943, (1993), § 37-423.01; Laws 1998, LB 922, § 364.

37-904 Land and water conservation; cooperation with federal government; state's consent.

The State of Nebraska hereby assents to the provisions of an Act of Congress entitled An Act to establish a land and water conservation fund to assist the states and federal agencies in meeting present and future outdoor recreation demands and needs of the American people, and for other purposes, approved September 3, 1964, (Public Law 88-578, 88th Congress), and the Game and Parks Commission shall perform all such acts as may be necessary on behalf of the State of Nebraska to conduct, coordinate, and carry out the purposes and objectives of such Act of Congress for and within the State of Nebraska, and may transfer funds made available to the state to political subdivisions thereof if consistent with an approved project and in compliance with such Act of Congress and with rules and regulations promulgated by the Secretary of the Interior for the administration of such act. For these purposes the Game and Parks Commission may inspect the projects and examine the records of political subdivisions receiving grants-in-aid and establish such rules and regulations relating thereto as may be necessary.

Source: Laws 1965, c. 6, § 1, p. 76; R.S.1943, (1993), § 37-427; Laws 1998, LB 922, § 365.

37-905 Land and Water Conservation Fund; created; use; investment.

There is created a fund to be known as the Land and Water Conservation Fund. All money made available to the fund for matching purposes by state appropriations shall be remitted to the State Treasurer for credit to such fund. Money in the fund shall be used by the Game and Parks Commission under the provisions of Public Law 88-578, 88th Congress, for financing administrative and project costs thereunder. The Game and Parks Commission may make grants-in-aid to political subdivisions of the state from money made available for matching purposes by state appropriations in amounts not exceeding twenty-five percent of the cost of approved projects submitted by such political subdivisions. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1965, c. 6, § 2, p. 76; Laws 1967, c. 219, § 1, p. 593; Laws 1969, c. 584, § 39, p. 2367; Laws 1995, LB 7, § 33; R.S.Supp.,1996, § 37-428; Laws 1998, LB 922, § 366.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

37-906 Land and Water Conservation Fund; federal funds; allocation; reallocation; manner; restriction.

Federal funds advanced to the State of Nebraska through grants-in-aid under the provisions of Public Law 88-578, 88th Congress, for approved projects shall be deposited in the Land and Water Conservation Fund and used for financing

such approved projects. Federal funds paid to the state in reimbursement of expenditures previously made by the state or its political subdivisions shall be returned to the fund from which such expenditures were made, except that after July 1, 1971, no funds shall be expended for projects which will not qualify for federal reimbursement under the provisions of Public Law 88-578, 88th Congress. Forty percent of the federal funds annually allocated to the State of Nebraska are hereby reallocated to state projects and sixty percent to the projects of political subdivisions. Funds reallocated to state projects may be made available to political subdivisions prior to the end of any fiscal year if such funds are not allocated for use in state projects. The Game and Parks Commission shall have discretionary authority to reallocate funds to the political subdivisions. If political subdivisions have submitted approved projects in excess of available funds during any fiscal year, the commission shall consider all such approved projects and use the factors of equity, population, and need in determining allocations thereto of available funds. If any project allocation exceeds actual project cost, the overage shall be returned to the Land and Water Conservation Fund for reallocation under the provisions of this section.

Source: Laws 1965, c. 6, § 3, p. 77; Laws 1971, LB 222, § 1; Laws 1975, LB 271, § 1; R.S.1943, (1993), § 37-429; Laws 1998, LB 922, § 367.

37-907 State assents to Federal Water Projects Recreation Act; Game and Parks Commission; powers.

The State of Nebraska hereby assents to the provision of an Act of Congress entitled the Federal Water Projects Recreation Act, approved July 9, 1965, Public Law 89-72, 89th Congress, and to any and all existing amendments thereto, including those found in an Act of Congress entitled the Water Resources Development Act of 1974, approved March 7, 1974, Public Law 93-251, 93rd Congress. The Game and Parks Commission is authorized and empowered to perform, within the limits of available funding, such acts as may be necessary to administer, operate, maintain, and replace land and water areas for recreation or fish and wildlife purposes or for both of such purposes in accordance with the provisions of such act as amended. The commission is further authorized to execute an agreement, the performance of which shall be contingent upon funds being made available therefor, to bear the separable costs of federal projects allocated to either or both of such purposes in the proportion specified by such act, as amended, and to pay or repay such costs in accordance with the terms of such agreement.

Source: Laws 1976, LB 779, § 1; R.S.1943, (1996), § 81-815.53; Laws 1998, LB 922, § 368.

37-908 Youth conservation corps projects; Game and Parks Commission; powers and duties; compliance with federal law; funds; use.

(1) The State of Nebraska hereby assents to the provisions of an Act of Congress entitled the Youth Conservation Corps Act, as amended, and also the provisions of Public Law 93-408, 93rd Congress.

(2) The Game and Parks Commission is hereby authorized, empowered, and directed to perform such acts as may be necessary to the establishment and maintenance of youth conservation corps projects, pursuant to the acts of

Congress, and in compliance with such acts and with rules and regulations promulgated thereunder.

(3) No funds accruing to the State of Nebraska and the Game and Parks Commission pursuant to such acts of Congress shall be used for any other purpose than the administration of youth conservation corps projects.

Source: Laws 1975, LB 600, § 1; R.S.1943, (1996), § 81-815.50; Laws 1998, LB 922, § 369.

37-909 Youth Conservation Corps Fund; created; funds available; use; investment.

(1) There is hereby created a fund to be known as the Youth Conservation Corps Fund.

(2) All money made available to the Youth Conservation Corps Fund under the provisions of the federal Youth Conservation Corps Act, as amended, and all money made available for matching purposes by state appropriations shall be remitted to the State Treasurer for credit to such fund.

(3) Money in the fund shall be used by the Game and Parks Commission pursuant to the federal Youth Conservation Corps Act, as amended, and also Public Law 93-408, 93rd Congress, for financing project costs thereunder.

(4) The commission may make grants-in-aid to political subdivisions of this state from money available in the Youth Conservation Corps Fund upon such terms and in such amounts as the commission determines.

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

Source: Laws 1975, LB 600, § 2; Laws 1995, LB 7, § 105; R.S.1943, (1996), § 81-815.51; Laws 1998, LB 922, § 370.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

37-910 State assents to Intermodal Surface Transportation Efficiency Act; Game and Parks Commission; powers.

The State of Nebraska hereby assents to the provisions of section 1302 of the Intermodal Surface Transportation Efficiency Act cited as the Symms National Recreational Trails Act of 1991 and establishing the National Recreational Trails Funding Program, Public Law 102-240, 102nd Congress. The Game and Parks Commission is authorized, empowered, and directed to perform all acts necessary on behalf of the State of Nebraska to the conduct and establishment of recreational trails and trail-related projects in accordance with such act of Congress for and within the State of Nebraska. The commission may adopt and promulgate rules and regulations to assist in carrying out the purposes of this section. No funds accruing to the State of Nebraska pursuant to the act shall be used in violation of the act.

Source: Laws 1993, LB 235, § 51; Laws 1996, LB 296, § 3; R.S.1943, (1996), § 81-815.55; Laws 1998, LB 922, § 371.

37-911 Recreational Trails Fund; created; use.

There is hereby created a fund to be known as the Recreational Trails Fund. Federal funds advanced to the State of Nebraska through grants-in-aid under the provisions of Public Law 102-240, 102nd Congress, for approved projects shall be remitted to the State Treasurer for credit to the fund. The money in the fund shall be used by the Game and Parks Commission for the purposes of establishing recreational trails and trail-related projects pursuant to such public law.

Source: Laws 1993, LB 235, § 52; Laws 1996, LB 296, § 3; R.S.1943, (1996), § 81-815.56; Laws 1998, LB 922, § 372.

37-912 Chicago and Northwestern Railroad; acceptance of gift; authorized; commission; powers and duties; section, how construed.

(1) Pursuant to the National Trails System Act, 16 U.S.C. 1241 et seq., the Game and Parks Commission is hereby authorized and directed to accept as a gift, when and if offered, from any present or future owner the entire right-of-way of the Chicago and Northwestern Railroad which lies between milepost 83.3 and milepost 404.5 in Nebraska. In the event a portion of the right-of-way continues in actual rail service, the commission is authorized and directed to accept as a gift the remaining section. So long as the integrity of the right-of-way as an interim recreational trail and for future rail use is not disturbed, the commission is authorized to lease and to grant easement rights on the right-of-way. All revenue collected from such leases shall be remitted to the State Treasurer for credit to the Cowboy Trail Fund and shall be used for the development and maintenance of the Cowboy Trail. The commission shall hold the right-of-way for interim trail use as a state recreational trail, to preserve wildlife habitat, and to provide a conservation, communications, utilities, and transportation corridor and for other uses approved by the commission and allowed by the National Trails System Act. The commission shall keep in good repair all crossings over the trail in accordance with its legal obligations, including all the grading, bridges, ditches, and culverts that may be necessary for such crossings within the right-of-way.

(2) The right-of-way may be accepted without any further legislative action or approval of the Governor but only if the State of Nebraska is indemnified in a manner satisfactory to the commission against the costs of remedial action and environmental cleanup for conditions arising prior to conveyance to the state and the title is free and clear of all liens and mortgage or deed of trust encumbrances.

(3) The commission may accept money from any public or private source for gift-acceptance costs, for the development and maintenance of the trail, or for other uses consistent with the purposes stated in this section. The commission may use funds available in the Trail Development Assistance Fund to carry out this section as provided in section 37-1003. Any money from the Trail Development Assistance Fund so used shall be transferred to the Cowboy Trail Fund.

(4) The commission may enter into an agreement with any public entity at any time for the development and maintenance of the trail pursuant to this section.

(5) This section shall not be construed to limit the power of eminent domain of the state or its agencies or of any political subdivision.

Source: Laws 1993, LB 739, § 2; Laws 1994, LB 1066, § 101; R.S.1943, (1996), § 81-815.59; Laws 1998, LB 922, § 373.

37-913 Cowboy Trail Fund; created; investment.

There is hereby created the Cowboy Trail 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. Money accepted or transferred pursuant to subsection (3) of section 37-912 shall be remitted to the State Treasurer for credit to the fund.

Source: Laws 1998, LB 922, § 374.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

37-914 National Trails System Act; commission; railroad right-of-way; acquisition; uses; conditions.

(1) Pursuant to the National Trails System Act, and with the consent of the Governor pursuant to section 37-303, the Game and Parks Commission may acquire by gift, devise, or purchase all or any part of a railroad right-of-way in the state proposed to be abandoned for interim trail use. The commission, pursuant to the National Trails System Act, shall hold the right-of-way for one or more of the following uses:

- (a) To provide a state recreational trail open to the public;
- (b) To preserve wildlife habitat;
- (c) To provide a conservation, communications, utilities, and transportation corridor; and
- (d) Other uses approved by the commission.

(2) The right-of-way may be acquired only if the State of Nebraska is reasonably protected in a manner satisfactory to the commission for the costs of remedial action and environmental cleanup for conditions arising prior to conveyance to the state and the title is free and clear of all liens and encumbrances.

(3) The commission may use funds available by gift, appropriation, the Trail Development Assistance Fund, and other appropriate cash funds for uses consistent with those stated in this section and sections 37-303 and 37-1003.

(4) As long as the integrity of the right-of-way as an interim recreational trail and future rail use is not disturbed, the commission may lease and grant easement rights on the right-of-way. Any lease or use allowed shall be subject to all prescriptions of the National Trails System Act. All revenue collected from such leases shall be remitted to the State Treasurer for credit to the Trail Development Assistance Fund pursuant to sections 37-1003 and 37-1004.

(5) The commission shall continue to allow all crossings across the right-of-way acquired at the time of acquisition on substantially the same terms and conditions as they existed prior to acquisition unless otherwise agreed between the commission and interested parties.

(6) The acquisition of the right-of-way shall be subject to the restoration of rail service. If a proposal for the operation of a railroad is approved by the Nebraska Railway Council and the Interstate Commerce Commission, the right-of-way shall be sold for the market value of the land and improvements and conditioned upon (a) the operation of a railroad along the right-of-way, (b) the grant of an easement to the commission for recreational trail use adjacent to

the railroad if such use is feasible, and (c) the return of the right-of-way to the commission if rail service is discontinued.

Source: Laws 1996, LB 584, § 18; R.S.1943, (1996), § 81-815.65; Laws 1998, LB 922, § 375.

ARTICLE 10 RECREATIONAL TRAILS

Section

- 37-1001. Act, how cited; termination.
- 37-1002. Legislative findings.
- 37-1003. Trail Development Assistance Fund; created; use; investment.
- 37-1004. Funding; application; grants; section, how construed.
- 37-1005. Administrative costs; limitation; rules and regulations.
- 37-1006. Eminent domain power.
- 37-1007. Boundary fences.
- 37-1008. Warning signs.
- 37-1009. State agency or political subdivision; establish fees.
- 37-1010. Recreational trails; public policy.
- 37-1011. Lease of undeveloped land; when.
- 37-1012. Responsibility for fences.
- 37-1013. Sanitary facilities required; camping or open fires prohibited.
- 37-1014. Rules and regulations.
- 37-1015. State Recreational Trails Coordinator; duties.

37-1001 Act, how cited; termination.

Sections 37-1001 to 37-1008 shall be known and may be cited as the Trail Development Assistance Act. The Trail Development Assistance Act shall terminate January 1, 2010, and any money in the Trail Development Assistance Fund at such time shall be transferred to the General Fund.

Source: Laws 1991, LB 714, § 1; R.S.1943, (1993), § 37-1501; Laws 1998, LB 922, § 376; Laws 1999, LB 176, § 99.

Termination date January 1, 2010.

The purpose of the Recreation Liability Act is to encourage owners of land to make available to the public land and water areas for recreational purposes by limiting their liability toward persons entering thereon and toward persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon. The Legislature did not intend for a court to look to the subjective intent of an injured plaintiff in using public land to determine whether or not the Recreation Liability Act would bar an action. *Veskerna v. City of West Point*, 254 Neb. 540, 578 N.W.2d 25 (1998).

37-1002 Legislative findings.

The Legislature finds that the abandonment of railroad rights-of-way in this state provides a unique opportunity to develop a statewide system of recreational trails by which citizens of Nebraska may enjoy the greenways or linear parks that will result and that such trails may act to preserve wildlife habitat and create conservation corridors. The Legislature further finds that it is in the public's interest to develop abandoned railroad rights-of-way and to do so through fostering public and private cooperation.

Source: Laws 1991, LB 714, § 2; R.S.1943, (1993), § 37-1502; Laws 1998, LB 922, § 377.

Termination date January 1, 2010.

37-1003 Trail Development Assistance Fund; created; use; investment.

The Trail Development Assistance Fund is hereby created. The fund shall consist of any direct appropriation by the Legislature and any funds received as

gifts, bequests, or other contributions to such fund from public or private entities. The fund shall be administered by the Game and Parks Commission and shall be used to assist in the purchase, development, and maintenance of recreational trails within the state. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1991, LB 714, § 3; Laws 1994, LB 1066, § 24; R.S.Supp.,1996, § 37-1503; Laws 1998, LB 922, § 378.
Termination date January 1, 2010.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

37-1004 Funding; application; grants; section, how construed.

(1) Any natural resources district, political subdivision, other public agency, or private nonprofit organization whose primary purpose is the purchase, development, or maintenance of a recreational trail within the state or any combination thereof may apply to the Game and Parks Commission for funding to assist in the purchase, development, and maintenance of a recreational trail within the state.

(2) The commission shall provide funds to a qualified applicant from the Trail Development Assistance Fund. The funds shall be disbursed to a qualified applicant as a lump-sum grant to be used as matching funds for no more than fifty percent of the total anticipated cost. This section shall not be construed to prevent agreements pursuant to the Interlocal Cooperation Act or any other agreement either before or after the application is submitted for the grant. Qualified applicants who have submitted their completed applications within sixty days following September 6, 1991, shall receive their disbursements by January 1, 1992.

(3) No real property, leased property, easement, right-of-way, or other property interest which is owned, controlled, managed, or maintained by the commission on September 6, 1991, may be the subject of a grant application under this section.

Source: Laws 1991, LB 714, § 4; R.S.1943, (1993), § 37-1504; Laws 1998, LB 922, § 379.
Termination date January 1, 2010.

Cross References

Interlocal Cooperation Act, see section 13-801.

37-1005 Administrative costs; limitation; rules and regulations.

Administrative costs for the administration of the Trail Development Assistance Fund shall not exceed five percent of the appropriation authorized by the Legislature. The Game and Parks Commission may adopt and promulgate rules and regulations to carry out the Trail Development Assistance Act.

Source: Laws 1991, LB 714, § 5; R.S.1943, (1993), § 37-1505; Laws 1998, LB 922, § 380.
Termination date January 1, 2010.

37-1006 Eminent domain power.

The Trail Development Assistance Act shall not be construed to limit the power of eminent domain of the state or its agencies.

Source: Laws 1991, LB 714, § 6; R.S.1943, (1993), § 37-1506; Laws 1998, LB 922, § 381.

Termination date January 1, 2010.

37-1007 Boundary fences.

Whenever abandoned railroad right-of-way trails are developed pursuant to the Trail Development Assistance Act, boundary fences shall be constructed and maintained as required for railroads in sections 74-601 to 74-604 unless such construction and maintenance is waived in writing by affected adjoining property owners. Such fences shall be deemed to be manifestly designed to exclude intruders for the purposes of subdivision (1)(c) of section 28-521.

Source: Laws 1991, LB 714, § 7; Laws 1994, LB 846, § 1; R.S.Supp.,1996, § 37-1507; Laws 1998, LB 922, § 382.

Termination date January 1, 2010.

37-1008 Warning signs.

Owners or operators of a trail developed pursuant to the Trail Development Assistance Act shall, at appropriate entry points, place signs warning that departures from the boundaries of the trail as marked by fences or otherwise may result in prosecution for trespass.

Source: Laws 1991, LB 714, § 8; R.S.1943, (1993), § 37-1508; Laws 1998, LB 922, § 383.

Termination date January 1, 2010.

37-1009 State agency or political subdivision; establish fees.

A state agency or political subdivision which owns or operates a recreational trail may establish and collect a user fee or a voluntary fee for the use of the trail as determined by the state agency or political subdivision. The fees shall be accounted for separately and shall be used for trail maintenance, operation, and acquisition.

Source: Laws 1996, LB 296, § 1; R.S.Supp.,1996, § 37-1510; Laws 1998, LB 922, § 384.

37-1010 Recreational trails; public policy.

It is the public policy of the State of Nebraska that (1) abandoned railroad rights-of-way should be kept intact for future possible use as recreation, conservation, communications, and transportation corridors and (2) the laws of the State of Nebraska should be construed to effectuate this policy.

Source: Laws 1993, LB 739, § 1; R.S.1943, (1996), § 81-815.58; Laws 1998, LB 922, § 385.

37-1011 Lease of undeveloped land; when.

If any portions of the right-of-way accepted under section 37-912 or 37-914 are not immediately developed as a state recreational trail or for habitat, the Game and Parks Commission shall use its best efforts to lease undeveloped

portions of the right-of-way, with first priority to adjacent landowners, for the purposes stated in section 37-912 or 37-914 or for other purposes which are not inconsistent with the purposes of section 37-912 or 37-914 until such time as a state recreational trail or habitat may be developed. Any lease or use allowed shall be subject to all prescriptions of the National Trails System Act.

Source: Laws 1993, LB 739, § 3; Laws 1996, LB 584, § 20; R.S.1943, (1996), § 81-815.60; Laws 1998, LB 922, § 386; Laws 2000, LB 701, § 2.

37-1012 Responsibility for fences.

(1) The Game and Parks Commission shall have the same responsibility with regard to division fences as a private landowner as provided in sections 34-102 to 34-117, except that in those areas where a state recreational trail is developed, the commission shall have the same responsibility as a railroad as provided in sections 74-601 to 74-604, but the type of fence required under section 74-601 shall not be required for those areas where a state recreational trail is developed. All fences shall be constructed and maintained as required under this subsection unless such construction and maintenance is waived in writing by affected adjoining landowners. The commission shall be responsible for the construction and replacement cost of any fence agreed to by the commission and adjoining landowner. The commission shall also be responsible for providing supplies for the maintenance of any fence along a state recreational trail or for the reimbursement to the adjoining landowner for the cost of supplies for the maintenance of any fence along a state recreational trail. The adjoining landowner shall be responsible for the maintenance of the fence. In such areas the type of fence may be (a) wire fence of at least four barbed wires, of a size not less than twelve and one-half gauge fencing wire, to be secured to posts, the posts to be at no greater distance than one rod from each other, or (b) a fence of any type that is agreed to by the commission and adjoining landowners. All fences constructed under either subdivision (a) or (b) of this subsection shall be deemed to be manifestly designed to exclude intruders for the purposes of subdivision (1)(c) of section 28-521.

(2) The responsibility of the commission for fences along a state recreational trail shall not exceed the amount appropriated to the commission by the Legislature for such purpose during any biennium, except that the commission may use any funds specifically gifted or obtained by grant application to the commission the sole purpose of which is to provide fencing for a state recreational trail.

(3) The commission shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1993, LB 739, § 4; R.S.1943, (1996), § 81-815.61; Laws 1998, LB 922, § 387; Laws 2000, LB 701, § 3; Laws 2007, LB108, § 8.

37-1013 Sanitary facilities required; camping or open fires prohibited.

If the right-of-way or any portion thereof is used as a state recreational trail pursuant to sections 37-912 and 37-1011, appropriate sanitary facilities shall be

provided along the trail for the use of persons using the trail. Camping or open fires shall be prohibited on such right-of-way or portion thereof.

Source: Laws 1993, LB 739, § 5; R.S.1943, (1996), § 81-815.62; Laws 1998, LB 922, § 388; Laws 2000, LB 701, § 4.

37-1014 Rules and regulations.

If the right-of-way or portion thereof is used as a state recreational trail or for other purposes as provided in sections 37-912 and 37-1011, the Game and Parks Commission shall adopt and promulgate rules and regulations to carry out the purposes of sections 37-912 and 37-1010 to 37-1013.

Source: Laws 1993, LB 739, § 6; R.S.1943, (1996), § 81-815.63; Laws 1998, LB 922, § 389; Laws 2000, LB 701, § 5.

37-1015 State Recreational Trails Coordinator; duties.

(1) The position of State Recreational Trails Coordinator may be established and appointed by the Game and Parks Commission. Necessary office space, furniture, equipment, and supplies as well as necessary professional, technical, and clerical assistance shall be provided by the commission.

(2) The duties of the State Recreational Trails Coordinator shall include, but not be limited to:

(a) Maintaining and updating the Nebraska Comprehensive Trails Plan. For purposes of this section, Nebraska Comprehensive Trails Plan means the document dated July 1994 and entitled A Network of Discovery: A Comprehensive Trails Plan for the State of Nebraska;

(b) Marketing and promoting trails across the state;

(c) Maintaining and updating an inventory of trails programs in Nebraska;

(d) Providing a central point for exchanging information among communities with trails programs;

(e) Providing organizational and technical assistance to communities and regional groups;

(f) Managing the state trails application and evaluation process;

(g) Coordinating state government's trails development efforts and administering the state trails program;

(h) Preparing and publishing an annual report on trails development in the state;

(i) Monitoring and filing paperwork on rail abandonments when necessary, consistent with rail-watch corridors established by the Nebraska Comprehensive Trails Plan or its updates; and

(j) Managing other right-of-way acquisition efforts when state involvement becomes necessary.

Source: Laws 1996, LB 296, § 2; R.S.1943, (1996), § 81-815.64; Laws 1998, LB 922, § 390; Laws 2003, LB 804, § 1.

ARTICLE 11

PARK ENTRY PERMITS

Section
37-1101. Transferred to section 37-434.

§ 37-1101

GAME AND PARKS

Section	
37-1102.	Transferred to section 37-435.
37-1103.	Transferred to section 37-436.
37-1104.	Transferred to section 37-437.
37-1105.	Transferred to section 37-438.
37-1105.01.	Repealed. Laws 1981, LB 74, § 3.
37-1105.02.	Repealed. Laws 1980, LB 723, § 9.
37-1105.03.	Repealed. Laws 1980, LB 723, § 9.
37-1106.	Repealed. Laws 1980, LB 723, § 9.
37-1107.	Repealed. Laws 1980, LB 723, § 9.
37-1107.01.	Transferred to section 37-439.
37-1108.	Transferred to section 37-440.
37-1109.	Transferred to section 37-441.
37-1110.	Transferred to section 37-442.
37-1111.	Transferred to section 37-443.
37-1112.	Transferred to section 37-444.
37-1113.	Transferred to section 37-445.
37-1114.	Transferred to section 37-446.

37-1101 Transferred to section 37-434.

37-1102 Transferred to section 37-435.

37-1103 Transferred to section 37-436.

37-1104 Transferred to section 37-437.

37-1105 Transferred to section 37-438.

37-1105.01 Repealed. Laws 1981, LB 74, § 3.

37-1105.02 Repealed. Laws 1980, LB 723, § 9.

37-1105.03 Repealed. Laws 1980, LB 723, § 9.

37-1106 Repealed. Laws 1980, LB 723, § 9.

37-1107 Repealed. Laws 1980, LB 723, § 9.

37-1107.01 Transferred to section 37-439.

37-1108 Transferred to section 37-440.

37-1109 Transferred to section 37-441.

37-1110 Transferred to section 37-442.

37-1111 Transferred to section 37-443.

37-1112 Transferred to section 37-444.

37-1113 Transferred to section 37-445.

37-1114 Transferred to section 37-446.

ARTICLE 12

STATE BOAT ACT

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37-1201 Act, how cited; declaration of policy.

Sections 37-1201 to 37-12,110 shall be known and may be cited as the State Boat Act. It is the policy of this state to promote safety for persons and property in and connected with the use, operation, and equipment of vessels and to promote uniformity of laws relating thereto.

Source: Laws 1978, LB 21, § 1; Laws 2004, LB 560, § 3.

37-1202 Definitions, where found.

For the purposes of the State Boat Act, unless the context otherwise requires, the definitions found in sections 37-1203 to 37-1210 shall be used.

Source: Laws 1978, LB 21, § 2; Laws 1989, LB 195, § 1; Laws 1999, LB 176, § 100.

37-1203 Vessel, defined.

Vessel shall mean every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

Source: Laws 1978, LB 21, § 3.

37-1204 Motorboat, defined.

Motorboat shall mean any watercraft propelled in any respect by machinery, including watercraft temporarily equipped with detachable motors, but shall not include a vessel which has a valid marine document issued by the Bureau of Customs of the United States Government or any federal agency successor thereto.

Source: Laws 1978, LB 21, § 4.

37-1204.01 Personal watercraft, defined.

Personal watercraft shall mean a class of motorboat less than sixteen feet in length which uses an internal combustion engine powering a jet pump as its primary source of motive propulsion and is designed to be operated by a person sitting, standing, or kneeling on the watercraft rather than in the conventional manner of boat operation.

Source: Laws 1999, LB 176, § 101.

37-1205 Owner, defined.

Owner shall mean a person, other than a lienholder, having the property in or title to a motorboat. The term shall include a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term shall exclude a lessee under a lease not intended as security.

Source: Laws 1978, LB 21, § 5.

37-1206 Waters of this state, defined.

Waters of this state shall mean any waters within the territorial limits of Nebraska.

Source: Laws 1978, LB 21, § 6.

37-1207 Person, defined.

Person shall mean an individual, partnership, limited liability company, firm, corporation, association, or other entity.

Source: Laws 1978, LB 21, § 7; Laws 1993, LB 121, § 204.

37-1208 Operate, defined.

Operate shall mean to navigate or otherwise use a motorboat or vessel.

Source: Laws 1978, LB 21, § 8.

37-1209 Commission, defined.

Commission shall mean the Game and Parks Commission.

Source: Laws 1978, LB 21, § 9.

37-1210 Length, defined.

Length, as it applies to vessels, shall mean extreme overall length.

Source: Laws 1978, LB 21, § 10.

37-1211 Motorboat; numbering required; operation of unnumbered motorboat prohibited; exceptions.

(1) Except as provided in subsections (2) and (3) of this section and sections 37-1249 and 37-1250, every motorboat on the waters of this state shall be numbered and no person shall operate or give permission for the operation of any vessel on such waters unless the vessel is numbered in accordance with the State Boat Act or in accordance with the laws of another state if the commission has by regulation approved the numbering system of such state and unless the certificate of number awarded to such vessel is in full force and effect and the identifying number set forth in the certificate of number is displayed and legible on each side of the forward half of the vessel.

(2) The owner of each motorboat may operate or give permission for the operation of such vessel for thirty days from the date the vessel was acquired in anticipation of the vessel being numbered. A duly executed bill of sale, certificate of title, or other satisfactory evidence of the right of possession of the vessel must be available for inspection at all times from the operator of the vessel.

(3) The owner or his or her invitee who operates a personal watercraft on any body of water (a) which is entirely upon privately owned land owned by only one person or one family and, if leased, leased by only one person or one family, (b) which does not connect by any permanent or intermittent inflow or outflow with other water outside such land, and (c) which is not operated on a commercial basis for profit may operate any personal watercraft on such body of water without complying with subsection (1) of this section.

Source: Laws 1978, LB 21, § 11; Laws 1995, LB 376, § 1; Laws 1998, LB 922, § 394.

37-1212 Manufacturers; retailers; temporary numbering; certificate; fee.

A person engaged in the manufacture or sale of vessels of a type otherwise required to be numbered under the State Boat Act, upon application to the county treasurer of the county in which the applicant resides or the business location of the manufacturer or retailer on forms prescribed by the commission, may obtain certificates of number for use in the testing or demonstrating of such vessels upon payment of a fee of not less than forty dollars and not more than forty-six dollars, as established by the commission pursuant to section 37-327, for each registration. Certificates of number so issued may be used by the applicant in the testing or demonstrating of vessels by temporary placement of the numbers assigned by such certificate on the vessel so tested or demonstrated. Such temporary placement of numbers shall otherwise be as prescribed by the act.

Source: Laws 1978, LB 21, § 12; Laws 1993, LB 235, § 35; Laws 1998, LB 922, § 395; Laws 2001, LB 131, § 1; Laws 2003, LB 306, § 20.

37-1213 Vessels; classification.

Vessels subject to the State Boat Act shall be divided into four classes as follows: Class 1. Less than sixteen feet in length including all canoes regardless of length; Class 2. Sixteen feet or over and less than twenty-six feet in length; Class 3. Twenty-six feet or over and less than forty feet in length; and Class 4. Forty feet or over.

Source: Laws 1978, LB 21, § 13; Laws 1999, LB 176, § 110.

37-1214 Motorboat; registration; period valid; application; fee.

(1) Except as otherwise provided in section 37-1211, the owner of each motorboat shall register such vessel or renew the registration every three years as provided in section 37-1226. The owner of such vessel shall file an initial application for a certificate of number pursuant to section 37-1216 with a county treasurer on forms approved and provided by the commission. The application shall be signed by the owner of the vessel, shall contain the year manufactured, and shall be accompanied by a fee for the three-year period of not less than twenty dollars and not more than twenty-three dollars for Class 1 boats, not less than forty dollars and not more than forty-six dollars for Class 2 boats, not less than sixty dollars and not more than sixty-seven dollars and fifty cents for Class 3 boats, and not less than one hundred dollars and not more than one hundred fifteen dollars for Class 4 boats, as established by the commission pursuant to section 37-327.

(2) If a county board consolidates services under the office of a designated county official other than the county treasurer pursuant to section 23-186, the powers and duties of the county treasurer relating to registration under sections 37-1214 to 37-1227 shall be performed by the designated county official.

Source: Laws 1978, LB 21, § 14; Laws 1993, LB 235, § 36; Laws 1994, LB 123, § 1; Laws 1995, LB 376, § 2; Laws 1996, LB 464, § 2; Laws 1997, LB 720, § 1; Laws 1998, LB 922, § 396; Laws 1999, LB 176, § 111; Laws 2003, LB 305, § 20; Laws 2003, LB 306, § 21.

37-1215 Motorboat; registration period already commenced; fee reduced; computation.

In the event an application is made after the beginning of any registration period for registration of any vessel not previously registered by the applicant in this state, the license fee on such vessel shall be reduced by one thirty-sixth for each full month of the registration period already expired as of the date such vessel was acquired. The county treasurer or designated county official shall compute the registration fee on forms and pursuant to rules of the commission.

Source: Laws 1978, LB 21, § 15; Laws 1996, LB 464, § 3.

37-1216 Motorboat; application for registration; issuance of a certificate of number; how displayed.

After the owner of the vessel submits an application as provided in section 37-1214 and presents a certificate of title if required pursuant to section 37-1276, the county treasurer or designated county official shall enter the application upon the records of the office and issue to the applicant a certificate of number stating the number awarded to the vessel and the name and address of the owner. The number shall be displayed on each side of the bow, and the

numbers shall be at least three inches high, of block characteristics, contrasting in color with the boat, and clearly visible from a distance of one hundred feet. The commission shall assign each county treasurer or designated county official a block of numbers and certificates therefor.

Source: Laws 1978, LB 21, § 16; Laws 1994, LB 123, § 2; Laws 1996, LB 464, § 4; Laws 1997, LB 720, § 2.

37-1217 Motorboat; registration; fee to recover administrative costs.

When the county treasurer or designated county official or the commission registers a vessel, such official or the commission shall be entitled to collect and retain a fee, in addition to the registration fee, of not less than three dollars and not more than four dollars on each registration issued, as established by the commission pursuant to section 37-327, as reimbursement for administrative costs incurred in issuing such certificate of registration. Such fee shall be credited to the general fund of the county and shall be included by the county treasurer or designated county official in his or her report of fees as provided by law.

Source: Laws 1978, LB 21, § 17; Laws 1993, LB 235, § 37; Laws 1996, LB 464, § 5; Laws 1998, LB 922, § 397; Laws 2003, LB 306, § 22.

37-1218 Motorboat; registration transmitted to Game and Parks Commission; when; duplicate copy.

Each county treasurer or designated county official providing registration to an owner of a vessel shall transmit on or before the thirtieth day of the following month registration information to the commission. The county treasurer or designated county official shall retain a duplicate copy of the registration.

Source: Laws 1978, LB 21, § 18; Laws 1996, LB 464, § 6; Laws 2001, LB 131, § 2.

37-1218.01 Repealed. Laws 2001, LB 131, § 8.

37-1219 Registration fees; remitted to commission; when; form; duplicate copy.

All registration fees received by the county treasurers or designated county officials shall be remitted on or before the thirtieth day of the following month to the secretary of the commission. All remittances shall be upon a form to be furnished by the commission and a duplicate copy shall be retained by the county treasurer or designated county official.

Source: Laws 1978, LB 21, § 19; Laws 1996, LB 464, § 7.

37-1220 Registration fees; deposited with State Treasurer; placed in State Game Fund.

The secretary of the commission shall deposit daily with the State Treasurer all registration fees received by him and shall take the receipt of the treasurer therefor. The State Treasurer shall place all of the fees so deposited in the State Game Fund.

Source: Laws 1978, LB 21, § 20.

37-1221 Motorboat; number awarded; maintained in legible condition; certificate of number; available for inspection; when removed.

(1) The number awarded or assigned pursuant to section 37-1216 shall be maintained in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the vessel for which issued, whenever such vessel is in operation.

(2) The person whose name appears on a certificate of number as an owner of a vessel shall remove the number and identification symbol when (a) the vessel is documented by the United States Coast Guard, (b) the certificate of number was obtained by false statement, (c) the fees for issuance of a number are not paid, or (d) the vessel is no longer principally used in the state where the certificate was issued.

Source: Laws 1978, LB 21, § 21.

37-1222 Vessel; previously numbered under a federally approved numbering system; registration of number; when.

The owner of any vessel already covered by a number in full force and effect which has been awarded to it pursuant to then operative federal law or a federally approved numbering system of another state shall register the number prior to operating the vessel on the waters of this state in excess of the sixty-day reciprocity period provided for in subdivision (1) of section 37-1249. Such registration shall be in the manner and pursuant to the procedure required for the award of a number under sections 37-1214 to 37-1217.

Source: Laws 1978, LB 21, § 22.

37-1223 Motorboat; change of ownership; new application; original number retained; when.

If the ownership of a vessel changes, a new application form with fee shall be filed with the county treasurer or designated county official and a new certificate of number stating the number awarded shall be issued in the same manner as provided for in an original award of number. The county treasurer or designated county official may allow the new owner to retain the previously assigned boat number if the existing number is serviceable. The commission shall provide procedures for the county treasurers or designated county officials to follow in determining whether the existing number is serviceable.

Source: Laws 1978, LB 21, § 23; Laws 1996, LB 464, § 8.

37-1224 Motorboat; removed from the state or transferred; registration fee; claim for refund; how computed.

When the owner of any vessel registered under the State Boat Act moves out of the state or upon the transfer of ownership of any vessel, such owner or transferor shall be credited with the number of unexpired months remaining in the registration period. If such vessel is removed from the state or transferred within the same calendar month in which it was registered, no refund shall be allowed for such month. Any individual moving out of the state or transferring ownership to any vessel may file a claim for refund with the commission upon forms provided by the commission. The commission shall make payment to the claimant from money available from the State Game Fund appropriated for

such purpose, but no refund shall be paid if less than twelve months remains in the registration period.

Source: Laws 1978, LB 21, § 24; Laws 1999, LB 176, § 112.

37-1225 United States Government vessel identification numbering system; effect.

In the event that an agency of the United States Government shall have in force an overall system of identification numbering for vessels within the United States, the commission may by rules and regulations adopt such numbering system as the numbering system pursuant to the State Boat Act.

Source: Laws 1978, LB 21, § 25; Laws 1999, LB 176, § 113.

37-1226 Motorboat; certificate of number and number awarded; period valid; renewal; fee.

(1) Every certificate of number and number awarded pursuant to the State Boat Act shall continue in full force and effect for a period of three years unless sooner terminated or discontinued. The numbering periods shall commence January 1 of each year and expire on December 31 of every three-year numbering period thereafter.

(2) Certificates of number and the number awarded may be renewed by the owner by presenting the previously issued certificate of number to the county treasurer or designated county official or an agent authorized to issue renewals. An owner whose registration has expired shall have until March 1 following the year of expiration to renew such registration.

(3) The fee for renewal shall be the same as for original registration as provided in section 37-1214.

Source: Laws 1978, LB 21, § 26; Laws 1994, LB 123, § 19; Laws 1996, LB 464, § 9; Laws 1999, LB 176, § 114.

37-1227 Certificate of number; lost or destroyed; replacement; fee.

In the event of loss or destruction of the certificate of number, the owner of the vessel shall apply to the county treasurer or designated county official on forms provided by the commission for replacement of such lost certificate of number. Upon satisfactory proof of loss and the payment to the county treasurer or designated county official of a fee of not less than one dollar and not more than five dollars, as established by the commission, the county treasurer or designated county official shall issue a duplicate certificate of number.

Source: Laws 1978, LB 21, § 27; Laws 1993, LB 235, § 38; Laws 1996, LB 464, § 10; Laws 1998, LB 922, § 399; Laws 2001, LB 131, § 3.

37-1228 Certificate of number; contents.

Every certificate of number shall contain the following information: Name and address of the owner, classification number or letter as classified by the commission, length, type of construction, material used in the boat, whether

inboard or outboard motor power, type of fuel, make, and the hull identification number.

Source: Laws 1978, LB 21, § 28; Laws 1999, LB 176, § 115; Laws 2001, LB 131, § 4.

37-1229 Motorboat; transfer, theft, recovery, destruction, or abandonment; notice to commission; certificate; terminated or declared invalid; when.

(1) The owner of any vessel shall furnish the commission notice of the transfer of all or any part of his interest, other than the creation of a security interest, in a vessel numbered in this state pursuant to sections 37-1214 to 37-1217 or of the theft, recovery, destruction, or abandonment of such vessel, within fifteen days thereof. Such transfer, theft, destruction, or abandonment shall terminate the certificate of number and number awarded for such vessel except that in the case of a transfer of a part interest which does not affect the owner's right to operate such vessel, such transfer shall not terminate the certificate of number and number awarded.

(2) The certificate of number shall be declared invalid when (a) the vessel is required to be documented, (b) the certificate of number was obtained falsely, (c) the necessary fees were not paid, or (d) the person whose name appears on the certificate involuntarily loses his interest in the numbered vessel by legal processes.

Source: Laws 1978, LB 21, § 29.

37-1230 Certificate of number; change of address; notice to commission.

Any holder of a certificate of number shall notify the commission within fifteen days if his address no longer conforms to the address appearing on the certificate and shall, as a part of such notification, furnish the commission with his new address. The commission shall provide in its rules and regulations for the alteration of an outstanding certificate to show the new address of the holder.

Source: Laws 1978, LB 21, § 30.

37-1231 Number other than number awarded attached to bow; prohibited.

No number other than the number awarded to a vessel or granted reciprocity pursuant to the State Boat Act shall be attached on either side of the bow of such vessel.

Source: Laws 1978, LB 21, § 31; Laws 1999, LB 176, § 116.

37-1232 Vessel; carry and exhibit lights; when.

Every vessel in all weather from sunset to sunrise shall carry and exhibit the lights prescribed by sections 37-1233 to 37-1238 when underway, and during such time no other lights which may be mistaken for those prescribed shall be exhibited.

Source: Laws 1978, LB 21, § 32.

37-1233 Class 1 and 2 motorboats; lights required; enumerated.

Under the conditions described in section 37-1232, every vessel of Classes 1 and 2 propelled by machinery shall carry the following lights:

- (1) A lantern or flashlight;
- (2) A combined lantern in the forepart of the vessel and lower than the white light aft, showing green to starboard and red to port side, each showing an unbroken light over an arc of the horizon of one hundred twelve and five-tenths degrees and so fixed as to show the light from right ahead to twenty-two and five-tenths degrees abaft the beam on its respective side; and
- (3) A white light aft which shall show all around the horizon.

Source: Laws 1978, LB 21, § 33; Laws 1989, LB 169, § 1.

37-1234 Class 3 and 4 motorboats; lights required; enumerated.

Under the conditions described in section 37-1232, every vessel of Classes 3 and 4 propelled by machinery shall carry the following lights:

- (1) A lantern or flashlight;
- (2) A white light placed over the fore and the aft centerline of the vessel showing an unbroken light over an arc of the horizon of two hundred twenty-five degrees and so fixed as to show the light from right ahead to twenty-two and five-tenths degrees abaft the beam on either side of the vessel;
- (3) A white light aft to show all around the horizon and higher than the white light forward; and
- (4) On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon one hundred twelve and five-tenths degrees, so fixed as to throw the light from right ahead to twenty-two and five-tenths degrees abaft the beam on the starboard side. On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of one hundred twelve and five-tenths degrees, so fixed as to throw the light from right ahead to twenty-two and five-tenths degrees abaft the beam on the port side. Such side lights shall be fitted with inboard screen of sufficient height so set as to prevent these lights from being seen across the bow.

Source: Laws 1978, LB 21, § 34; Laws 1989, LB 169, § 2.

37-1235 Vessels propelled by sail or hand power; lights required.

(1) Under the conditions described in section 37-1232, all vessels when propelled by sail alone shall carry (a) a lantern or flashlight and (b) the red and green side lights suitably screened, but not the white lights, prescribed by sections 37-1233 and 37-1234. Vessels of all classes when so propelled shall carry a white light placed as nearly as practicable at the stern showing an unbroken light over an arc of the horizon of one hundred thirty-five degrees and so fixed as to show the light sixty-seven and five-tenths degrees from right aft on each side of the vessel.

(2) Rowboats and canoes or other vessels under hand power shall display a white light showing an unbroken light over an arc of the horizon of three hundred sixty degrees in time to avoid collision.

Source: Laws 1978, LB 21, § 35; Laws 1989, LB 169, § 3.

37-1236 Lights; visibility requirements.

Every white light prescribed by sections 37-1233 to 37-1235 shall be of such character as to be visible at a distance of at least two miles. Every colored light prescribed by sections 37-1233 to 37-1235 shall be of such character as to be

visible at a distance of at least one mile. The word visible in this section, when applied to lights, shall mean visible on a dark night with clear atmosphere.

Source: Laws 1978, LB 21, § 36.

37-1237 Vessel propelled by sail and machinery; lights required.

Under the conditions prescribed in section 37-1232 and when propelled by sail and machinery, any vessel shall carry the lights required for a vessel propelled by machinery only.

Source: Laws 1978, LB 21, § 37.

37-1238 Lights required by federal rules; commission; option to adopt.

The commission may adopt and promulgate rules and regulations providing that any vessel may carry and exhibit the lights required by the Inland Navigational Rules Act of 1980, as amended, 33 U.S.C. 2001 et seq., in lieu of the lights required by sections 37-1232 to 37-1237.

Source: Laws 1978, LB 21, § 38; Laws 1993, LB 235, § 39.

37-1238.01 Vessel equipped with red or blue light; limitation on operation.

No person other than a rescue squad member actually en route to, at, or returning from any emergency requiring the services of such member or any law enforcement officer in the performance of his or her official duties shall operate a vessel equipped with a rotating or flashing red or blue light or lights upon the waters of this state.

Source: Laws 1993, LB 235, § 42.

37-1238.02 Vessel signaled to stop; violation; penalty.

The operator of any vessel when signaled to stop either by hand signals or by the display of a rotating or flashing red or blue light or lights shall immediately bring such vessel to a stop or follow the directions given by any officer having the authority to enforce the State Boat Act. Violation of this section shall be a Class IV misdemeanor.

Source: Laws 1993, LB 235, § 43.

37-1239 Class 2, 3, or 4 vessel; sound-producing equipment required.

Every vessel of Class 2, 3, or 4 shall be provided with an efficient whistle or other sound-producing mechanical appliance.

Source: Laws 1978, LB 21, § 39.

37-1240 Class 3 or 4 vessel; bell required.

Every vessel of Class 3 or 4 shall be provided with an efficient bell.

Source: Laws 1978, LB 21, § 40.

37-1241 All vessels; floatation device; requirements; exceptions.

(1) Every vessel except sailboards shall carry at least one life preserver, ring buoy, or other device of the sort prescribed by the regulations of the commission for each person on board, so placed as to be readily accessible, except that every vessel carrying passengers for hire shall carry so placed as to be readily

accessible at least one life preserver of the sort prescribed by the regulations of the commission for each person on board. Every vessel except canoes, kayaks, sailboards, and personal watercraft shall carry at least one throwable floatation device which shall be in addition to the devices required for each person on board.

(2) Subsection (1) of this section shall not apply to any racing shell or rowing scull during an authorized race or regatta or an officially supervised training session if at least one approved floatation device is carried aboard an accompanying vessel for each person in such racing shell or rowing scull. Such floatation devices shall be in addition to those required for each person aboard the accompanying vessel.

(3) For purposes of this section, sailboard means a surfboard-type vessel with no freeboard and using a free-sail system with a swivel-mounted mast not secured to a hull by guys or stays.

Source: Laws 1978, LB 21, § 41; Laws 1993, LB 235, § 40; Laws 1999, LB 176, § 117.

37-1241.01 Personal watercraft; applicability of laws, rules, and regulations.

Except as provided in sections 37-1241.02 to 37-1241.08, a personal watercraft shall be subject to all applicable laws, rules, and regulations which govern the operation, equipment, registration, and numbering of and all other matters relating to vessels whenever a personal watercraft is operated on the waters of this state.

Source: Laws 1999, LB 176, § 102.

37-1241.02 Personal watercraft; operation requirements.

(1) A personal watercraft may not be operated on the waters of this state unless each person aboard the personal watercraft is wearing a Type I, Type II, Type III, or Type V United States Coast Guard-approved floatation device.

(2) Each person operating a personal watercraft on the waters of this state which is equipped by the manufacturer with a lanyard-type engine cutoff switch shall attach the lanyard to the operator's person, clothing, or floatation device as appropriate.

Source: Laws 1999, LB 176, § 103.

37-1241.03 Personal watercraft; time restrictions.

A person shall not operate a personal watercraft on the waters of this state during the period from sunset to sunrise.

Source: Laws 1999, LB 176, § 104; Laws 2001, LB 131, § 5.

37-1241.04 Personal watercraft; manner of operation.

(1) A person shall operate a personal watercraft on the waters of this state in a reasonable and prudent manner. A maneuver which unreasonably or unnecessarily endangers life, limb, or property is prohibited and includes weaving through congested vessel traffic, jumping the wake produced by another vessel at a distance of less than fifty yards, or jumping the wake produced by a motorboat or personal watercraft that is towing a person or persons.

(2) A person shall not operate a personal watercraft on the waters of this state unless he or she is facing forward on the watercraft.

Source: Laws 1999, LB 176, § 105; Laws 2003, LB 305, § 21.

37-1241.05 Personal watercraft; towing; when permitted.

A person shall not operate a personal watercraft on the waters of this state to tow a person on water skis, kneeboards, inflatable crafts, or any other device unless the personal watercraft is designed to accommodate more than one person and the personal watercraft is recommended by the manufacturer to tow such devices.

Source: Laws 1999, LB 176, § 106.

37-1241.06 Personal watercraft; age restrictions; boating safety course; fee.

(1)(a) No person under fourteen years of age shall operate a motorboat or personal watercraft on the waters of this state.

(b) No person under sixteen years of age shall operate a motorboat or personal watercraft on the waters of this state with an individual in tow behind the motorboat or personal watercraft.

(2) Effective May 1, 2000, and until January 1, 2004, a person under sixteen years of age shall not operate a motorboat or personal watercraft on the waters of this state unless he or she has successfully completed a boating safety course approved by the commission and has been issued a valid boating safety certificate.

(3) Effective January 1, 2004, a person under eighteen years of age shall not operate a motorboat or personal watercraft on the waters of this state unless he or she has successfully completed a boating safety course approved by the commission and has been issued a valid boating certificate.

(4) The commission may charge a fee of no more than ten dollars for a boating safety course required by this section.

Source: Laws 1999, LB 176, § 107; Laws 2003, LB 305, § 22.

37-1241.07 Motorboat or personal watercraft; age restriction on lease, hire, or rental; restriction on operation.

The owner of a boat livery, or his or her agent or employee, shall not lease, hire, or rent a motorboat or personal watercraft to any person under eighteen years of age.

Except as provided in subdivision (1)(a) of section 37-1241.06, a person younger than eighteen years of age may operate a motorboat or personal watercraft rented, leased, or hired by a person eighteen years of age or older if the person younger than eighteen years of age holds a valid boating safety certificate issued under section 37-1241.06.

Source: Laws 1999, LB 176, § 108; Laws 2003, LB 305, § 23; Laws 2005, LB 21, § 1.

37-1241.08 Personal watercraft; sections; applicability.

Sections 37-1204.01 and 37-1241.01 to 37-1241.07 shall not apply to a person participating in a regatta, race, marine parade, tournament, or exhibition which has been authorized or permitted by the commission pursuant to

sections 37-1262 and 37-1263 or is otherwise exempt from the provisions of the State Boat Act.

Source: Laws 1999, LB 176, § 109.

37-1242 Motorboat; fire extinguishers required.

Every motorboat shall be provided with such number, size, and type of fire extinguishers, capable of promptly and effectually extinguishing burning gasoline, as may be prescribed by the regulations of the commission, which fire extinguishers shall be at all times kept in condition for immediate and effective use and shall be so placed as to be readily accessible.

Source: Laws 1978, LB 21, § 42.

37-1243 Racing vessels; equipment, exceptions; when.

The provisions of sections 37-1239, 37-1240, and 37-1242 shall not apply to vessels while competing in any race conducted pursuant to sections 37-1262 and 37-1263 or, if such boats be designed and intended solely for racing, while engaged in such navigation as is incidental to the tuning up of the boats and engines for the race.

Source: Laws 1978, LB 21, § 43.

37-1244 Motorboat; engine equipped with flame arrester or similar device; exception.

Every motorboat shall have the carburetor or carburetors of every engine therein, except outboard motors, using gasoline as fuel, equipped with such efficient flame arrester, backfire trap, or other similar device as may be prescribed by the regulations of the commission.

Source: Laws 1978, LB 21, § 44.

37-1245 Motorboat; proper ventilation of bilges required.

Every motorboat and every vessel, except open boats, using as fuel any liquid of a volatile nature, shall be provided with such means as may be prescribed by the regulations of the commission for properly and efficiently ventilating the bilges of the engine and fuel tank compartments so as to remove any explosive or inflammable gases.

Source: Laws 1978, LB 21, § 45.

37-1246 Federal boating laws or coast guard regulations; equipment requirements; commission; option to adopt.

The commission may adopt rules and regulations modifying the equipment requirements contained in sections 37-1232 to 37-1245 to the extent necessary to keep these requirements in conformity with the provisions of the federal boating laws or with the boating regulations promulgated by the United States Coast Guard.

Source: Laws 1978, LB 21, § 46.

37-1247 Federal boating laws or coast guard regulations; pilot rules; commission; option to adopt.

The commission is hereby authorized to establish and maintain, for the operation of vessels on the waters of this state, pilot rules in conformity with the pilot rules contained in the federal boating laws or the boating regulations promulgated by the United States Coast Guard.

Source: Laws 1978, LB 21, § 46.

37-1248 Operation of a vessel without required equipment; prohibited.

No person shall operate or give permission for the operation of a vessel which is not equipped as required by the State Boat Act.

Source: Laws 1978, LB 21, § 48; Laws 1999, LB 176, § 118.

37-1249 Vessels; exemption from numbering.

A vessel shall not be required to be numbered pursuant to the State Boat Act if it is:

(1) Already covered by a number in full force and effect which has been awarded to it pursuant to federal law or a federally approved numbering system of another state and if such boat has not been within this state for a period in excess of sixty consecutive days;

(2) A vessel from a country other than the United States temporarily using the waters of this state;

(3) A vessel whose owner is the United States, a state, or a subdivision thereof; or

(4) A ship's lifeboat.

Source: Laws 1978, LB 21, § 49; Laws 1999, LB 176, § 119.

37-1250 Vessel; exempt from numbering by commission rule and regulation.

The commission may by rule and regulation exempt a vessel from numbering under the State Boat Act after the commission has found that the numbering of certain vessels will not materially aid in their safety and identification.

Source: Laws 1978, LB 21, § 50; Laws 1999, LB 176, § 120.

37-1251 Boat livery; records required.

The owner of a boat livery shall cause to be kept a record of the name and address of the person or persons hiring any vessel which is designed or permitted by him to be operated as a motorboat, the certificate of number thereof, the departure date and time, and the expected time of return. The record shall be preserved for at least six months.

Source: Laws 1978, LB 21, § 51.

37-1252 Boat livery; vessel operated without required equipment; prohibited.

Neither the owner of a boat livery, nor his agent or employee shall permit any motorboat or any vessel designed or permitted by him to be operated as a motorboat to depart from his premises unless it shall have been provided, either by owner or renter, with the equipment required pursuant to sections 37-1232 to 37-1248 and any rules and regulations made pursuant thereto.

Source: Laws 1978, LB 21, § 52.

37-1253 Motorboat; noise level; restriction; muffling equipment; requirements.

(1) No person shall operate or give permission for the operation of a motorboat on the waters of this state in such a manner as to exceed a noise level of ninety-six decibels when measured at one hundred feet or more on plane using the A-weighting network of a sound level meter complying with the standards set forth in S1.4-1983 (R 2001) of the American National Standards Institute, as those standards existed on August 31, 2003.

(2) The exhaust of every internal combustion engine used on any motorboat shall be effectively muffled by equipment so constructed and used as to muffle the noise of the exhaust in a reasonable manner.

The use of cutouts is prohibited except for motorboats competing in a regatta or boat race approved as provided in sections 37-1262 and 37-1263, and for such motorboats while on trial runs, during a period not to exceed forty-eight hours immediately preceding such regatta or race and for such motorboats while competing in official trials for speed records during a period not to exceed forty-eight hours immediately following such regatta or race.

Source: Laws 1978, LB 21, § 53; Laws 2003, LB 305, § 24.

37-1254 Prohibited operation; reckless or negligent; proof.

No person shall operate any motorboat or vessel or manipulate any water skis, surfboard, or similar device in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

Source: Laws 1978, LB 21, § 54; Laws 1989, LB 195, § 2.

37-1254.01 Boating under influence of alcohol or controlled substance; penalty; probation; prohibit operation; city or village ordinances; alcoholism treatment program.

(1) No person shall be in the actual physical control of any motorboat under propulsion upon the waters of this state:

(a) While under the influence of alcohol or of any controlled substance as defined in section 28-401;

(b) When such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood; or

(c) When such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.

(2) Any person who is in the actual physical control of any motorboat under propulsion upon the waters of this state while in a condition described in subsection (1) of this section shall be guilty of a Class II misdemeanor. Upon conviction the court shall, as part of the judgment of conviction, order such person not to be in the physical control of a motorboat under propulsion upon the waters of this state for any purpose for a period of six months from the date of such conviction, except that if the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order such person not to be in the physical control of any motorboat under propulsion upon the waters of this state for any purpose for a period of sixty days from the date of the order.

(3) Any city or village may enact ordinances in conformance with this section and section 37-1254.02.

(4) At the discretion of the court, any person convicted of violating this section or violating any city or village ordinance adopted in conformance with this section may be required to attend, at the convicted person's expense, an alcoholism treatment program as a term of probation.

Source: Laws 1989, LB 195, § 3; Laws 2001, LB 166, § 1; Laws 2001, LB 773, § 7.

37-1254.02 Boating under influence of alcohol or controlled substance; implied consent to submit to chemical test; preliminary test; refusal; penalty.

(1) Any person who has in his or her actual physical control a motorboat under propulsion upon the waters of this state shall be deemed to have given his or her consent to submit to a chemical test of his or her blood or breath for the purpose of determining the amount of alcohol content in such blood or breath.

(2) Any law enforcement officer who has been duly authorized to make arrests for violations of laws of this state or ordinances of any city or village may require any person arrested for any offense arising out of acts alleged to have been committed while the person was in the actual physical control of a motorboat under propulsion upon the waters of this state under the influence of alcohol to submit to a chemical test of his or her blood or breath for the purpose of determining the alcohol content of such blood or breath when the officer has reasonable grounds to believe that the person was in the actual physical control of a motorboat under propulsion upon the waters of this state while under the influence of alcohol.

(3) Any law enforcement officer who has been duly authorized to make arrests for violations of laws of this state or ordinances of any city or village may require any person who has in his or her actual physical control a motorboat under propulsion upon the waters of this state to submit to a preliminary test of his or her breath for alcohol content if the officer has reasonable grounds to believe that such person has alcohol in his or her body or has committed any violation of this section and section 37-1254.01. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol content of eight-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath shall be placed under arrest. Any person who refuses to submit to such preliminary breath test shall be guilty of a Class III misdemeanor.

(4) Any person arrested pursuant to this section may, upon the direction of a law enforcement officer, be required to submit to a chemical test of his or her blood or breath for a determination of the alcohol content. Any person who refuses to submit to a chemical blood or breath test required pursuant to this section shall be guilty of a Class II misdemeanor, and the court shall, as part of the judgment of conviction, order such person not to be in the actual physical control of any motorboat under propulsion upon the waters of this state for any purpose for a period of six months from the date of such conviction. If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order such person not to be in the actual physical control of any motorboat under

propulsion upon the waters of this state for any purpose for a period of sixty days from the date of the order.

(5) Any person who is required to submit to a preliminary breath test or to a chemical blood or breath test pursuant to this section shall be advised of the consequences of refusing to submit to such test.

Source: Laws 1989, LB 195, § 4; Laws 1999, LB 176, § 121; Laws 2001, LB 166, § 2; Laws 2001, LB 773, § 8.

37-1254.03 Boating under influence of alcohol or controlled substance; choice of test; privileges of person tested.

The law enforcement officer who requires a chemical blood or breath test pursuant to section 37-1254.02 may direct whether the test shall be of blood or breath. When the officer directs that the test shall be of a person's blood, the person tested shall be permitted to have a physician of his or her choice evaluate his or her condition and perform or have performed whatever laboratory tests such person tested deems appropriate in addition to and following the test administered at the direction of the law enforcement officer. If the officer refuses to permit such additional test to be taken, then the original test shall not be competent as evidence. Upon request the results of the test taken at the direction of the law enforcement officer shall be made available to the person being tested.

Source: Laws 1989, LB 195, § 5; Laws 2001, LB 773, § 9.

37-1254.04 Boating under influence of alcohol or controlled substance; unconscious; effect on consent.

Any person who is unconscious or who is otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn the consent provided by section 37-1254.02, and the test may be given.

Source: Laws 1989, LB 195, § 6.

37-1254.05 Boating under influence of alcohol or controlled substance; chemical test; violation of statute or ordinance; results; competent evidence; permit; fee.

Except as provided in section 37-1254.03, any test made pursuant to section 37-1254.02, if made in conformance with the requirements of this section, shall be competent evidence in any prosecution under a state law or city or village ordinance regarding the actual physical control of any motorboat under propulsion upon the waters of this state while under the influence of alcohol or regarding the actual physical control of any motorboat under propulsion upon the waters of this state when the concentration of alcohol in the blood or breath is in excess of allowable levels in violation of section 37-1254.01 or a city or village ordinance. To be considered valid, tests shall have been performed according to methods approved by the Department of Health and Human Services and by an individual possessing a valid permit issued by the department for such purpose. The department may approve satisfactory techniques or methods and ascertain the qualifications and competence of individuals to perform such tests and may issue permits which shall be subject to termination or revocation at the discretion of the department.

The permit fee may be established by rules and regulations adopted and promulgated by the department, which fee shall not exceed the actual cost of processing the initial permit. Such fee shall be charged annually to each permit holder. The fees shall be used to defray the cost of processing and issuing the permits and other expenses incurred by the department in carrying out this section. The fee shall be deposited in the state treasury and credited to the Health and Human Services Cash Fund as a laboratory service fee.

Source: Laws 1989, LB 195, § 7; Laws 1996, LB 1044, § 95; Laws 2001, LB 773, § 10; Laws 2007, LB296, § 53.

37-1254.06 Boating under influence of alcohol or controlled substance; blood test; withdrawing requirements; damages; liability.

(1) Any physician, registered nurse, other trained person employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act, a clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act, as amended, to withdraw human blood for scientific or medical purposes, or a hospital shall be an agent of the State of Nebraska when performing the act of withdrawing blood at the request of a peace officer pursuant to section 37-1254.02. The state shall be liable in damages for any illegal or negligent acts or omissions of such agents in performing the act of withdrawing blood. The agent shall not be individually liable in damages or otherwise for any act done or omitted in performing the act of withdrawing blood at the request of a peace officer pursuant to such section except for acts of willful, wanton, or gross negligence of the agent or of persons employed by such agent.

(2) Any person listed in subsection (1) of this section withdrawing a blood specimen for purposes of section 37-1254.02 shall, upon request, furnish to any law enforcement agency or the person being tested a certificate stating that such specimen was taken in a medically acceptable manner. The certificate shall be signed under oath before a notary public and shall be admissible in any proceeding as evidence of the statements contained in the certificate. The form of the certificate shall be prescribed by the Department of Health and Human Services and such forms shall be made available to the persons listed in subsection (1) of this section.

Source: Laws 1989, LB 195, § 8; Laws 1997, LB 210, § 1; Laws 2000, LB 819, § 67; Laws 2000, LB 1115, § 3; Laws 2007, LB296, § 54.

Cross References

Health Care Facility Licensure Act, see section 71-401.

37-1254.07 Boating under influence of alcohol or controlled substance; violation of city or village ordinance; fee for test; court costs.

Upon the conviction of any person for violation of section 37-1254.01 or for being in actual physical control of a motorboat under propulsion upon the waters of this state while under the influence of alcohol or of any controlled substance as defined in section 28-401 in violation of any city or village ordinance, there shall be assessed as part of the court costs the fee charged by any physician or any agency administering tests, pursuant to a permit issued in

accordance with section 37-1254.05, for the test administered and the analysis thereof pursuant to section 37-1254.02 if such test was actually made.

Source: Laws 1989, LB 195, § 9.

37-1254.08 Boating under influence of alcohol or controlled substance; test without preliminary breath test; when; qualified personnel.

Any person arrested for any offense involving the actual physical control of a motorboat under propulsion upon the waters of this state while under the influence of alcohol shall be required to submit to a chemical test of his or her blood or breath as provided in section 37-1254.02 without the preliminary breath test if the arresting officer does not have available the necessary equipment for administering a breath test or if the person is unconscious or is otherwise in a condition rendering him or her incapable of testing by a preliminary breath test. Only a physician, registered nurse, or qualified technician acting at the request of a law enforcement officer may withdraw blood for the purpose of determining its alcohol content, but such limitation shall not apply to the taking of a breath specimen.

Source: Laws 1989, LB 195, § 10; Laws 2001, LB 773, § 11.

37-1255 Collisions, accidents, and casualties; operator of vessel; duties.

It shall be the duty of the operator of a vessel involved in a collision, accident, or other casualty, so far as he can do so without serious danger to his own vessel, crew, and passengers, if any, to render to other persons affected by the collision, accident, or other casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty, and also to give his name, address, and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty.

Source: Laws 1978, LB 21, § 55.

37-1256 Collision, accident, or other casualty; commission; Nebraska State Patrol; duties.

(1) In the case of collision, accident, or other casualty involving a vessel, the operator thereof, if the collision, accident, or other casualty results in death, a missing person, or injury to a person or damage to property in excess of five hundred dollars, shall file with the commission a full description of the collision, accident, or other casualty, including such information and within such time limit as the commission may by regulation require.

(2) The commission or any other law enforcement agency shall notify the Nebraska State Patrol as soon as practicable in any cases of collision, accident, or other casualty involving a vessel, when the collision, accident, or other casualty results in death, a missing person, or life-threatening injury to a person.

(3) The Nebraska State Patrol shall collaborate with the commission or any other law enforcement agency in any investigations pursuant to this section.

Source: Laws 1978, LB 21, § 56; Laws 2001, LB 131, § 6; Laws 2003, LB 305, § 25.

37-1257 Transmittal of information; when.

In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the commission pursuant to sections 37-1255 and 37-1256 shall be transmitted to such official or agency of the United States.

Source: Laws 1978, LB 21, § 57.

37-1258 Water skis, surfboard, or similar device; observation required.

No person shall operate a vessel on any waters of this state for towing a person or persons on water skis, surfboard, or similar device unless there is in such vessel a person, in addition to the operator, in a position to observe the progress of the person or persons being towed, except that this section shall not apply to any motorboat equipped with a wide-angle, rearview mirror.

Source: Laws 1978, LB 21, § 58.

37-1259 Water skis, aquaplane, or similar device; operation; time restrictions.

No motorboat shall have in tow or shall otherwise be assisting a person on water skis, aquaplane, or a similar contrivance from the period of one-half hour after sunset to one-half hour prior to sunrise, except that this section shall not apply to motorboats used in duly authorized water ski tournaments, competitions, or exhibitions or trials therefor when adequate lighting is provided.

Source: Laws 1978, LB 21, § 59; Laws 1993, LB 235, § 41.

37-1260 Water skis, aquaplane, or similar device; manner of operation.

All motorboats having in tow or otherwise assisting a person on water skis, aquaplane, or similar contrivance, shall be operated in a careful and prudent manner and at a reasonable distance from persons and property so as not to endanger the life or property of any person.

Source: Laws 1978, LB 21, § 60.

37-1261 Water skis, aquaplane, or similar device; collision; operation to avoid.

No person shall operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, aquaplane, or similar device may be affected or controlled in such a way as to cause the water skis, aquaplane, or similar device, or any persons thereon to collide with or strike against any person or object, except ski jumps, buoys, and like objects normally used in competitive or recreational skiing.

Source: Laws 1978, LB 21, § 61.

37-1262 Races and exhibitions; commission authorization.

The commission may authorize the holding of regattas, motorboat or other boat races, marine parades, tournaments, or exhibitions on any waters of this state. It shall adopt and may, from time to time, amend regulations concerning the safety of motorboats and other vessels and persons thereon, either observers or participants.

Source: Laws 1978, LB 21, § 62.

37-1263 Races and exhibitions; application; when; contents.

Whenever a regatta, motorboat or other boat race, marine parade, tournament, or exhibition is proposed to be held, the person in charge thereof shall, at least fifteen days prior thereto, file an application with the commission for permission to hold such regatta, motorboat or other boat race, marine parade, tournament, or exhibition. The application shall set forth the date, time, and location where it is proposed to hold such regatta, motorboat or other boat race, marine parade, tournament or exhibition, and it shall not be conducted without authorization of the commission in writing. The provisions of this section shall not exempt any person from compliance with applicable federal law or regulations.

Source: Laws 1978, LB 21, § 63.

37-1264 Local regulation; extent permitted.

The provisions of the State Boat Act and of other applicable laws of this state shall govern the operation, equipment, numbering, and all other matters relating thereto whenever any vessel shall be operated on the waters of this state or when any activity regulated by the act shall take place thereon; but nothing in the act shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels the provisions of which are identical to the provisions of the act or rules or regulations issued thereunder, but such ordinances or local laws shall be operative only so long as and to the extent that they continue to be identical to provisions of the State Boat Act or rules or regulations issued thereunder.

Source: Laws 1978, LB 21, § 64; Laws 1999, LB 176, § 122.

37-1265 Local regulation; special rules and regulations.

Any subdivision of this state may at any time, but only after public notice, make formal application to the commission for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

Source: Laws 1978, LB 21, § 65.

37-1266 Commission; special rules and regulations.

The commission is hereby authorized to make special rules and regulations with reference to the operation of vessels, including waterskiing and other related activities, on any specific water or waters within the territorial limits of this state.

Source: Laws 1978, LB 21, § 66.

37-1267 Civil liability of owner; recovery limited to actual damages.

The owner of a vessel shall be liable for any injury or damage occasioned by the negligent operation of such vessel, whether such negligence consists of a violation of the provisions of the statutes of this state or neglecting to observe such ordinary care and such operation as the rules of the common law require. The owner shall not be liable unless such vessel is being used with his or her express or implied consent. It shall be presumed that such vessel is being operated with the knowledge and consent of the owner, if at the time of the

injury or damage, it is under the control of his or her spouse, father, mother, brother, sister, son, daughter, or other immediate member of the owner's family. Nothing contained in this section shall be construed to relieve any other person from any liability which he would otherwise have, but nothing contained in this section shall be construed to authorize or permit any recovery in excess of injury or damage actually incurred.

Source: Laws 1978, LB 21, § 67.

37-1268 Commission; rules and regulations.

The commission shall adopt and promulgate such rules and regulations as are necessary to carry out the State Boat Act. In adopting such rules and regulations, the commission shall be governed by the provisions of the Administrative Procedure Act.

Source: Laws 1978, LB 21, § 68; Laws 1999, LB 176, § 123.

Cross References

Administrative Procedure Act, see section 84-920.

37-1269 Conservation and peace officers; enforcement of act.

Every conservation officer and peace officer of this state and its subdivisions shall have the duty and authority to enforce the State Boat Act and in the exercise thereof shall have the authority to stop and board any vessel subject to the act.

Source: Laws 1978, LB 21, § 69; Laws 1998, LB 922, § 400.

37-1270 Violations; general penalty.

Any person who violates any provisions of the State Boat Act, or any provisions of the rules and regulations established by the commission pursuant thereto, for which a penalty is not otherwise provided, shall be guilty of a Class V misdemeanor for each such violation.

Source: Laws 1978, LB 21, § 70; Laws 1999, LB 176, § 124.

37-1271 Violations; penalty.

Any person who violates any provision of sections 37-1241.02 to 37-1241.05, 37-1241.07, 37-1251, 37-1252, or 37-1258 to 37-1261 shall be guilty of a Class IV misdemeanor for each violation.

Source: Laws 1978, LB 21, § 71; Laws 1999, LB 176, § 125.

37-1272 Operation of vessel in violation of law; penalty.

Any person who violates any provision of section 37-1254 shall be guilty of a Class II misdemeanor for each such violation.

Source: Laws 1978, LB 21, § 72.

37-1273 Fees; placed in State Game Fund; how used.

All fees as provided by the State Boat Act shall be remitted to the State Treasurer for credit to the State Game Fund to be used primarily for (1) administration and enforcement of the State Boat Act, (2) boating safety educational programs, (3) the construction and maintenance of boating and docking facilities, navigation aids, and access to boating areas and such other

uses as will promote the safety and convenience of the boating public in Nebraska, and (4) publishing costs subject to the restrictions and limitations in section 37-324. Secondary uses for the fees shall be for the propagation, importation, protection, preservation, and distribution of game and fish and necessary equipment therefor and all things pertaining thereto.

Source: Laws 1978, LB 21, § 73; Laws 1987, LB 785, § 2; Laws 1998, LB 922, § 401; Laws 2003, LB 305, § 26.

37-1274 Transferred to section 37-1291.

37-1275 Manufacturer's or importer's certificate; required.

No manufacturer, importer, dealer, or other person shall sell or otherwise dispose of a new motorboat to a dealer to be used by such dealer for purposes of display and resale without delivering to the dealer a duly executed manufacturer's or importer's certificate with assignments on the certificate to show title in the purchaser of the motorboat and affixing to the motorboat its hull identification number if not already affixed. No dealer shall purchase or acquire a new motorboat without obtaining from the seller a manufacturer's or importer's certificate.

Source: Laws 1994, LB 123, § 3; Laws 1996, LB 464, § 11.

37-1276 Certificate of title; assignment required; exemption.

(1) Except as provided in subsection (2) of this section or section 37-1275, (a) no person shall sell or otherwise dispose of a motorboat without delivering to the purchaser or transferee of the motorboat a certificate of title with an assignment on the certificate to show title in the purchaser and affixing to the motorboat its hull identification number if not already affixed and (b) no person shall purchase or otherwise acquire or bring into this state a motorboat without complying with sections 37-1275 to 37-1287 except for temporary use.

(2) A motorboat manufactured before November 1, 1972, is exempt from the requirement to have a certificate of title. A motorboat owned by the United States, the State of Nebraska, or an agency or political subdivision of either is exempt from the requirement to have a certificate of title.

(3) No purchaser or transferee shall receive a certificate of title which does not contain an assignment to show title in the purchaser or transferee. Possession of a title which does not meet this requirement shall be prima facie evidence of a violation of this section.

Source: Laws 1994, LB 123, § 4; Laws 1996, LB 464, § 12; Laws 1997, LB 720, § 3.

37-1277 Acquisition of motorboat; requirements.

(1) Except as provided in subsections (2) and (3) of this section, no person acquiring a motorboat from the owner thereof, whether the owner is a manufacturer, importer, dealer, or otherwise, shall acquire any right, title, claim, or interest in or to such motorboat until he or she has physical possession of the motorboat and a certificate of title or a manufacturer's or importer's certificate with assignments on the certificate to show title in the purchaser or an instrument in writing required by section 37-1281. No waiver or estoppel shall operate in favor of such person against a person having physical possession of the motorboat and the certificate of title, the manufacturer's or importer's

certificate, or an instrument in writing required by section 37-1281. No court in any case at law or in equity shall recognize the right, title, claim, or interest of any person in or to any motorboat sold, disposed of, mortgaged, or encumbered unless there is compliance with this section.

(2) A motorboat manufactured before November 1, 1972, is exempt from the requirement to have a certificate of title. If a person acquiring a motorboat which is exempt from the requirement to have a certificate of title desires to acquire a certificate of title for the motorboat, the person may apply for a certificate of title pursuant to section 37-1278.

(3) A motorboat owned by the United States, the State of Nebraska, or an agency or political subdivision of either is exempt from the requirement to have a certificate of title. A person other than an agency or political subdivision acquiring such a motorboat which is not covered under subsection (2) of this section shall apply for a certificate of title pursuant to section 37-1278. The person shall show proof of purchase from a governmental agency or political subdivision to obtain a certificate of title.

Source: Laws 1994, LB 123, § 5; Laws 1996, LB 464, § 13; Laws 1997, LB 720, § 4.

37-1278 Certificate of title; application; issuance; transfer of motorboat.

(1) Application for a certificate of title shall be presented to the county clerk or designated county official, shall be made upon a form prescribed by the Department of Motor Vehicles, and shall be accompanied by the fee prescribed in section 37-1287. The owner of a motorboat for which a certificate of title is required shall obtain a certificate of title prior to registration required under section 37-1214.

(2) If a certificate of title has previously been issued for the motorboat in this state, the application for a new certificate of title shall be accompanied by the certificate of title duly assigned. If a certificate of title has not previously been issued for the motorboat in this state, the application shall be accompanied by a certificate of number from this state, a manufacturer's or importer's certificate, a duly certified copy thereof, proof of purchase from a governmental agency or political subdivision, a certificate of title from another state, or a court order issued by a court of record, a manufacturer's certificate of origin, or an assigned registration certificate, if the motorboat was brought into this state from a state which does not have a certificate of title law. The county clerk or designated county official shall retain the evidence of title presented by the applicant on which the certificate of title is issued. When the evidence of title presented by the applicant is a certificate of title or an assigned registration certificate issued by another state, the department shall notify the state of prior issuance that the certificate has been surrendered. If a certificate of title has not previously been issued for the motorboat in this state and the applicant is unable to provide such documentation, the applicant may apply for a bonded certificate of title as prescribed in section 37-1278.01.

(3) The county clerk or designated county official shall use reasonable diligence in ascertaining whether or not the statements in the application for a certificate of title are true by checking the application and documents accompanying the same with the records of motorboats in his or her office. If he or she is satisfied that the applicant is the owner of the motorboat and that the application is in the proper form, the county clerk or designated county official

shall issue a certificate of title over his or her signature and sealed with his or her seal.

(4) In the case of the sale of a motorboat, the certificate of title shall be obtained in the name of the purchaser upon application signed by the purchaser, except that for titles to be held by husband and wife, applications may be accepted by the county clerk or designated county official upon the signature of either spouse as a signature for himself or herself and as an agent for his or her spouse.

(5) In all cases of transfers of motorboats, the application for a certificate of title shall be filed within thirty days after the delivery of the motorboat. A dealer need not apply for a certificate of title for a motorboat in stock or acquired for stock purposes, but upon transfer of a motorboat in stock or acquired for stock purposes, the dealer shall give the transferee a reassignment of the certificate of title on the motorboat or an assignment of a manufacturer's or importer's certificate. If all reassignments printed on the certificate of title have been used, the dealer shall obtain title in his or her name prior to any subsequent transfer.

(6) If a county board consolidates services under the office of a designated county official other than the county clerk pursuant to section 23-186, the powers and duties of the county clerk relating to motorboat titles under sections 37-1278 to 37-1289 shall be performed by the designated county official.

Source: Laws 1994, LB 123, § 6; Laws 1996, LB 464, § 14; Laws 1997, LB 635, § 14; Laws 1997, LB 720, § 5; Laws 2000, LB 1317, § 1.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1278.01 Bonded certificate of title; requirements; fee.

(1) The Department of Motor Vehicles shall issue a bonded certificate of title to an applicant who:

(a) Presents evidence reasonably sufficient to satisfy the department of the applicant's ownership of the motorboat or security interest in the motorboat;

(b) Pays a fee of fifty dollars for motorboats manufactured on or after January 1, 1990, and twenty dollars for motorboats manufactured prior to January 1, 1990; and

(c) Files a bond in a form prescribed by the department and executed by the applicant.

(2) The bond shall be issued by a surety company authorized to transact business in this state, in an amount equal to one and one-half times the value of the motorboat as determined by the department using reasonable appraisal methods, and conditioned to indemnify any prior owner and secured party, any subsequent purchaser and secured party, and any successor of the purchaser and secured party for any expense, loss, or damage, including reasonable attorney's fees, incurred by reason of the issuance of the certificate of title to the motorboat or any defect in or undisclosed security interest upon the right, title, and interest of the applicant in and to the motorboat. An interested person may have a cause of action to recover on the bond for a breach of the conditions of the bond. The aggregate liability of the surety to all persons having a claim shall not exceed the amount of the bond.

(3) At the end of three years after the issuance of the bond, the holder of the certificate of title may apply to the department on a form prescribed by the department for the release of the bond and the removal of the notice required by subsection (4) of this section if no claim has been made on the bond. The department may release the bond at the end of three years after the issuance of the bond if all questions as to the ownership of the motorboat have been answered to the satisfaction of the department unless the department has been notified of the pendency of an action to recover on the bond. If the currently valid certificate of title is surrendered to the department, the department may release the bond prior to the end of the three-year period.

(4) The department shall include the following statement on a bonded certificate of title issued pursuant to this section and any subsequent title issued as a result of a title transfer while the bond is in effect:

NOTICE: THIS MOTORBOAT MAY BE SUBJECT TO AN UNDISCLOSED INTEREST, BOND NUMBER

(5) The department shall recall a bonded certificate of title if the department finds that the application for the title contained a false statement or if a check presented by the applicant for fees pursuant to this section is returned uncollected by a financial institution.

(6) The department shall remit fees collected pursuant to this section to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 1996, LB 464, § 15; Laws 1997, LB 635, § 15; Laws 1997, LB 720, § 6; Laws 2000, LB 1317, § 2.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1279 Certificate of title; issuance; form; county clerk or designated county official; duties; filing.

(1) The county clerk or designated county official shall issue the certificate of title. One copy shall be retained by the county clerk or designated county official in his or her office, and the other copy shall be transmitted on the day of issuance to the Department of Motor Vehicles. The county clerk or designated county official shall sign and affix his or her seal to the original certificate of title and deliver the certificate to the applicant if there are no liens on the motorboat or deliver or mail the certificate to the holder of the first lien on the day of issuance if there are liens on the motorboat. The county clerk or designated county official shall keep on hand a sufficient supply of blank forms which shall be furnished and distributed without charge to manufacturers, dealers, or other persons residing within the county, except that certificates of title shall only be issued by the county clerk, designated county official, or the department. Each county shall issue and file certificates of title using the vehicle titling and registration computer system. The department shall use a portion of the fees appropriated from boat titling and credited to the Department of Motor Vehicles Cash Fund to pay for the costs of the boat titling system. The costs shall be limited to printers as deemed necessary by the department to support the issuance of boat titles by the counties.

(2) Each county clerk or designated county official of the various counties shall provide his or her seal without charge to the applicant on any certificate of title, application for certificate of title, duplicate copy, assignment or reas-

signment, power of attorney, statement, or affidavit pertaining to the issuance of a certificate of title. The department shall prescribe a uniform method of numbering certificates of title.

(3) The county clerk or designated county official shall (a) file all certificates of title according to rules and regulations of the department, (b) maintain in the office indices for such certificates of title, (c) be authorized to destroy all previous records five years after a subsequent transfer has been made on a motorboat, and (d) be authorized to destroy all certificates of title and all supporting records and documents which have been on file for a period of five years or more from the date of filing the certificate or a notation of lien, whichever occurs later. Any person holding a certificate of title to a motorboat may refile the same with the county clerk or designated county official to prevent destruction of the county clerk's or designated county official's records.

Source: Laws 1994, LB 123, § 7; Laws 1996, LB 464, § 16.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1280 Department of Motor Vehicles; powers and duties; rules and regulations; cancellation of certificate of title.

The Department of Motor Vehicles shall adopt and promulgate rules and regulations necessary to carry out sections 37-1275 to 37-1290, and the county clerks or designated county officials shall conform to the rules and regulations and act at the direction of the department. The department shall also provide the county clerks or designated county officials with the necessary training for the proper administration of such sections. The department shall receive and file in its office all instruments forwarded to it by the county clerks or designated county officials under such sections and shall maintain indices covering the entire state for the instruments so filed. These indices shall be by hull identification number and alphabetically by the owner's name and shall be for the entire state and not for individual counties. The department shall provide and furnish the forms required by section 37-1286 to the county clerks or designated county officials except manufacturers' or importers' certificates. The department shall check with its records all duplicate certificates of title received from the county clerks or designated county officials. If it appears that a certificate of title has been improperly issued, the department shall cancel the certificate of title. Upon cancellation of any certificate of title, the department shall notify the county clerk or designated county official who issued the certificate, and the county clerk or designated county official shall enter the cancellation upon his or her records. The department shall also notify the person to whom such certificate of title was issued and any lienholders appearing on the certificate of the cancellation and shall demand the surrender of the certificate of title, but the cancellation shall not affect the validity of any lien noted on the certificate. The holder of the certificate of title shall return the certificate to the department immediately. If a certificate of number has been issued pursuant to section 37-1216 to the holder of a certificate of title so canceled, the department shall notify the commission. Upon receiving the notice, the commission shall immediately cancel the certificate of number and

demand the return of the certificate of number and the holder of the certificate of number shall return the certificate to the commission immediately.

Source: Laws 1994, LB 123, § 8; Laws 1996, LB 464, § 17.

37-1281 Motorboat sale; sale instrument; contents.

Every motorboat sale between a manufacturer or distributor shall be evidenced by an instrument in writing upon a form that may be promulgated by the Department of Motor Vehicles and approved by the Attorney General which shall contain all the agreements of the parties and shall be signed by the buyer and seller or a duly acknowledged agent of the seller. Prior to or concurrent with any such motorboat sale, the seller shall deliver to the buyer one instrument which shall contain the following information: (1) Name of seller; (2) name of buyer; (3) year of model, manufacturer's name, hull identification number, and hull length; (4) cash sale price; (5) the amount of buyer's downpayment and whether made in money or goods or partly in money and partly in goods, including a brief description of any goods traded in; (6) the difference between subdivisions (4) and (5) of this section; (7) the amount included for insurance if a separate charge is made therefor, specifying the types of coverages; (8) the basic time-price, which is the sum of subdivisions (6) and (7) of this section; (9) the time-price differential; (10) the amount of the time-price balance, which is the sum of subdivisions (8) and (9) of this section payable in installments by the buyer to the seller; (11) the number, amount, and due date or period of each installment payment; (12) the time-sale price; (13) whether the sale is as is or subject to warranty and, if subject to warranty, specifying the warranty; and (14) if repairs or inspections arising out of the conduct of a dealer's business cannot be provided by the dealer in any representations or warranties that may arise, the instrument shall so state that fact and shall provide the purchaser with the location of a facility where such repairs or inspections can be accomplished as provided for in the service contract. A copy of all such instruments shall be retained in the file of the dealer for five years from the date of sale.

Source: Laws 1994, LB 123, § 9.

37-1282 Security interest; financing instruments; provisions applicable; priority; notation of liens; cancellation.

(1) The provisions of article 9, Uniform Commercial Code, shall not be construed to apply to or to permit or require the deposit, filing, or other record whatsoever of a security agreement, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or similar instrument or any copy of the same covering a motorboat. Any mortgage, conveyance intended to operate as a security agreement as provided by article 9, Uniform Commercial Code, trust receipt, conditional sales contract, or other similar instrument covering a motorboat, if such instrument is accompanied by delivery of such manufacturer's or importer's certificate and followed by actual and continued possession of same by the holder of the instrument or, in the case of a certificate of title, if a notation of same has been made by the county clerk, the designated county official, or the Department of Motor Vehicles on the face of the certificate of title, shall be valid as against the creditors of the debtor, whether armed with process or not, and subsequent purchasers, secured parties, and other lienholders or claimants, but otherwise shall not be valid

against them, except that during any period in which a motorboat is inventory, as defined in section 9-102, Uniform Commercial Code, held for sale by a person or corporation that is in the business of selling motorboats, the filing provisions of article 9, Uniform Commercial Code, as applied to inventory, shall apply to a security interest in the motorboat created by such person or corporation as debtor without the notation of lien on the instrument of title. A buyer at retail from a dealer of any motorboat in the ordinary course of business shall take the motorboat free of any security interest.

(2) All liens, security agreements, and encumbrances noted upon a certificate of title shall take priority according to the order of time in which the same are noted on the certificate of title by the county clerk, the designated county official, or the department. Exposure for sale of any motorboat by the owner thereof with the knowledge or with the knowledge and consent of the holder of any lien, security agreement, or encumbrance on the motorboat shall not render the same void or ineffective as against the creditors of the owner or holder of subsequent liens, security agreements, or encumbrances upon the motorboat.

(3) Upon presentation of a security agreement, trust receipt, conditional sales contract, or similar instrument to the county clerk or designated county official of the county where the certificate of title was issued or, if issued by the department, to the department together with the certificate of title and the fee prescribed by section 37-1287, the holder of such instrument may have a notation of the lien made on the face of the certificate of title. The owner of a motorboat may present a valid out-of-state certificate of title issued to such owner for such motorboat with a notation of lien on such certificate of title and the prescribed fee to the county clerk, designated county official, or department and have the notation of lien made on the face of the new certificate of title issued pursuant to section 37-1278 without presenting a copy of the lien instrument. The county clerk, the designated county official, or the department shall enter the notation and the date thereof over the signature of the person making the notation and the seal of office and shall also note the lien and the date thereof on the duplicate of the certificate of title on file. The county clerk, the designated county official, or the department shall also indicate by appropriate notation and on such instrument itself the fact that the lien has been noted on the certificate of title.

(4) The county clerk, the designated county official, or the department, upon receipt of a lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments together with the fee prescribed for notation of lien, shall notify the first lienholder to deliver to the county clerk, the designated county official, or the department, within fifteen days from the date of notice, the certificate of title to permit notation of the junior lien and, after notation of the lien, the county clerk, the designated county official, or the department shall deliver the certificate of title to the first lienholder. The holder of a certificate of title who refuses to deliver a certificate of title to the county clerk, the designated county official, or the department for the purpose of showing a junior lien on the certificate of title within fifteen days from the date when notified to do so shall be liable for damages to the junior lienholder for the amount of damages the junior lienholder suffered by reason of the holder of the certificate of title refusing to permit the showing of the lien on the certificate of title.

(5) When the lien is discharged, the holder shall, within fifteen days after payment is received, note a cancellation of the lien on the face of the certificate of title over his, her, or its signature and deliver the certificate of title to the county clerk, the designated county official, or the department which shall note the cancellation of the lien on the face of the certificate of title and on the records of the office. If delivered to a county clerk or designated county official, he or she shall on that day notify the department which shall note the cancellation on its records. The county clerk, the designated county official, or the department shall then return the certificate of title to the owner or as otherwise directed by the owner. The cancellation of the lien shall be noted on the certificate of title without charge.

(6) Any exchange of information may be accomplished by the computerized exchange of information or by any other exchange of electrically, electronically, telephonically, or mechanically processed information.

Source: Laws 1994, LB 123, § 10; Laws 1996, LB 464, § 18; Laws 1999, LB 550, § 7; Laws 2008, LB756, § 1.
Operative date July 18, 2008.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1283 New certificate; when issued; proof required; processing of application.

(1) In the event of the transfer of ownership of a motorboat by operation of law as upon inheritance, devise, or bequest, order in bankruptcy, insolvency, replevin, or execution sale, (2) whenever a motorboat is sold to satisfy storage or repair charges, or (3) whenever repossession is had upon default in performance of the terms of a chattel mortgage, trust receipt, conditional sales contract, or other like agreement, the county clerk or designated county official of the county in which the last certificate of title to the motorboat was issued or the Department of Motor Vehicles if the last certificate of title was issued by the department, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof of ownership and right of possession to the motorboat, and upon payment of the fee prescribed in section 37-1287 and the presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto. If the prior certificate of title issued for the motorboat provided for joint ownership with right of survivorship, a new certificate of title shall be issued to a subsequent purchaser upon the assignment of the prior certificate of title by the surviving owner and presentation of satisfactory proof of death of the deceased owner. Only an affidavit by the person or agent of the person to whom possession of the motorboat has so passed, setting forth facts entitling him or her to such possession and ownership, together with a copy of the journal entry, court order, or instrument upon which such claim of possession and ownership is founded shall be considered satisfactory proof of ownership and right of possession, except that if the applicant cannot produce such proof of ownership, he or she may submit to the department such evidence as he or she may have and the department may thereupon, if it finds the evidence sufficient, issue the certificate of title or authorize the county clerk or designated county official to issue a certificate of title, as the case may be. If from the records in the office of the county clerk, the designated county official, or the

department there appear to be any liens on the motorboat, the certificate of title shall contain a statement of the liens unless the application is accompanied by proper evidence of their satisfaction or extinction. If the county in which the last certificate of title to the motorboat was issued cannot be determined, the application for title shall be processed by the county clerk or designated county official of the county where the court entering the journal entry or order is located or the county where the instrument was executed upon which the claim of possession and ownership is founded as the case may be.

Source: Laws 1994, LB 123, § 11; Laws 1996, LB 464, § 19.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1284 Certificate; loss or destruction; replacement; subsequent purchaser, rights; recovery of original; duty of owner.

In the event of a lost or destroyed certificate of title, the owner of the motorboat or the holder of a lien on the motorboat shall apply, upon a form prescribed by the Department of Motor Vehicles, to the county clerk or designated county official of the county where the certificate of title was issued or, if issued by the department, to the department, for a certified copy of the certificate of title and shall pay the fee prescribed by section 37-1287. The application shall be signed and sworn to by the person making the application. The county clerk or designated county official, with the approval of the department, or the department shall issue a certified copy of the certificate of title to the person entitled to receive the certificate of title. If the county clerk's or designated county official's records of the title have been destroyed pursuant to section 37-1279, the county clerk or designated county official shall issue a duplicate certificate of title to the person entitled to receive the certificate upon such showing as the county clerk or designated county official deems sufficient. If the applicant cannot produce such proof of ownership, he or she may apply directly to the department and submit such evidence as he or she may have, and the department may, if it finds the evidence sufficient, authorize the county clerk or designated county official to issue a duplicate certificate of title. The new purchaser shall be entitled to receive an original title upon presentation of the assigned duplicate copy of the certificate of title, properly assigned to the new purchaser, to the county clerk or designated county official as prescribed in section 37-1278. Any purchaser of the motorboat may at the time of purchase require the seller of the motorboat to indemnify him or her and all subsequent purchasers of the motorboat against any loss which he, she, or they may suffer by reason of any claim presented upon the original certificate. In the event of the recovery of the original certificate of title by the owner, he or she shall immediately surrender the certificate to the county clerk, the designated county official, or the department for cancellation.

Source: Laws 1994, LB 123, § 12; Laws 1996, LB 464, § 20.

37-1285 Certificate; surrender and cancellation; when required.

Each owner of a motorboat and each person mentioned as owner in the last certificate of title, when the motorboat is dismantled, destroyed, or changed in such a manner that it loses its character as a motorboat or changed in such a manner that it is not the motorboat described in the certificate of title, shall surrender his or her certificate of title to the county clerk or designated county

official of the county where the certificate of title was issued or, if issued by the Department of Motor Vehicles, to the department. If the certificate of title is surrendered to the county clerk or designated county official, he or she shall, with the consent of any holders of any liens noted on the certificate, enter a cancellation upon his or her records and shall notify the department of the cancellation. If the certificate is surrendered to the department, it shall, with the consent of any holder of any lien noted on the certificate, enter a cancellation upon its records. Upon cancellation of a certificate of title in the manner prescribed by this section, the county clerk or designated county official and the department may cancel and destroy all certificates and all memorandum certificates in that chain of title.

Source: Laws 1994, LB 123, § 13; Laws 1996, LB 464, § 21.

37-1286 Forms; contents; assignment of hull identification number; fee.

A certificate of title shall be printed upon safety security paper to be selected by the Department of Motor Vehicles. The certificate of title, manufacturer's statement of origin, and assignment of manufacturer's certificate shall be upon forms prescribed by the department and may include county of issuance, date of issuance, certificate of title number, previous certificate of title number, name and address of the owner, acquisition date, manufacturer's name, model year, hull identification number, hull material, propulsion, hull length, issuing county clerk's or designated county official's signature and official seal, and sufficient space for the notation and release of liens, mortgages, or encumbrances, if any. If a motorboat does not have a hull identification number, the state shall assign a hull identification number.

An assignment of certificate of title shall appear on each certificate of title and shall include a statement that the owner of the motorboat assigns all his or her right, title, and interest in the motorboat, the name and address of the assignee, the name and address of the lienholder or secured party, if any, and the signature of the owner.

A reassignment by a dealer shall appear on each certificate of title and shall include a statement that the dealer assigns all his or her right, title, and interest in the motorboat, the name and address of the assignee, the name and address of the lienholder or secured party, if any, and the signature of the dealer or designated representative. Reassignments shall be printed on the reverse side of each certificate of title as many times as convenient. The department may, with the approval of the Attorney General, require additional information on such forms.

The county clerk or designated county official, subject to the approval of the department, shall assign a distinguishing hull identification number to any homebuilt motorboat or any motorboat manufactured prior to November 1, 1972. Hull identification numbers shall be assigned and affixed in conformity with the Federal Boat Safety Act of 1971. The county clerk or designated county official shall charge a nonrefundable fee of twenty dollars for each hull identification number and shall remit the fee to the department. The department shall remit the fees to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 1994, LB 123, § 14; Laws 1996, LB 464, § 22; Laws 1997, LB 720, § 7.

37-1287 Fees; disposition.

(1) The county clerks, the designated county officials, or the Department of Motor Vehicles shall charge a fee of six dollars for each certificate of title and a fee of three dollars for each notation of any lien on a certificate of title. The county clerks or designated county officials shall retain for the county four dollars of the six dollars charged for each certificate of title and two dollars for each notation of lien. The remaining amount of the fee charged for the certificate of title and notation of lien under this subsection shall be remitted to the State Treasurer for credit to the General Fund.

(2) The county clerks, the designated county officials, or the department shall charge a fee of ten dollars for each replacement or duplicate copy of a certificate of title, and the duplicate copy issued shall show only those unreleased liens of record. A fee of four dollars shall be charged for refiling a certificate of title pursuant to section 37-1279. Such fees shall be remitted by the county or the department to the State Treasurer for credit to the General Fund.

(3) In addition to the fees prescribed in subsections (1) and (2) of this section, the county clerks, the designated county officials, or the department shall charge a fee of four dollars for each certificate of title, each replacement or duplicate copy of a certificate of title, each refiling of a certificate of title, and each notation of lien on a certificate of title. The county clerks, the designated county officials, or the department shall remit the fee charged under this subsection to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(4) The county clerks or designated county officials shall remit fees due the State Treasurer for credit to the General Fund under this section monthly and not later than the fifth day of the month following collection. The county clerks or designated county officials shall remit fees not due to the State Treasurer for credit to the General Fund to their respective county treasurers who shall credit the fees to the county general fund.

Source: Laws 1994, LB 123, § 15; Laws 1995, LB 467, § 1; Laws 1996, LB 464, § 23.

37-1288 Prohibited acts; penalty.

It shall be a Class IV felony to (1) forge any certificate of title or manufacturer's or importer's certificate to a motorboat, any assignment of either, or any cancellation of any liens on a motorboat, (2) hold or use such certificate, assignment, or cancellation knowing the same to have been forged, (3) procure or attempt to procure a certificate of title to a motorboat or pass or attempt to pass a certificate of title or any assignment thereof to a motorboat, knowing or having reason to believe that such motorboat has been stolen, or (4) knowingly use a false or fictitious name, knowingly give a false or fictitious address, or knowingly make any false statement in any application or affidavit required under sections 37-1275 to 37-1287 or in a bill of sale or sworn statement of ownership.

Source: Laws 1994, LB 123, § 16; Laws 1996, LB 464, § 24.

37-1289 Violations; penalty.

It shall be a Class III misdemeanor to (1) operate in this state a motorboat for which a certificate of title is required without having a certificate of title or upon which the certificate of title has been canceled, (2) acquire, purchase, hold, or display for sale a new motorboat without having obtained a manufacturer's or importer's certificate or a certificate of title therefor, (3) fail to surrender any certificate of title or any certificate of number upon cancellation of the certificate by the county clerk, the designated county official, or the Department of Motor Vehicles and notice thereof, (4) fail to surrender the certificate of title to the county clerk or designated county official in case of the destruction or dismantling or change of a motorboat in such respect that it is not the motorboat described in the certificate of title, (5) purport to sell or transfer a motorboat without delivering to the purchaser or transferee of the motorboat a certificate of title if required or a manufacturer's or importer's certificate thereto duly assigned to the purchaser, (6) knowingly alter or deface a certificate of title, or (7) violate any of the other provisions of sections 37-1275 to 37-1287.

Source: Laws 1994, LB 123, § 17; Laws 1996, LB 464, § 25; Laws 1997, LB 720, § 8.

37-1290 Security interest perfected prior to January 1, 1997; treatment; notation of lien.

(1) Any security interest in a motorboat perfected prior to January 1, 1997, shall continue to be perfected (a) until the financing statement perfecting such security interest is terminated or would have lapsed in the absence of the filing of a continuation statement pursuant to article 9, Uniform Commercial Code, or (b) until a motorboat certificate of title is issued and a lien noted on the face thereof pursuant to section 37-1282.

(2) Any lien noted on the face of a motorboat certificate of title after January 1, 1997, pursuant to subsection (1) of this section, on behalf of the holder of a security interest in the motorboat, shall have priority as of the date such security interest was originally perfected.

(3) The holder of a motorboat certificate of title shall, upon request, surrender the motorboat certificate of title to a holder of a security interest in the motorboat which was perfected prior to January 1, 1997, to permit notation of a lien on the motorboat certificate of title and shall do such other acts as may be required to permit such notation.

(4) The assignment, release, or satisfaction of a security interest in a motorboat shall be governed by the laws under which it was perfected.

Source: Laws 1994, LB 123, § 18; Laws 1999, LB 550, § 8.

37-1291 Nontransferable certificate of title; issued; when; effect.

When an insurance company authorized to do business in Nebraska acquires a motorboat which has been properly titled and registered in a state other than Nebraska through payment of a total loss settlement on account of theft and the motorboat has not become unusable for transportation through damage and has not sustained any malfunction beyond reasonable maintenance and repair, the company shall obtain the certificate of title from the owner and may make application for a nontransferable certificate of title by surrendering the certificate of title to the county clerk. A nontransferable certificate of title shall be issued in the same manner and for the same fee as provided for a certificate of

title in sections 37-1275 to 37-1287 and shall be on a form prescribed by the Department of Motor Vehicles.

A motorboat which has a nontransferable certificate of title shall not be sold or otherwise transferred or disposed of without first obtaining a certificate of title under sections 37-1275 to 37-1287.

When a nontransferable certificate of title is surrendered for a certificate of title, the application shall be accompanied by a statement from the insurance company stating that to the best of its knowledge the motorboat has not become unusable for transportation through damage and has not sustained any malfunction beyond reasonable maintenance and repair. The statement shall not constitute or imply a warranty of condition to any subsequent purchaser or operator of the motorboat.

Source: Laws 1978, LB 21, § 74; Laws 1989, LB 195, § 11; Laws 1993, LB 235, § 44; R.S.Supp., 1993, § 37-1274; Laws 1994, LB 123, § 20; Laws 1996, LB 464, § 26; Laws 1998, LB 922, § 402; Laws 1999, LB 176, § 126; Laws 2004, LB 560, § 4.

37-1292 Salvage certificate of title; terms, defined.

For purposes of this section and sections 37-1293 to 37-1298:

(1) Cost of repairs means the estimated or actual retail cost of parts needed to repair a motorboat plus the cost of labor computed by using the hourly labor rate and time allocations for repair that are customary and reasonable. Retail cost of parts and labor rates may be based upon collision estimating manuals or electronic computer estimating systems customarily used in the insurance industry;

(2) Late model motorboat means a motorboat which has (a) a manufacturer's model year designation of, or later than, the year in which the motorboat was wrecked, damaged, or destroyed, or any of the six preceding years, or (b) a retail value of more than ten thousand dollars until January 1, 2006, a retail value of more than ten thousand five hundred dollars until January 1, 2010, and a retail value of more than ten thousand five hundred dollars increased by five hundred dollars every five years thereafter;

(3) Previously salvaged means the designation of a rebuilt or reconstructed motorboat which was previously required to be issued a salvage branded certificate of title;

(4) Retail value means the actual cash value, fair market value, or retail value of a motorboat as (a) set forth in a current edition of any nationally recognized compilation, including automated data bases, of retail values or (b) determined pursuant to a market survey of comparable motorboats with respect to condition and equipment; and

(5) Salvage means the designation of a motorboat which is:

(a) A late model motorboat which has been wrecked, damaged, or destroyed to the extent that the estimated total cost of repair to rebuild or reconstruct the motorboat to its condition immediately before it was wrecked, damaged, or destroyed and to restore the motorboat to a condition for legal operation, meets or exceeds seventy-five percent of the retail value of the motorboat at the time it was wrecked, damaged, or destroyed; or

(b) Voluntarily designated by the owner of the motorboat as a salvage motorboat by obtaining a salvage branded certificate of title, without respect to the damage to, age of, or value of the motorboat.

Source: Laws 2004, LB 560, § 5.

37-1293 Salvage branded certificate of title; when issued; procedure.

When an insurance company acquires a salvage motorboat through payment of a total loss settlement on account of damage, the company shall obtain the certificate of title from the owner, surrender such certificate of title to the county clerk, and make application for a salvage branded certificate of title which shall be assigned when the company transfers ownership. An insurer shall take title to a salvage motorboat for which a total loss settlement is made unless the owner of the motorboat elects to retain the motorboat. If the owner elects to retain the motorboat, the insurance company shall notify the Department of Motor Vehicles of such fact in a format prescribed by the department. The department shall immediately enter the salvage brand onto the computerized record of the motorboat. The insurance company shall also notify the owner of the owner's responsibility to comply with this section. The owner shall, within thirty days after the settlement of the loss, forward the properly endorsed acceptable certificate of title to the county clerk or designated county official in the county designated in section 37-1214. The county clerk or designated county official shall, upon receipt of the certificate of title, issue a salvage branded certificate of title for the motorboat.

Source: Laws 2004, LB 560, § 6.

37-1294 Salvage or previously salvaged title brand; procedure; fee.

Whenever a title is issued in this state for a motorboat that is designated as salvage or previously salvaged, the following title brands shall be required: Salvage or previously salvaged. A certificate branded salvage or previously salvaged shall be administered in the same manner and for the same fee as provided for a certificate of title in sections 37-1275 to 37-1287.

Source: Laws 2004, LB 560, § 7.

37-1295 Certificate of title; disclosures required.

A certificate of title which is issued on or after January 1, 2005, shall disclose in writing, from any records readily accessible to the Department of Motor Vehicles or county officials or a law enforcement officer, anything which indicates that the motorboat was previously issued a title in another jurisdiction that bore any word or symbol signifying that the motorboat was damaged, including, but not limited to, older model salvage, unrebuildable, parts only, scrap, junk, nonrepairable, reconstructed, rebuilt, flood damaged, damaged, or any other indication, symbol, or word of like kind, and the name of the jurisdiction issuing the previous title.

Source: Laws 2004, LB 560, § 8.

37-1296 Acquisition of salvage motorboat without salvage branded certificate of title; duties.

Any person who acquires ownership of a salvage motorboat, for which he or she does not obtain a salvage branded certificate of title, shall surrender the

certificate of title to the county clerk and make application for a salvage branded certificate of title within thirty days after acquisition or prior to the sale or resale of the motorboat or any major component part of such motorboat or use of any major component part of the motorboat, whichever occurs earlier.

Source: Laws 2004, LB 560, § 9.

37-1297 Sections; how construed.

Nothing in sections 37-1293 to 37-1298 shall be construed to require the actual repair of a wrecked, damaged, or destroyed motorboat to be designated as salvage.

Source: Laws 2004, LB 560, § 10.

37-1298 Salvage motorboat; prohibited acts; penalty.

Any person who knowingly transfers a wrecked, damaged, or destroyed motorboat in violation of sections 37-1293 to 37-1296 is guilty of a Class IV felony.

Source: Laws 2004, LB 560, § 11.

37-1299 Abandoned motorboat, defined.

(1) A motorboat is abandoned:

- (a) If left unattended for more than seven days on any public property;
- (b) If left unattended for more than seven days on private property if left initially without permission of the owner;
- (c) If left for more than seven days on private property after permission of the owner is terminated; or
- (d) If left for more than thirty days in the custody of a law enforcement agency after the agency has sent a letter to the last-registered owner under section 37-12,102.

(2) For purposes of this section:

- (a) Public property means any public park, waterfront, or other state, county, or municipally owned property; and
- (b) Private property means any privately owned property which is not included within the definition of public property.

(3) No motorboat subject to forfeiture under section 28-431 shall be deemed abandoned under this section.

Source: Laws 2004, LB 560, § 12.

37-12,100 Abandoned motorboat; title; vest in local authority or state agency; when.

If an abandoned motorboat, at the time of abandonment, has no hull identification number affixed and is of a wholesale value, taking into consideration the condition of the motorboat, of two hundred fifty dollars or less, title shall immediately vest in the local authority or state agency having jurisdiction thereof as provided in section 37-12,103. Any certificate of title issued under

this section to the local authority or state agency shall be issued at no cost to such authority or agency.

Source: Laws 2004, LB 560, § 13.

37-12,101 Local authority or state agency; powers and duties.

(1) Except for motorboats covered by section 37-12,100, the local authority or state agency having custody of an abandoned motorboat shall make an inquiry concerning the last-registered owner of such motorboat to the Department of Motor Vehicles.

(2) The local authority or state agency shall notify the last-registered owner, if any, that the motorboat in question has been determined to be abandoned and that, if unclaimed, either (a) it will be sold or will be offered at public auction after five days from the date such notice was mailed or (b) title will vest in the local authority or state agency thirty days after the date such notice was mailed. If the Department of Motor Vehicles also notifies the local authority or state agency that a lien or mortgage exists, such notice shall also be sent to the lienholder or mortgagee. Any person claiming such motorboat shall be required to pay the cost of removal and storage of such motorboat.

(3) Title to an abandoned motorboat, if unclaimed, shall vest in the local authority or state agency (a) five days after the date the notice is mailed if the motorboat will be sold or offered at public auction under subdivision (2)(a) of this section, (b) thirty days after the date the notice is mailed if the local authority or state agency will retain the motorboat, or (c) if the last-registered owner cannot be ascertained, when notice of such fact is received.

(4) After title to the abandoned motorboat vests pursuant to subsection (3) of this section, the local authority or state agency may retain for use, sell, or auction the abandoned motorboat. If the local authority or state agency has determined that the motorboat should be retained for use, the local authority or state agency shall, at the same time that the notice, if any, is mailed, publish in a newspaper of general circulation in the jurisdiction an announcement that the local authority or state agency intends to retain the abandoned vehicle for its use and that title will vest in the local authority or state agency thirty days after the publication.

Source: Laws 2004, LB 560, § 14.

37-12,102 State or local law enforcement agency; powers and duties.

A state or local law enforcement agency which has custody of a motorboat for investigatory purposes and has no further need to keep it in custody shall send a certified letter to each of the last-registered owners stating that the motorboat is in the custody of the law enforcement agency, that the motorboat is no longer needed for law enforcement purposes, and that after thirty days the agency will dispose of the motorboat. This section shall not apply to a motorboat subject to forfeiture under section 28-431. No storage fees shall be assessed against the registered owner of a motorboat held in custody for investigatory purposes under this section unless the registered owner or the person in possession of the motorboat when it is taken into custody is charged with a felony or misdemeanor related to the offense for which the law enforcement agency took the motorboat into custody. If a registered owner or the person in possession of the motorboat when it is taken into custody is charged with a felony or

misdemeanor but is not convicted, the registered owner shall be entitled to a refund of the storage fees.

Source: Laws 2004, LB 560, § 15.

37-12,103 Custody; who entitled.

If a state agency caused an abandoned motorboat described in subdivision (1)(d) of section 37-1299 to be removed from public property, the state agency shall be entitled to custody of the motorboat. If a state agency caused an abandoned motorboat described in subdivision (1)(a), (b), or (c) of section 37-1299 to be removed from public property, the state agency shall deliver the motorboat to the local authority which shall have custody. The local authority entitled to custody of an abandoned motorboat shall be the county in which the motorboat was abandoned or, if abandoned in a city or village, the city or village in which the motorboat was abandoned.

Source: Laws 2004, LB 560, § 16.

37-12,104 Proceeds of sale; disposition.

Any proceeds from the sale of an abandoned motorboat less any expenses incurred by the local authority or state agency shall be held by the local authority or state agency, without interest, for the benefit of the owner or lienholders of such motorboat for a period of two years. If not claimed within such two-year period, the proceeds shall be paid into the general fund of the local authority entitled to custody under section 37-12,103 or the General Fund if a state agency is entitled to custody under section 37-12,103.

Source: Laws 2004, LB 560, § 17.

37-12,105 Liability for removal.

Neither the owner, lessee, nor occupant of the premises from which any abandoned motorboat is removed, nor the state, city, village, or county, shall be liable for any loss or damage to such motorboat which occurs during its removal or while in the possession of the state, city, village, or county or its contractual agent or as a result of any subsequent disposition.

Source: Laws 2004, LB 560, § 18.

37-12,106 Person cannot abandon a motorboat.

No person shall cause any motorboat to be abandoned as described in subdivision (1)(a), (b), or (c) of section 37-1299.

Source: Laws 2004, LB 560, § 19.

37-12,107 Destroy, deface, or remove parts; unlawful; exception; violation; penalty.

No person other than one authorized by the appropriate local authority or state agency shall destroy, deface, or remove any part of a motorboat which is left unattended on a highway or other public place without a hull identification number affixed or which is abandoned. Anyone violating this section is guilty of a Class V misdemeanor.

Source: Laws 2004, LB 560, § 20.

37-12,108 Costs of removal and storage; last-registered owner; liable.

The last-registered owner of an abandoned motorboat shall be liable to the local authority or state agency for the costs of removal and storage of such motorboat.

Source: Laws 2004, LB 560, § 21.

37-12,109 Rules and regulations.

The Director of Motor Vehicles may adopt and promulgate rules and regulations providing for such forms and procedures as are necessary or desirable to effectuate sections 37-1299 to 37-12,110. Such rules and regulations may include procedures for the removal and disposition of hull identification numbers of abandoned motorboats, forms for local records for abandoned motorboats, and inquiries relating to ownership of such motorboats.

Source: Laws 2004, LB 560, § 22.

37-12,110 Violations; penalty.

Any person violating sections 37-1299 to 37-12,106 shall be guilty of a Class II misdemeanor.

Source: Laws 2004, LB 560, § 23.

HEALTH OCCUPATIONS AND PROFESSIONS

CHAPTER 38

HEALTH OCCUPATIONS AND PROFESSIONS

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ARTICLE 1

UNIFORM CREDENTIALING ACT

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- 38-1,139. Violations; prosecution; duty of Attorney General and county attorney.
- 38-1,140. Consultation with licensed veterinarian; zoological park or garden; conduct authorized.

38-101 Act, how cited.

Sections 38-101 to 38-1,140 and the following practice acts shall be known and may be cited as the Uniform Credentialing Act:

- (1) The Advanced Practice Registered Nurse Practice Act;
- (2) The Alcohol and Drug Counseling Practice Act;
- (3) The Athletic Training Practice Act;
- (4) The Audiology and Speech-Language Pathology Practice Act;
- (5) The Certified Nurse Midwifery Practice Act;
- (6) The Certified Registered Nurse Anesthetist Practice Act;
- (7) The Chiropractic Practice Act;
- (8) The Clinical Nurse Specialist Practice Act;
- (9) The Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;
- (10) The Dentistry Practice Act;
- (11) The Emergency Medical Services Practice Act;
- (12) The Environmental Health Specialists Practice Act;
- (13) The Funeral Directing and Embalming Practice Act;
- (14) The Hearing Aid Instrument Dispensers and Fitters Practice Act;

- (15) The Licensed Practical Nurse-Certified Practice Act;
- (16) The Massage Therapy Practice Act;
- (17) The Medical Nutrition Therapy Practice Act;
- (18) The Medical Radiography Practice Act;
- (19) The Medicine and Surgery Practice Act;
- (20) The Mental Health Practice Act;
- (21) The Nurse Practice Act;
- (22) The Nurse Practitioner Practice Act;
- (23) The Nursing Home Administrator Practice Act;
- (24) The Occupational Therapy Practice Act;
- (25) The Optometry Practice Act;
- (26) The Perfusion Practice Act;
- (27) The Pharmacy Practice Act;
- (28) The Physical Therapy Practice Act;
- (29) The Podiatry Practice Act;
- (30) The Psychology Practice Act;
- (31) The Respiratory Care Practice Act;
- (32) The Veterinary Medicine and Surgery Practice Act; and
- (33) The Water Well Standards and Contractors' Practice Act.

If there is any conflict between any provision of sections 38-101 to 38-1,139 and any provision of a practice act, the provision of the practice act shall prevail.

The Revisor of Statutes shall assign the Uniform Credentialing Act, including the practice acts enumerated in subdivisions (1) through (32) of this section, to consecutive articles within Chapter 38.

Source: Laws 1927, c. 167, § 1, p. 454; C.S.1929, § 71-101; R.S.1943, § 71-101; Laws 1972, LB 1067, § 1; Laws 1984, LB 481, § 5; Laws 1986, LB 277, § 2; Laws 1986, LB 286, § 23; Laws 1986, LB 579, § 15; Laws 1986, LB 926, § 1; Laws 1986, LB 355, § 8; Laws 1987, LB 473, § 3; Laws 1988, LB 1100, § 4; Laws 1988, LB 557, § 12; Laws 1989, LB 344, § 4; Laws 1989, LB 323, § 2; Laws 1991, LB 456, § 4; Laws 1993, LB 48, § 1; Laws 1993, LB 187, § 3; Laws 1993, LB 429, § 1; Laws 1993, LB 536, § 43; Laws 1993, LB 669, § 2; Laws 1994, LB 900, § 1; Laws 1994, LB 1210, § 9; Laws 1994, LB 1223, § 2; Laws 1995, LB 406, § 10; Laws 1996, LB 1044, § 371; Laws 1997, LB 622, § 77; Laws 1999, LB 178, § 1; Laws 1999, LB 366, § 7; Laws 1999, LB 828, § 7; Laws 2001, LB 25, § 1; Laws 2001, LB 209, § 1; Laws 2001, LB 270, § 1; Laws 2001, LB 398, § 19; Laws 2002, LB 1021, § 4; Laws 2002, LB 1062, § 11; Laws 2003, LB 242, § 13; Laws 2004, LB 1005, § 8; Laws 2004, LB 1083, § 103; Laws 2005, LB 306, § 1; Laws 2006, LB 994, § 79; R.S.Supp.,2006, § 71-101; Laws 2007, LB236, § 1; Laws 2007, LB247, § 23; Laws 2007, LB247, § 58; Laws 2007, LB296,

§ 296; Laws 2007, LB463, § 1; Laws 2007, LB481, § 1; Laws 2008, LB928, § 2.

Operative date December 1, 2008.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.
 Alcohol and Drug Counseling Practice Act, see section 38-301.
 Athletic Training Practice Act, see section 38-401.
 Audiology and Speech-Language Pathology Practice Act, see section 38-501.
 Certified Nurse Midwifery Practice Act, see section 38-601.
 Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
 Chiropractic Practice Act, see section 38-801.
 Clinical Nurse Specialist Practice Act, see section 38-901.
 Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, see section 38-1001.
 Dentistry Practice Act, see section 38-1101.
 Emergency Medical Services Practice Act, see section 38-1201.
 Environmental Health Specialists Practice Act, see section 38-1301.
 Funeral Directing and Embalming Practice Act, see section 38-1401.
 Hearing Aid Instrument Dispensers and Fitters Practice Act, see section 38-1501.
 Licensed Practical Nurse-Certified Practice Act, see section 38-1601.
 Massage Therapy Practice Act, see section 38-1701.
 Medical Nutrition Therapy Practice Act, see section 38-1801.
 Medical Radiography Practice Act, see section 38-1901.
 Medicine and Surgery Practice Act, see section 38-2001.
 Mental Health Practice Act, see section 38-2101.
 Nurse Practice Act, see section 38-2201.
 Nurse Practitioner Practice Act, see section 38-2301.
 Nursing Home Administrator Practice Act, see section 38-2401.
 Occupational Therapy Practice Act, see section 38-2501.
 Optometry Practice Act, see section 38-2601.
 Perfusion Practice Act, see section 38-2701.
 Pharmacy Practice Act, see section 38-2801.
 Physical Therapy Practice Act, see section 38-2901.
 Podiatry Practice Act, see section 38-3001.
 Psychology Practice Act, see section 38-3101.
 Respiratory Care Practice Act, see section 38-3201.
 Veterinary Medicine and Surgery Practice Act, see section 38-3301.
 Water Well Standards and Contractors' Practice Act, see section 46-1201.

38-102 Legislative findings.

The Legislature recognizes the need for regulation of persons and businesses providing health and health-related services and environmental services. It is the intent of the Legislature to provide for such regulation through the Uniform Credentialing Act.

Source: Laws 2007, LB463, § 2.

38-103 Purposes of act.

The purposes of the Uniform Credentialing Act are (1) to protect the public health, safety, and welfare by (a) providing for the credentialing of persons and businesses that provide health and health-related services and environmental services which are made subject to the act and (b) the development, establishment, and enforcement of standards for such services and (2) to provide for the efficient, adequate, and safe practice of such persons and businesses.

Source: Laws 2007, LB463, § 3.

38-104 Existing rules, regulations, licenses, certificates, and legal and administrative proceedings; how treated.

(1) All rules and regulations adopted prior to December 1, 2008, under the Uniform Licensing Law or other statutes amended or repealed by Laws 2007, LB 463, shall continue to be effective under the Uniform Credentialing Act to the extent not in conflict with the act.

(2) All licenses, certificates, registrations, permits, seals, practice agreements, or other forms of approval issued prior to December 1, 2008, in accordance with the Uniform Licensing Law or other statutes amended or repealed by Laws 2007, LB 463, shall remain valid as issued for purposes of the Uniform Credentialing Act unless revoked or otherwise terminated by law.

(3) Any suit, action, or other proceeding, judicial or administrative, which was lawfully commenced prior to December 1, 2008, under the Uniform Licensing Law or other statutes amended or repealed by Laws 2007, LB 463, shall be subject to the provisions of the Uniform Licensing Law or such other statutes as they existed prior to December 1, 2008.

Source: Laws 2007, LB463, § 4.

38-105 Definitions, where found.

For purposes of the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-106 to 38-120 apply.

Source: Laws 2007, LB463, § 5.

38-106 Active addiction, defined.

Active addiction means current physical or psychological dependence on alcohol or a substance, which dependence develops following the use of alcohol or a substance on a periodic or continuing basis.

Source: Laws 2007, LB463, § 6.

38-107 Alcohol or substance abuse, defined.

Alcohol or substance abuse means a maladaptive pattern of alcohol or substance use leading to clinically significant impairment or distress as manifested by one or more of the following occurring at any time during the same twelve-month period:

- (1) Recurrent alcohol or substance use resulting in a failure to fulfill major role obligations at work, school, or home;
- (2) Recurrent alcohol or substance use in situations in which it is physically hazardous;
- (3) Recurrent legal problems related to alcohol or substance use; or
- (4) Continued alcohol or substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the alcohol or substance use.

Source: Laws 2007, LB463, § 7.

38-108 Board, defined; no board established by statute; effect.

Board means one of the boards appointed by the State Board of Health pursuant to section 38-158 or appointed by the Governor pursuant to the Emergency Medical Services Practice Act or the Water Well Standards and Contractors' Practice Act. For professions for which there is no board established by statute, the duties normally carried out by a board are the responsibility of the department.

Source: Laws 2007, LB463, § 8.

Cross References

Emergency Medical Services Practice Act, see section 38-1201.

Water Well Standards and Contractors' Practice Act, see section 46-1201.

38-109 Business, defined.

Business means a person engaged in providing services listed in subsection (3) of section 38-121.

Source: Laws 2007, LB463, § 9.

38-110 Certificate, defined.

Certificate means an authorization issued by the department that gives a person the right to use a protected title that only a person who has met specific requirements may use.

Source: Laws 2007, LB463, § 10.

38-111 Consumer, defined.

Consumer means a person receiving health or health-related services or environmental services and includes a patient, client, resident, customer, or person with a similar designation.

Source: Laws 2007, LB463, § 11.

38-112 Course of study, defined.

Course of study means a program of instruction necessary to obtain a credential meeting the requirements set out for each profession in the appropriate practice act and rules and regulations and includes a college, a professional school, a vocational school, hours of training, or a program of instruction with a similar designation.

Source: Laws 2007, LB463, § 12.

38-113 Credential, defined.

Credential means a license, certificate, or registration.

Source: Laws 2007, LB463, § 13.

38-114 Department, defined.

Department means the Division of Public Health of the Department of Health and Human Services.

Source: Laws 2007, LB463, § 14.

38-115 Dependence, defined.

Dependence means a maladaptive pattern of alcohol or substance use, leading to clinically significant impairment or distress, as manifested by three or more of the following occurring at any time in the same twelve-month period:

(1) Tolerance as defined by either of the following:

(a) A need for markedly increased amounts of alcohol or the substance to achieve intoxication or desired effect; or

(b) A markedly diminished effect with continued use of the same amount of alcohol or the substance;

(2) Withdrawal as manifested by either of the following:

(a) The characteristic withdrawal syndrome for alcohol or the substance as referred to in the Diagnostic and Statistical Manual of Mental Disorders — Fourth Edition, published by the American Psychiatric Association; or

(b) Alcohol or the same substance or a closely related substance is taken to relieve or avoid withdrawal symptoms;

(3) Alcohol or the substance is often taken in larger amounts or over a longer period than was intended;

(4) A persistent desire or unsuccessful efforts to cut down or control alcohol or substance use;

(5) A great deal of time is spent in activities necessary to obtain alcohol or the substance, to use alcohol or the substance, or to recover from the effects of use of alcohol or the substance;

(6) Important social, occupational, or recreational activities are given up or reduced because of alcohol or substance use; or

(7) Alcohol or substance use continues despite knowledge of having had a persistent or recurrent physical or psychological problem that was likely to have been caused or exacerbated by alcohol or the substance.

Source: Laws 2007, LB463, § 15.

38-116 Director, defined.

Director means the Director of Public Health of the Division of Public Health or his or her designee.

Source: Laws 2007, LB463, § 16.

38-117 Inactive credential, defined.

Inactive credential means a credential which the credential holder has voluntarily placed on inactive status and by which action has terminated the right to practice or represent himself or herself as having an active credential.

Source: Laws 2007, LB463, § 17.

38-118 License, defined.

License means an authorization issued by the department to an individual to engage in a profession or to a business to provide services which would otherwise be unlawful in this state in the absence of such authorization.

Source: Laws 2007, LB463, § 18.

38-119 Profession, defined.

Profession means any profession or occupation named in subsection (1) or (2) of section 38-121.

Source: Laws 2007, LB463, § 19.

38-120 Registry, defined.

Registry means a list of persons who offer a specified service or activity.

Source: Laws 2007, LB463, § 20.

38-121 Practices; credential required.

(1) No individual shall engage in the following practices unless such individual has obtained a credential under the Uniform Credentialing Act:

- (a) Acupuncture;
- (b) Advanced practice nursing;
- (c) Alcohol and drug counseling;
- (d) Asbestos abatement, inspection, project design, and training;
- (e) Athletic training;
- (f) Audiology;
- (g) Speech-language pathology;
- (h) Body art;
- (i) Chiropractic;
- (j) Cosmetology;
- (k) Dentistry;
- (l) Dental hygiene;
- (m) Electrology;
- (n) Emergency medical services;
- (o) Esthetics;
- (p) Funeral directing and embalming;
- (q) Hearing aid instrument dispensing and fitting;
- (r) Lead-based paint abatement, inspection, project design, and training;
- (s) Licensed practical nurse-certified;
- (t) Massage therapy;
- (u) Medical nutrition therapy;
- (v) Medical radiography;
- (w) Medicine and surgery;
- (x) Mental health practice;
- (y) Nail technology;
- (z) Nursing;
- (aa) Nursing home administration;
- (bb) Occupational therapy;
- (cc) Optometry;
- (dd) Osteopathy;
- (ee) Perfusion;
- (ff) Pharmacy;
- (gg) Physical therapy;
- (hh) Podiatry;
- (ii) Psychology;
- (jj) Radon detection, measurement, and mitigation;
- (kk) Respiratory care;
- (ll) Veterinary medicine and surgery;
- (mm) Public water system operation; and

(nn) Constructing or decommissioning water wells and installing water well pumps and pumping equipment.

(2) No individual shall hold himself or herself out as any of the following until such individual has obtained a credential under the Uniform Credentialing Act for that purpose:

- (a) Registered environmental health specialist;
- (b) Certified marriage and family therapist;
- (c) Certified professional counselor; or
- (d) Social worker.

(3) No business shall operate for the provision of any of the following services unless such business has obtained a credential under the Uniform Credentialing Act:

- (a) Body art;
- (b) Cosmetology;
- (c) Emergency medical services;
- (d) Esthetics;
- (e) Funeral directing and embalming;
- (f) Massage therapy; or
- (g) Nail technology.

Source: Laws 1927, c. 167, § 2, p. 455; C.S.1929, § 71-201; Laws 1935, c. 142, § 27, p. 529; C.S.Supp.,1941, § 71-201; R.S.1943, § 71-102; Laws 1957, c. 298, § 5, p. 1076; Laws 1961, c. 337, § 3, p. 1051; Laws 1971, LB 587, § 1; Laws 1978, LB 406, § 1; Laws 1980, LB 94, § 2; Laws 1984, LB 481, § 6; Laws 1985, LB 129, § 1; Laws 1986, LB 277, § 3; Laws 1986, LB 286, § 24; Laws 1986, LB 579, § 16; Laws 1986, LB 355, § 9; Laws 1988, LB 1100, § 5; Laws 1988, LB 557, § 13; Laws 1989, LB 342, § 4; Laws 1993, LB 669, § 3; Laws 1995, LB 406, § 11; Laws 1996, LB 1044, § 372; Laws 2001, LB 270, § 2; Laws 2004, LB 1083, § 104; R.S.Supp.,2006, § 71-102; Laws 2007, LB236, § 2; Laws 2007, LB247, § 59; Laws 2007, LB296, § 297; Laws 2007, LB463, § 21.

The practice of operative surgery in its commonly accepted meaning requires a license to practice medicine and surgery. State ex rel. Johnson v. Wagner, 139 Neb. 471, 297 N.W. 906 (1941).

Former statute regulating the practice of medicine was not void as discriminatory because it did not provide for examination of all persons desiring to treat patients by drugless or other methods of healing. Carpenter v. State, 106 Neb. 742, 184 N.W. 941 (1921).

One who had no license to practice dentistry could not maintain an action in equity to enjoin the state board from interfering with such practice. Patterson v. Morehead, 100 Neb. 760, 161 N.W. 273 (1917).

A corporation cannot be licensed to practice medicine but licensed physicians may form a corporation and make contracts for services of members. State Electro-Medical Institute v. State, 74 Neb. 40, 103 N.W. 1078 (1905).

Under former statute, the practice of osteopathy without license as a physician was unlawful. Little v. State, 60 Neb. 749, 84 N.W. 248 (1900), 51 L.R.A. 717 (1900).

Statute requiring a license to practice the professions enumerated in this section does not contravene Article 3, section 14, of the Constitution of Nebraska providing that no bill shall contain more than one subject to be clearly expressed in the title. Peet Stock Remedy Co. v. McMullen, 32 F.2d 669 (8th Cir. 1929).

38-122 Credential; form.

Every initial credential to practice a profession or engage in a business shall be in the form of a document under the name of the department and signed by the director, the Governor, and the officers of the appropriate board, if any.

Source: Laws 1927, c. 167, § 5, p. 455; C.S.1929, § 71-204; R.S.1943, § 71-105; Laws 1994, LB 1210, § 12; Laws 1996, LB 1044, § 374; Laws 1999, LB 828, § 9; R.S.1943, (2003), § 71-105; Laws 2007, LB296, § 299; Laws 2007, LB463, § 22.

38-123 Record of credentials issued under act; department; duties; contents.

(1) The department shall establish and maintain a record of all credentials issued pursuant to the Uniform Credentialing Act. The record shall contain identifying information for each credential holder and the credential issued pursuant to the act.

(2) For individual credential holders engaged in a profession:

(a) The record information shall include:

(i) The name, date and place of birth, and social security number;

(ii) The street, rural route, or post office address;

(iii) The school and date of graduation;

(iv) The name of examination, date of examination, and ratings or grades received, if any;

(v) The type of credential issued, the date the credential was issued, the identifying name and number assigned to the credential, and the basis on which the credential was issued;

(vi) The status of the credential; and

(vii) A description of any disciplinary action against the credential, including, but not limited to, the type of disciplinary action, the effective date of the disciplinary action, and a description of the basis for any such disciplinary action;

(b) The record may contain any additional information the department deems appropriate to advance or support the purpose of the Uniform Credentialing Act;

(c) The record may be maintained in computer files or paper copies and may be stored on microfilm or in similar form; and

(d) The record is a public record, except that social security numbers shall not be public information but may be shared as specified in subsection (5) of section 38-130.

(3) For credential holders engaged in a business:

(a) The record information shall include:

(i) The full name and address of the business;

(ii) The type of credential issued, the date the credential was issued, the identifying name and number assigned to the credential, and the basis on which the credential was issued;

(iii) The status of the credential; and

(iv) A description of any disciplinary action against the credential, including, but not limited to, the type of disciplinary action, the effective date of the disciplinary action, and a description of the basis for any such disciplinary action;

(b) The record may contain any additional information the department deems appropriate to advance or support the purpose of the Uniform Credentialing Act;

(c) The record may be maintained in computer files or paper copies and may be stored on microfilm or in similar form; and

(d) The record is a public record.

(4) If the department is required to provide notice or notify an applicant or credential holder under the Uniform Credentialing Act, such requirements shall be satisfied by mailing a written notice to such applicant or credential holder at his or her last address of record.

Source: Laws 2007, LB463, § 23.

38-124 Credential; availability; identity of profession or business.

Every person credentialed under the Uniform Credentialing Act shall make the person's current credential available upon request. The department, with the recommendation of the appropriate board, if any, shall determine how a consumer will be able to identify a credential holder. The method of identification shall be clear and easily accessed and used by the consumer.

All signs, announcements, stationery, and advertisements of persons credentialed under the act shall identify the profession or business for which the credential is held.

Source: Laws 1927, c. 167, § 7, p. 456; C.S.1929, § 71-206; Laws 1935, c. 142, § 28, p. 529; C.S.Supp.,1941, § 71-206; Laws 1943, c. 150, § 2, p. 539; R.S.1943, § 71-107; Laws 1957, c. 298, § 6, p. 1076; Laws 1961, c. 337, § 4, p. 1051; Laws 1978, LB 406, § 2; Laws 1985, LB 129, § 2; Laws 1986, LB 286, § 28; Laws 1986, LB 579, § 20; Laws 1988, LB 1100, § 6; Laws 1988, LB 557, § 14; Laws 1989, LB 342, § 5; Laws 1993, LB 669, § 4; Laws 1994, LB 1210, § 14; Laws 1995, LB 406, § 12; Laws 1999, LB 828, § 10; Laws 2004, LB 1083, § 105; R.S.Supp.,2006, § 71-107; Laws 2007, LB236, § 3; Laws 2007, LB463, § 24.

38-125 Certification and verification of credentials.

(1) Upon request and payment of the required fee, the department shall provide certification of a credential which shall include a certified statement that provides information regarding the basis on which a credential was issued, the date of issuance, and whether disciplinary action has been taken against the credential.

(2) Upon request and payment of the required fee, the department shall provide verification of a credential which shall include written confirmation as to whether a credential is valid at the time the request is made.

Source: Laws 1927, c. 167, § 44, p. 465; C.S.1929, § 71-506; R.S.1943, § 71-145; Laws 1986, LB 286, § 44; Laws 1986, LB 579, § 36; Laws 1994, LB 1210, § 24; Laws 1996, LB 1044, § 381; Laws 2003, LB 242, § 19; R.S.1943, (2003), § 71-145; Laws 2007, LB463, § 25.

38-126 Rules and regulations; board and department; adopt.

To protect the health, safety, and welfare of the public and to insure to the greatest extent possible the efficient, adequate, and safe practice of health services, health-related services, and environmental services:

(1)(a) The appropriate board may adopt rules and regulations to:

(i) Specify minimum standards required for a credential, including education, experience, and eligibility for taking the credentialing examination;

(ii) Designate credentialing examinations, specify the passing score on credentialing examinations, and specify standards, if any, for accepting examination results from other jurisdictions;

(iii) Set continuing competency requirements in conformance with section 38-145;

(iv) Set standards for waiver of continuing competency requirements in conformance with section 38-146;

(v) Set standards for courses of study; and

(vi) Specify acts in addition to those set out in section 38-179 that constitute unprofessional conduct; and

(b) The department shall promulgate and enforce such rules and regulations;

(2) For professions or businesses that do not have a board created by statute:

(a) The department may adopt, promulgate, and enforce such rules and regulations; and

(b) The department shall carry out any statutory powers and duties of the board;

(3) The department, with the recommendation of the appropriate board, if any, may adopt, promulgate, and enforce rules and regulations for the respective profession, other than those specified in subdivision (1) of this section, to carry out the Uniform Credentialing Act; and

(4) The department may adopt, promulgate, and enforce rules and regulations with general applicability to carry out the Uniform Credentialing Act.

Source: Laws 1927, c. 167, § 68, p. 472; C.S.1929, § 71-902; R.S.1943, § 71-169; Laws 1996, LB 1044, § 401; R.S.1943, (2003), § 71-169; Laws 2007, LB296, § 321; Laws 2007, LB463, § 26.

38-127 Statutes, rules, and regulations; availability; duty of department.

The department shall have available for each profession and business regulated under the Uniform Credentialing Act the applicable statutes, rules, and regulations relative to the credentials for the appropriate profession or business.

Source: Laws 1927, c. 167, § 69, p. 472; C.S.1929, § 71-903; R.S.1943, § 71-170; Laws 1986, LB 286, § 75; Laws 1986, LB 579, § 67; Laws 1994, LB 1210, § 51; Laws 1996, LB 1044, § 402; Laws 1999, LB 828, § 57; R.S.1943, (2003), § 71-170; Laws 2007, LB463, § 27.

38-128 Legislative intent; department review of credentialed professions and businesses.

(1) It is the intent of the Legislature that quality health care services and human services be provided to the public and basic standards be developed to protect the public health and safety and that professions be regulated by the state only when it is demonstrated that such regulation is in the best interests of the public.

(2) The department shall periodically review each credentialed profession and business to determine if continued credentialing is needed to protect the public.

Source: Laws 1999, LB 828, § 8; R.S.1943, (2003), § 71-1,343; Laws 2007, LB463, § 28.

38-129 Issuance of credential; qualifications.

No individual shall be issued a credential under the Uniform Credentialing Act until he or she has furnished satisfactory evidence to the department that he or she is of good character and has attained the age of nineteen years except as otherwise specifically provided by statute, rule, or regulation. A credential may only be issued to a citizen of the United States, an alien lawfully admitted into the United States who is eligible for a credential under the Uniform Credentialing Act, or a nonimmigrant whose visa for entry, or application for visa for entry, is related to such employment in the United States.

Source: Laws 1927, c. 167, § 3, p. 455; C.S.1929, § 71-202; R.S.1943, § 71-103; Laws 1969, c. 560, § 1, p. 2278; Laws 1974, LB 811, § 6; Laws 1986, LB 286, § 25; Laws 1986, LB 579, § 17; Laws 1986, LB 926, § 2; Laws 1994, LB 1210, § 10; R.S.1943, (2003), § 71-103; Laws 2007, LB463, § 29.

38-130 Credential; application; contents.

(1) An individual shall file an application for a credential to practice a profession with the department accompanied by the fee set pursuant to the Uniform Credentialing Act. The application shall contain:

- (a) The legal name of the applicant;
- (b) The date and place of birth of the applicant;
- (c) The address of the applicant;
- (d) The social security number of the applicant or the resident identification number of the applicant if the applicant is not a citizen of the United States and is otherwise eligible to be credentialed under section 38-129; and
- (e) Any other information required by the department.

(2) A business shall file an application for a credential with the department accompanied by the fee set pursuant to the Uniform Credentialing Act. The application shall contain:

- (a) The full name and address of the business;
- (b) The full name and address of the owner of the business;
- (c) The name of each person in control of the business;
- (d) The social security number of the business if the applicant is a sole proprietorship; and
- (e) Any other information required by the department.

(3) The applicant shall sign the application. If the applicant is a business, the application shall be signed by:

- (a) The owner or owners if the applicant is a sole proprietorship, a partnership, or a limited liability company that has only one member;
- (b) Two of its members if the applicant is a limited liability company that has more than one member;

- (c) Two of its officers if the applicant is a corporation;
 - (d) The head of the governmental unit having jurisdiction over the business if the applicant is a governmental unit; or
 - (e) If the applicant is not an entity described in subdivisions (a) through (d) of this subsection, the owner or owners or, if there is no owner, the chief executive officer or comparable official.
- (4) Each credential holder under the Uniform Credentialing Act shall notify the department of any change to the address of record so that the department can update the record of the credential holder under section 38-123.
- (5) Social security numbers obtained under this section shall not be public information but may be shared by the department for administrative purposes if necessary and only under appropriate circumstances to ensure against any unauthorized access to such information.

Source: Laws 1927, c. 167, § 8, p. 456; C.S.1929, § 71-207; R.S.1943, § 71-108; Laws 1979, LB 427, § 1; Laws 1986, LB 286, § 29; Laws 1986, LB 579, § 21; Laws 1986, LB 926, § 3; Laws 1987, LB 473, § 4; Laws 1991, LB 456, § 5; Laws 1994, LB 1210, § 15; Laws 1997, LB 752, § 156; Laws 1999, LB 828, § 11; R.S.1943, (2003), § 71-108; Laws 2007, LB463, § 30.

38-131 Criminal background check; when required.

- (1) An applicant for an initial license to practice a profession which is authorized to prescribe controlled substances shall be subject to a criminal background check. Except as provided in subsection (3) of this section, the applicant shall submit with the application a full set of fingerprints which shall be forwarded to the Nebraska State Patrol to be submitted to the Federal Bureau of Investigation for a national criminal history record information check. The applicant shall authorize release of the results of the national criminal history record information check to the department. The applicant shall pay the actual cost of the fingerprinting and criminal background check.
- (2) This section shall not apply to a dentist who is an applicant for a dental locum tenens under section 38-1122 or to a physician or osteopathic physician who is an applicant for a physician locum tenens under section 38-2036.
- (3) An applicant for a temporary educational permit as defined in section 38-2019 shall have ninety days from the issuance of the permit to comply with subsection (1) of this section and shall have his or her permit suspended after such ninety-day period if the criminal background check is not complete or revoked if the criminal background check reveals that the applicant was not qualified for the permit.

Source: Laws 2005, LB 306, § 2; Laws 2005, LB 382, § 15; Laws 2006, LB 833, § 1; R.S.Supp.,2006, § 71-104.01; Laws 2007, LB247, § 60; Laws 2007, LB463, § 31; Laws 2007, LB481, § 2.

38-132 Examinations; application; fees.

Any person desiring to take an examination for credentialing purposes shall make application to the department or to the organization specified by the department prior to examination on a form provided by the department or such organization. Such application shall be accompanied by the examination fee and such documents and affidavits as are necessary to show the eligibility of the

candidate to take such examination. All applications shall be in accordance with the rules and regulations of the department or such organization. When a national or standardized examination is required, the department may direct the applicant to apply directly to the organization administering the examination to take the examination.

Source: Laws 1927, c. 167, § 25, p. 460; C.S.1929, § 71-401; R.S.1943, § 71-125; Laws 1979, LB 427, § 14; Laws 1986, LB 286, § 36; Laws 1986, LB 579, § 28; Laws 1986, LB 926, § 13; Laws 1987, LB 473, § 13; Laws 1990, LB 1064, § 2; Laws 1991, LB 703, § 13; R.S.1943, (2003), § 71-125; Laws 2007, LB463, § 32.

38-133 Approved courses of study; approval required.

The department shall maintain a list of approved courses of study for the professions which are regulated by the Uniform Credentialing Act. The appropriate board shall make recommendations relative thereto and shall approve the list for its profession. The department shall approve the list for a profession if there is no appropriate board. No course of study shall be approved without the formal action of the department or the appropriate board. Any course of study whose graduates or students desire to take the Nebraska examination shall supply the department with the necessary data to allow the board and the department to determine whether that course of study should be approved.

Source: Laws 1927, c. 167, § 28, p. 461; C.S.1929, § 71-404; R.S.1943, § 71-128; Laws 1979, LB 427, § 15; Laws 1986, LB 286, § 37; Laws 1986, LB 579, § 29; Laws 1990, LB 1064, § 3; Laws 1999, LB 828, § 31; R.S.1943, (2003), § 71-128; Laws 2007, LB463, § 33.

38-134 Examinations; oral or practical; approval of national or other examination.

(1) The oral or practical work portion of any examination for a credential under the Uniform Credentialing Act may be given by the members of the appropriate board, the department, or an organization approved by the appropriate board or the department if there is no board. The oral examination questions shall be limited to the practice of the profession.

(2) The appropriate board may approve any national or other examination to constitute part or all of the credentialing examination for any of the professions which are regulated by the Uniform Credentialing Act.

Source: Laws 1927, c. 167, § 33, p. 462; C.S.1929, § 71-409; R.S.1943, § 71-133; Laws 1979, LB 427, § 18; Laws 1982, LB 449, § 1; Laws 1982, LB 450, § 1; Laws 1982, LB 448, § 1; Laws 1984, LB 470, § 4; Laws 1984, LB 481, § 15; Laws 1986, LB 286, § 39; Laws 1986, LB 579, § 31; Laws 1988, LB 1100, § 14; Laws 1989, LB 489, § 1; Laws 1990, LB 1064, § 6; Laws 1999, LB 828, § 35; Laws 2001, LB 209, § 2; R.S.1943, (2003), § 71-133; Laws 2007, LB463, § 34.

38-135 Examinations; time and place.

Examinations for credentialing shall be held on such dates and at such times and places as set by the department or the organization approved by the appropriate board or the department. Special examinations may be given at the

expense of the applicant and administered by the department or the organization specified by the department.

Source: Laws 1927, c. 167, § 29, p. 461; C.S.1929, § 71-405; R.S.1943, § 71-129; Laws 1984, LB 470, § 3; Laws 1986, LB 926, § 14; Laws 1990, LB 1064, § 4; Laws 1996, LB 1108, § 7; Laws 1999, LB 828, § 32; R.S.1943, (2003), § 71-129; Laws 2007, LB463, § 35.

38-136 Examinations; passing score; reexaminations.

(1) In the absence of any specific requirement or provision relating to any particular profession:

(a) The appropriate board may specify the passing score on credentialing examinations;

(b) An examinee who fails a credentialing examination may retake the entire examination or the part failed upon payment of the cost of retaking the examination; and

(c) The department shall withhold from the credentialing fee submitted by an examinee the cost of any national examination used when an examinee fails a credentialing examination and shall return to the examinee the remainder of the credentialing fee collected subject to section 38-156, except that:

(i) If a state-administered jurisprudence portion of the credentialing examination was failed, the examinee may retake that portion without charge; and

(ii) If any component of a national examination was failed, the examinee shall be charged the cost for retaking such examination.

(2) A person who desires to take an examination but does not wish to receive a credential may take such examination by meeting the examination eligibility requirements and paying the cost of the examination.

Source: Laws 1927, c. 167, § 31, p. 462; C.S.1929, § 71-407; Laws 1939, c. 91, § 4, p. 394; C.S.Supp.,1941, § 71-407; R.S.1943, § 71-131; Laws 1969, c. 560, § 3, p. 2279; Laws 1979, LB 427, § 16; Laws 1983, LB 476, § 4; Laws 1984, LB 481, § 14; Laws 1985, LB 250, § 1; Laws 1986, LB 277, § 7; Laws 1986, LB 286, § 38; Laws 1986, LB 579, § 30; Laws 1986, LB 926, § 16; Laws 1986, LB 355, § 13; Laws 1988, LB 1100, § 13; Laws 1988, LB 557, § 19; Laws 1989, LB 342, § 10; Laws 1990, LB 1064, § 5; Laws 1991, LB 703, § 14; Laws 1993, LB 669, § 10; Laws 1994, LB 1210, § 21; Laws 1995, LB 406, § 17; Laws 1999, LB 828, § 33; Laws 2002, LB 1021, § 8; Laws 2002, LB 1062, § 12; Laws 2003, LB 242, § 18; Laws 2004, LB 1083, § 111; R.S.Supp.,2006, § 71-131; Laws 2007, LB481, § 3; Laws 2007, LB463, § 36.

38-137 Examinations; records maintained; eligibility.

(1) All questions, the answer key, and the examinees' answers connected with any examination for credentialing shall be maintained by the department, national organization, or testing service for a period of two years from the date of administration of the examination.

(2) When national examinations are accepted for credentialing, the department shall obtain from the national organization or testing service documenta-

tion that the examination development and maintenance process meets generally accepted standards for test development and maintenance.

(3) The department, with the recommendation of the appropriate board, may:

- (a) Specify credentialing examination application procedures;
- (b) Provide for the review of procedures for the development of examinations;
- (c) Provide for the administration of all or separate components of examinations; and

(d) Protect the security of the content of examination questions and answers.

(4) The appropriate board may specify eligibility for taking the credentialing examination. In determining such eligibility, the board shall consider the practices of other states but shall determine such eligibility standards based on the extent to which completion of a course of study prior to examination is necessary to assure that applicants for credentials meet minimum standards of proficiency and competency for the protection of the health and safety of the public.

Source: Laws 1927, c. 167, § 38, p. 463; C.S.1929, § 71-414; R.S.1943, § 71-138; Laws 1969, c. 560, § 4, p. 2280; Laws 1978, LB 406, § 10; Laws 1979, LB 427, § 29; Laws 1986, LB 286, § 42; Laws 1986, LB 579, § 34; Laws 1986, LB 926, § 22; Laws 1987, LB 473, § 14; Laws 1990, LB 1064, § 7; Laws 1991, LB 703, § 16; Laws 1999, LB 828, § 36; R.S.1943, (2003), § 71-138; Laws 2007, LB463, § 37.

38-138 Inspection of business by department.

The department may inspect or provide for the inspection of any business credentialed or applying for a credential under the Uniform Credentialing Act. The department shall issue an inspection report and provide a copy of the report to the business within ten working days after the completion of an inspection.

Source: Laws 2007, LB463, § 38.

38-139 Inspection of business by State Fire Marshal or local fire prevention personnel.

The department may request the State Fire Marshal to inspect any business credentialed or applying for a credential under the Uniform Credentialing Act for fire safety pursuant to section 81-502. The State Fire Marshal shall assess a fee for such inspection pursuant to section 81-505.01 payable by such business. The State Fire Marshal may delegate such authority to make such inspections to qualified local fire prevention personnel pursuant to section 81-502.

Source: Laws 2007, LB463, § 39.

38-140 Report of unauthorized practice or unauthorized operation of business; investigation; cease and desist order; violation; penalty.

Every business credentialed under the Uniform Credentialing Act shall report to the department the name of every person without a credential that he or she has reason to believe is engaged in practicing any profession or operating any business for which a credential is required by the Uniform Credentialing Act. The department may, along with other law enforcement agencies, investigate

such reports or other complaints of unauthorized practice or unauthorized operation of a business. The appropriate board may issue an order to cease and desist the unauthorized practice of such profession or unauthorized operation of such business as a measure to obtain compliance with the applicable credentialing requirements by the person or business prior to referral of the matter to the Attorney General for action. For businesses that do not have a board, the department may issue such cease and desist orders. Practice of such profession or operation of such business without a credential after receiving a cease and desist order is a Class III felony.

Source: Laws 2007, LB463, § 40.

38-141 Inspector or investigator; appointment by department.

Whenever the department deems it necessary to appoint an inspector or investigator to assist it in performing its duty, the department may appoint a person who holds an active credential in the appropriate profession or any other qualified person who has been trained in investigational procedures and techniques to serve as such inspector or investigator.

Source: Laws 1953, c. 247, § 3, p. 850; Laws 1979, LB 427, § 13; Laws 1996, LB 1108, § 6; Laws 1999, LB 828, § 30; R.S.1943, (2003), § 71-124.01; Laws 2007, LB463, § 41.

38-142 Credential; expiration date; renewal; reinstatement; inactive status.

(1) The credential to practice a profession shall be renewed biennially upon request of the credentialed person and upon documentation of continuing competency pursuant to sections 38-145 and 38-146. The renewals provided for in this section shall be accomplished in such manner and on such date as the department, with the recommendation of the appropriate board, may establish.

The request for renewal shall include all information required by the department and shall be accompanied by the renewal fee. Such fee shall be paid not later than the date of the expiration of such credential, except that persons actively engaged in the military service of the United States, as defined in the Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as the act existed on January 1, 2007, shall not be required to pay the renewal fee.

(2) At least thirty days before the expiration of a credential, the department shall notify each credentialed person at his or her last address of record. If a credentialed person fails to notify the department of his or her desire to have his or her credential placed on inactive status upon its expiration, fails to meet the requirements for renewal on or before the date of expiration of his or her credential, or otherwise fails to renew his or her credential, it shall expire. When a person's credential expires, the right to represent himself or herself as a credentialed person and to practice the profession in which a credential is required shall terminate. Any credentialed person who fails to renew the credential by the expiration date and desires to resume practice of the profession shall apply to the department for reinstatement of the credential.

(3) When a person credentialed pursuant to the Uniform Credentialing Act desires to have his or her credential placed on inactive status, he or she shall notify the department of such desire in writing. The department shall notify the credentialed person in writing of the acceptance or denial of the request to allow the credential to be placed on inactive status. When the credential is placed on inactive status, the credentialed person shall not engage in the

practice of such profession, but he or she may represent himself or herself as having an inactive credential. A credential may remain on inactive status for an indefinite period of time.

Source: Laws 1927, c. 167, § 10, p. 456; C.S.1929, § 71-209; Laws 1933, c. 122, § 1, p. 492; Laws 1935, c. 142, § 29, p. 529; C.S.Supp.,1941, § 71-209; Laws 1943, c. 151, § 1, p. 551; R.S. 1943, § 71-110; Laws 1953, c. 238, § 2, p. 824; Laws 1957, c. 298, § 7, p. 1077; Laws 1961, c. 337, § 5, p. 1051; Laws 1978, LB 406, § 3; Laws 1979, LB 427, § 3; Laws 1979, LB 428, § 1; Laws 1984, LB 481, § 8; Laws 1985, LB 129, § 4; Laws 1986, LB 277, § 4; Laws 1986, LB 286, § 30; Laws 1986, LB 579, § 22; Laws 1986, LB 926, § 4; Laws 1986, LB 355, § 10; Laws 1987, LB 473, § 5; Laws 1988, LB 1100, § 7; Laws 1988, LB 557, § 15; Laws 1989, LB 342, § 6; Laws 1990, LB 1064, § 1; Laws 1993, LB 187, § 4; Laws 1993, LB 669, § 5; Laws 1994, LB 1210, § 16; Laws 1994, LB 1223, § 3; Laws 1995, LB 406, § 13; Laws 1997, LB 197, § 1; Laws 1999, LB 828, § 12; Laws 2001, LB 270, § 3; Laws 2002, LB 1021, § 5; Laws 2003, LB 242, § 14; Laws 2004, LB 1083, § 106; R.S.Supp.,2006, § 71-110; Laws 2007, LB236, § 4; Laws 2007, LB463, § 42.

38-143 Credential to engage in business; renewal; procedure; notice of expiration.

(1) The credential to engage in a business shall be renewed biennially upon request of the credentialed business and completion of the renewal requirements. The renewals provided for in this section shall be accomplished in such manner and on such date as the department, with the recommendation of the appropriate board, may establish. The request for renewal shall include all information required by the department and shall be accompanied by the renewal fee. Such fee shall be paid not later than the date of the expiration of such credential.

(2) At least thirty days before the expiration of a credential, the department shall notify each credentialed business at its last address of record. If a credentialed business fails to meet the renewal requirements on or before the date of expiration of the credential, the credential shall expire. When a credential expires, the right to operate the business shall terminate. A business which fails to renew its credential by the expiration date shall apply for and obtain another credential prior to operating the business.

Source: Laws 2003, LB 242, § 15; Laws 2004, LB 906, § 1; Laws 2004, LB 1005, § 9; R.S.Supp.,2006, § 71-110.01; Laws 2007, LB463, § 43.

38-144 Credential; failure to pay fees; failure to meet continuing competency requirement; effect.

(1) The credential of any person who fails, by the expiration date of such credential, to pay the required renewal fee or to submit documentation of continuing competency shall automatically expire without further notice or hearing.

(2) The department shall refuse to renew after notice and opportunity for hearing, the credential of any person who fails, by the expiration date of such

credential, to meet the applicable continuing competency requirement for renewal.

(3) Subsections (1) and (2) of this section shall not apply when the credential holder has given notification to the department that he or she desires to have his or her credential expire or be placed on inactive status upon expiration.

Source: Laws 1927, c. 167, § 48, p. 467; C.S.1929, § 71-603; Laws 1943, c. 150, § 12, p. 543; R.S.1943, § 71-149; Laws 1976, LB 877, § 2; Laws 1984, LB 481, § 19; Laws 1986, LB 286, § 47; Laws 1986, LB 579, § 39; Laws 1987, LB 473, § 17; Laws 1988, LB 1100, § 18; Laws 1994, LB 1210, § 28; Laws 2002, LB 1021, § 10; Laws 2003, LB 242, § 20; R.S.1943, (2003), § 71-149; Laws 2007, LB463, § 44.

38-145 Continuing competency requirements; board; duties.

(1) The appropriate board shall establish continuing competency requirements for persons seeking renewal of a credential.

(2) The purposes of continuing competency requirements are to ensure (a) the maintenance by a credential holder of knowledge and skills necessary to competently practice his or her profession, (b) the utilization of new techniques based on scientific and clinical advances, and (c) the promotion of research to assure expansive and comprehensive services to the public.

(3) Each board shall consult with the department and the appropriate professional academies, professional societies, and professional associations in the development of such requirements.

(4)(a) For a profession for which there are no continuing education requirements on December 31, 2002, the requirements may include, but not be limited to, any one or a combination of the continuing competency activities listed in subsection (5) of this section.

(b) For a profession for which there are continuing education requirements on December 31, 2002, continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, any one or a combination of the continuing competency activities listed in subdivisions (5)(b) through (5)(p) of this section which a credential holder may select as an alternative to continuing education.

(5) Continuing competency activities may include, but not be limited to, any one or a combination of the following:

- (a) Continuing education;
- (b) Clinical privileging in an ambulatory surgical center or hospital as defined in section 71-405 or 71-419;
- (c) Board certification in a clinical specialty area;
- (d) Professional certification;
- (e) Self-assessment;
- (f) Peer review or evaluation;
- (g) Professional portfolio;
- (h) Practical demonstration;
- (i) Audit;
- (j) Exit interviews with consumers;

- (k) Outcome documentation;
- (l) Testing;
- (m) Refresher courses;
- (n) Inservice training;
- (o) Practice requirement; or
- (p) Any other similar modalities.

Source: Laws 1976, LB 877, § 14; Laws 1984, LB 481, § 21; Laws 1985, LB 250, § 4; Laws 1986, LB 286, § 62; Laws 1986, LB 579, § 54; Laws 1992, LB 1019, § 38; Laws 1994, LB 1210, § 41; Laws 1999, LB 828, § 47; Laws 2002, LB 1021, § 12; R.S.1943, (2003), § 71-161.09; Laws 2007, LB463, § 45.

38-146 Continuing competency requirements; compliance; waiver; audits.

(1) Each person holding an active credential within the state shall, on or before the date of expiration of his or her credential, comply with continuing competency requirements for his or her profession. Except as otherwise provided in this section, the department shall not renew the credential of any person who has not complied with such requirements.

(2) The department may waive continuing competency requirements, in whole or in part, upon submission by a credential holder of documentation that circumstances beyond his or her control have prevented completion of such requirements. Such circumstances shall include, but not be limited to:

(a) The credential holder has served in the regular armed forces of the United States during part of the credentialing period immediately preceding the renewal date;

(b) The credential holder was first credentialed within the credentialing period immediately preceding the renewal date; or

(c) Other circumstances prescribed by rules and regulations adopted and promulgated under the appropriate practice act.

(3) Each credential holder shall be responsible for maintaining certificates or records of continuing competency activities.

The department or appropriate board may biennially select, in a random manner, a sample of the renewal applications for audit of continuing competency requirements. Each credential holder selected for audit shall be required to produce documentation of the continuing competency activities. The credential of any person who fails to comply with the conditions of the audit shall expire thirty days after notice and an opportunity for a hearing.

Source: Laws 1976, LB 877, § 15; Laws 1985, LB 250, § 5; Laws 1986, LB 286, § 63; Laws 1986, LB 579, § 55; Laws 1986, LB 926, § 34; Laws 1994, LB 1210, § 42; Laws 1997, LB 307, § 120; Laws 1999, LB 828, § 48; Laws 2001, LB 209, § 3; Laws 2002, LB 1021, § 13; R.S.1943, (2003), § 71-161.10; Laws 2007, LB463, § 46.

38-147 Credential; reinstatement; application; department; powers.

(1) Any person who desires to reinstate a credential after the date of expiration or from inactive to active status shall apply to the department for reinstatement. The credential may be reinstated upon the receipt of evidence of

meeting the renewal requirements, or the requirements specified under the practice act for the appropriate profession, which are in effect at the time the credential holder applies to regain active status and payment of reinstatement and renewal fees if applicable.

(2) The department, with the recommendation of the appropriate board, may deny an application for reinstatement or may issue the credential subject to any of the terms of section 38-196 if the applicant has committed any of the acts set out in section 38-178.

(3) A credential holder who elected to have his or her credential placed on lapsed status prior to December 1, 2008, may have the credential reinstated in accordance with this section.

Source: Laws 2007, LB463, § 47.

38-148 Credential; suspended, revoked, or other limitations; apply for reinstatement; when.

(1) A person whose credential has been suspended or has had limitations placed thereon for any reason specified in sections 38-178 and 38-179 may apply for reinstatement of the credential at any time. The application shall include such information as may be required by the department.

(2) A person whose credential has been revoked for any reason specified in such sections may apply for reinstatement of the credential after a period of two years has elapsed from the date of revocation. The application shall include such information as may be required by the department.

Source: Laws 1976, LB 877, § 9; Laws 1986, LB 286, § 57; Laws 1986, LB 579, § 49; Laws 1986, LB 926, § 32; Laws 1988, LB 1100, § 23; Laws 1994, LB 1210, § 37; Laws 1999, LB 828, § 45; R.S.1943, (2003), § 71-161.04; Laws 2007, LB463, § 48.

38-149 Application for reinstatement of credential for profession with board; when considered and acted upon; hearing; when allowed; procedure; appeal.

(1) Upon receipt of an application under section 38-148 for reinstatement of a credential in a profession that has a board, the application shall be sent to the board for consideration. Any application for reinstatement, accompanied by the required information and documentation, shall be acted upon by the board within one hundred eighty days after the filing of the completed application.

(2) The department, with the recommendation of the appropriate board, may:

(a) Conduct an investigation to determine if the applicant has committed acts or offenses prohibited by section 38-178;

(b) Require the applicant to submit to a complete diagnostic examination at the expense of the applicant by one or more physicians or other qualified professionals appointed by the board, the applicant being free also to consult a physician or physicians or other professionals of his or her own choice for an evaluation or diagnostic examination and to make available a report or reports thereof to the department and the appropriate board;

(c) Require the applicant to pass a written, oral, or practical examination or any combination of such examinations at the expense of the applicant;

(d) Require the applicant to successfully complete additional education at the expense of the applicant;

(e) Require the applicant to successfully pass an inspection of his or her practice site; or

(f) Take any combination of the actions in this subsection.

(3) On the basis of material submitted by the applicant, the results of any inspection or investigation by the department, and the completion of any requirements imposed under subsection (2) of this section, the board shall (a) deny the application for reinstatement or (b) recommend to the department (i) full reinstatement of the credential, (ii) modification of the suspension or limitation, or (iii) reinstatement of the credential subject to limitations or subject to probation with terms and conditions.

(4) The decision of the board shall become final thirty days after mailing the decision to the applicant unless the applicant requests a hearing within such thirty-day period. If the applicant requests a hearing before the board, the department shall mail notice of the date, time, and location of the hearing to the applicant at least thirty days prior to the hearing. If the applicant has been afforded a hearing or an opportunity for a hearing on an application for reinstatement within two years prior to filing the current application, the department may grant or deny such application without another hearing before the board. The affirmative vote of a majority of the members of the board shall be necessary to recommend reinstatement of a credential with or without terms, conditions, or restrictions.

(5)(a) The department may only consider applications for reinstatement with an affirmative recommendation of the appropriate board. If the board recommends (i) full reinstatement of the credential, (ii) modification of the suspension or limitation, or (iii) reinstatement of the credential subject to limitations or subject to probation with terms and conditions, the board's recommendation shall be sent to the applicant by certified mail and forwarded to the director for a decision.

(b) The director shall receive (i) the written recommendation of the board, including any finding of fact or order of the board, (ii) the application for reinstatement, (iii) the record of hearing if any, and (iv) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the board and the applicant.

(c) The director shall then review the application and other documents and may affirm the recommendation of the board and grant reinstatement or may reverse or modify the recommendation if the board's recommendation is (i) in excess of statutory authority, (ii) made upon unlawful procedure, (iii) unsupported by competent, material, and substantial evidence in view of the entire record, or (iv) arbitrary or capricious.

(6) The director's decision may be appealed by any party to the decision. The appeal shall be in accordance with the Administrative Procedure Act.

(7) Denial by a board of an application for reinstatement may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1976, LB 877, § 11; Laws 1986, LB 286, § 59; Laws 1986, LB 579, § 51; Laws 1990, LB 1064, § 8; Laws 1994, LB 1210, § 39; Laws 1996, LB 1044, § 390; R.S.1943, (2003), § 71-161.06; Laws 2007, LB296, § 312; Laws 2007, LB463, § 49.

Cross References

Administrative Procedure Act, see section 84-920.

38-150 Application for reinstatement of credential for profession without board; department; procedure; hearing; when allowed; appeal.

(1) Upon receipt of an application for reinstatement of a credential in a profession that does not have a board, the application shall be considered by the department.

(2) The department may:

(a) Conduct an investigation to determine if the applicant has committed acts or offenses prohibited by section 38-178;

(b) Require the applicant to submit to a complete diagnostic examination by one or more physicians or other qualified professionals appointed by the department, the applicant being free also to consult a physician or physicians or other professionals of his or her own choice for an evaluation or diagnostic examination and to make available a report or reports thereof to the department;

(c) Require the applicant to pass a written, oral, or practical examination or any combination of such examinations;

(d) Require the applicant to successfully complete additional education;

(e) Require the applicant, if a business, to successfully complete an inspection; or

(f) Take any combination of the actions in this subsection.

(3) On the basis of material submitted by the applicant, the results of any inspection or investigation by the department, and the completion of any requirements imposed under subsection (2) of this section, the department shall (a) deny the application for reinstatement, (b) grant the application for reinstatement, (c) modify the probation, suspension, or limitation, or (d) reinstate the credential subject to limitations or subject to probation with terms and conditions.

(4) The decision of the department shall become final thirty days after mailing the decision to the applicant unless the applicant requests a hearing within such thirty-day period. If the applicant requests a hearing, the department shall mail notice of the date, time, and location of the hearing to the applicant at least thirty days prior to the hearing. Any requested hearing shall be held according to rules and regulations of the department for administrative hearings in contested cases. Any party to the decision shall have a right to appeal. Such appeal shall be in accordance with the Administrative Procedure Act.

(5) If the applicant has been afforded a hearing or an opportunity for a hearing on an application for reinstatement within two years prior to filing the current application, the department may grant or deny such application without another hearing.

Source: Laws 2007, LB463, § 50.

Cross References

Administrative Procedure Act, see section 84-920.

38-151 Credentialing system; administrative costs; how paid.

(1) It is the intent of the Legislature that the revenue to cover the cost of the credentialing system administered by the department is to be derived from General Funds, cash funds, federal funds, gifts, grants, or fees from individuals or businesses seeking credentials. The credentialing system includes the totality of the credentialing infrastructure and the process of issuance and renewal of credentials, examinations, inspections, investigations, continuing competency, compliance assurance, and the credentialing review process for individuals and businesses that provide health services, health-related services, and environmental services.

(2) The department shall determine the cost of the credentialing system for such individuals and businesses by calculating the total of the base costs, the variable costs, and any adjustments as provided in sections 38-152 to 38-154.

(3) When fees are to be established pursuant to section 38-155 for individuals or businesses other than individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the department, with the recommendation of the appropriate board if applicable, shall base the fees on the cost of the credentialing system and shall include usual and customary cost increases, a reasonable reserve, and the cost of any new or additional credentialing activities. For individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the Water Well Standards and Contractors' Licensing Board shall establish the fees as otherwise provided in this subsection. All such fees shall be used as provided in section 38-157.

Source: Laws 1927, c. 167, § 61, p. 469; C.S.1929, § 71-701; Laws 1935, c. 142, § 34, p. 531; Laws 1937, c. 157, § 1, p. 615; Laws 1941, c. 141, § 1, p. 555; C.S.Supp.,1941, § 71-701; Laws 1943, c. 150, § 16, p. 545; R.S.1943, § 71-162; Laws 1953, c. 238, § 3, p. 825; Laws 1955, c. 270, § 2, p. 850; Laws 1957, c. 292, § 1, p. 1048; Laws 1957, c. 298, § 12, p. 1080; Laws 1959, c. 318, § 2, p. 1166; Laws 1961, c. 337, § 8, p. 1054; Laws 1963, c. 409, § 1, p. 1314; Laws 1965, c. 412, § 1, p. 1319; Laws 1967, c. 438, § 4, p. 1350; Laws 1967, c. 439, § 17, p. 1364; Laws 1969, c. 560, § 6, p. 2281; Laws 1969, c. 562, § 1, p. 2288; Laws 1971, LB 300, § 1; Laws 1971, LB 587, § 9; Laws 1973, LB 515, § 3; Laws 1975, LB 92, § 1; Laws 1978, LB 689, § 1; Laws 1978, LB 406, § 12; Laws 1979, LB 4, § 6; Laws 1979, LB 428, § 3; Laws 1981, LB 451, § 8; Laws 1982, LB 263, § 1; Laws 1982, LB 448, § 2; Laws 1982, LB 449, § 2; Laws 1982, LB 450, § 2; Laws 1984, LB 481, § 22; Laws 1985, LB 129, § 12; Laws 1986, LB 277, § 8; Laws 1986, LB 286, § 72; Laws 1986, LB 579, § 64; Laws 1986, LB 926, § 36; Laws 1986, LB 355, § 14; Laws 1987, LB 473, § 18; Laws 1988, LB 1100, § 26; Laws 1988, LB 557, § 20; Laws 1989, LB 342, § 12; Laws 1990, LB 1064, § 9; Laws 1991, LB 703, § 17; Laws 1992, LB 1019, § 39; Laws 1993, LB 187, § 7; Laws 1993, LB 669, § 12; Laws 1994, LB 1210, § 46; Laws 1994, LB 1223, § 9; Laws 1995, LB 406, § 18; Laws 1997, LB 622, § 80; Laws 1999, LB 828, § 54; Laws 2001, LB 270, § 7; Laws 2003, LB 242, § 23; Laws 2004, LB 906, § 2; Laws 2004, LB 1005, § 10; Laws 2004, LB 1083, § 113; Laws 2006, LB 994, § 81; R.S.Supp.,2006, § 71-162; Laws 2007, LB236, § 6; Laws 2007, LB283, § 1; Laws 2007, LB463, § 51.

Cross References

Fees of state boards, see sections 33-151 and 33-152.

38-152 Base costs of credentialing.

Base costs of credentialing are the costs that are common to all professions and businesses listed in section 38-121 and include the following:

- (1) Salaries and benefits for employees of the department who work with credentialing activities;
- (2) Shared operating costs for credentialing activities that are not specific to a particular profession or business such as indirect costs, rent, and utilities;
- (3) Costs related to compliance assurance, including investigative costs, contested case costs, and compliance monitoring;
- (4) Costs of the Licensee Assistance Program under section 38-175;
- (5) Capital costs, including office equipment and computer hardware or software, which are not specific to a particular profession or business; and
- (6) Other reasonable and necessary costs as determined by the department.

Source: Laws 2003, LB 242, § 24; R.S.1943, (2003) § 71-162.01; Laws 2007, LB463, § 52.

38-153 Variable costs of credentialing.

Variable costs of credentialing are the costs that are unique to a specific profession or business listed in section 38-121 and include the following:

- (1) Per diems which are paid to members of the appropriate board;
- (2) Operating costs that are specific to a particular profession or business, including publications, conference registrations, and subscriptions;
- (3) Costs for travel by members of the appropriate board and employees of the department related to a particular profession or business, including car rental, gas, and mileage charges but not salaries;
- (4) Costs to operate and administer the Nebraska Center for Nursing, which costs shall be derived from credentialing fees of registered and practical nurses in accordance with section 71-1798.01; and
- (5) Other reasonable and necessary costs as determined by the appropriate board or the department.

Source: Laws 2003, LB 242, § 25; Laws 2005, LB 243, § 1; R.S.1943, (2003), § 71-162.02; Laws 2007, LB463, § 53.

38-154 Adjustments to the cost of credentialing.

Adjustments to the cost of credentialing include, but are not limited to:

- (1) Revenue from sources that include, but are not limited to:
 - (a) Interest earned on the Professional and Occupational Credentialing Cash Fund, if any;
 - (b) Certification and verification of credentials;
 - (c) Administrative fees;
 - (d) Reinstatement fees;
 - (e) General Funds and federal funds;

- (f) Fees for miscellaneous services, such as production of photocopies, lists, labels, and diskettes;
 - (g) Gifts; and
 - (h) Grants; and
- (2) Transfers to other funds for costs related to the Nebraska Regulation of Health Professions Act and section 38-128.

Source: Laws 2003, LB 242, § 26; R.S.1943, (2003), § 71-162.03; Laws 2007, LB463, § 54.

Cross References

Nebraska Regulation of Health Professions Act, see section 71-6201.

38-155 Credentialing fees; establishment and collection.

(1) The department, with the recommendation of the appropriate board if applicable, or the Water Well Standards and Contractors' Licensing Board as provided in section 38-151, shall adopt and promulgate rules and regulations to establish and collect the fees for the following credentials:

- (a) Initial credentials, which include, but are not limited to:
 - (i) Licensure, certification, or registration;
 - (ii) Add-on or specialty credentials;
 - (iii) Temporary, provisional, or training credentials; and
 - (iv) Supervisory or collaborative relationship credentials;
- (b) Applications to renew licenses, certifications, and registrations;
- (c) Approval of continuing education courses and other methods of continuing competency; and
- (d) Inspections and reinspections.

(2) When a credential will expire within one hundred eighty days after its initial issuance date and the initial credentialing fee is twenty-five dollars or more, the department shall collect twenty-five dollars or one-fourth of the initial credentialing fee, whichever is greater, for the initial credential, and the credential shall be valid until the next subsequent renewal date.

Source: Laws 2003, LB 242, § 27; R.S.1943, (2003), § 71-162.04; Laws 2007, LB463, § 55.

38-156 Administrative and other fees; amount.

(1) The department shall retain a twenty-five-dollar administrative fee from each credentialing fee established under section 38-155 for a denied credential or a withdrawn application, except that (a) if the credentialing fee is less than twenty-five dollars, the fee shall be forfeited and (b) an examination fee shall not be returned.

- (2) The department shall collect fees for services as follows:
 - (a) Ten dollars for a duplicate original or reissued credential;
 - (b) Twenty-five dollars for certification of a credential pursuant to section 38-125;
 - (c) Five dollars for verification of a credential pursuant to section 38-125; and

(d) A reinstatement fee of thirty-five dollars in addition to the renewal fee to reinstate an expired or inactive credential for professions specified in section 38-121.

Source: Laws 2003, LB 242, § 28; R.S.1943, (2003), § 71-162.05; Laws 2007, LB463, § 56.

38-157 Professional and Occupational Credentialing Cash Fund; created; use; investment.

(1) The Professional and Occupational Credentialing Cash Fund is created. Except as provided in section 71-17,113, the fund shall consist of all fees, gifts, grants, and other money, excluding fines and civil penalties, received or collected by the department under sections 38-151 to 38-156.

(2) The department shall use the fund for the administration and enforcement of such laws regulating the individuals and businesses listed in section 38-121 except for a percentage of the fees credited to the Nebraska Regulation of Health Professions Fund pursuant to section 71-6228.

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

(4) Any money in the Licensee Assistance Cash Fund on December 1, 2008, shall be transferred to the Professional and Occupational Credentialing Cash Fund.

Source: Laws 1927, c. 167, § 62, p. 471; C.S.1929, § 71-702; R.S.1943, § 71-163; Laws 1986, LB 926, § 37; Laws 1988, LB 1100, § 27; Laws 1994, LB 1210, § 47; Laws 2003, LB 242, § 30; Laws 2005, LB 146, § 10; R.S.Supp.,2006, § 71-163; Laws 2007, LB463, § 57.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

38-158 Boards; appointment; vacancy.

(1) The State Board of Health shall appoint members to the boards designated in section 38-167 except the Board of Emergency Medical Services and the Water Well Standards and Contractors' Licensing Board.

(2) Any vacancy in the membership of a board caused by death, resignation, removal, or otherwise shall be filled for the unexpired term in the same manner as original appointments are made.

Source: Laws 1927, c. 167, § 11, p. 457; C.S.1929, § 71-301; R.S.1943, § 71-111; Laws 1979, LB 427, § 4; Laws 1981, LB 451, § 2; Laws 1986, LB 286, § 31; Laws 1986, LB 579, § 23; Laws 1987, LB 473, § 6; Laws 1989, LB 342, § 7; Laws 1994, LB 1210, § 17; Laws 1999, LB 828, § 13; Laws 2001, LB 270, § 4; Laws 2002, LB 1021, § 6; R.S.1943, (2003), § 71-111; Laws 2007, LB463, § 58.

38-159 Board; application; professional member; state association or society recommendation.

(1) Any person who desires to be considered for an appointment to a board appointed by the State Board of Health and who possesses the necessary qualifications for such appointment may apply in a manner specified by the State Board of Health. The State Board of Health shall consider such applications and may appoint any qualified person so applying to the appropriate board.

(2) A state association or society, or its managing board, for each profession may submit to the State Board of Health a list of persons of recognized ability in such profession who have the qualifications prescribed for professional members of the board for that particular profession. If such a list is submitted, the State Board of Health shall consider the names on such list and may appoint one of the persons so named.

Source: Laws 1927, c. 167, § 17, p. 458; C.S.1929, § 71-307; Laws 1939, c. 91, § 3, p. 394; C.S.Supp.,1941, § 71-307; R.S.1943, § 71-117; Laws 1979, LB 427, § 8; Laws 1992, LB 860, § 1; Laws 1999, LB 828, § 21; R.S.1943, (2003), § 71-117; Laws 2007, LB463, § 59.

38-160 Board; member; removal; procedure; grounds.

(1) The State Board of Health shall have power to remove from office at any time any member of a board for which it appoints the membership, after a public hearing pursuant to the Administrative Procedure Act, for physical or mental incapacity to carry out the duties of a board member, for continued neglect of duty, for incompetency, for acting beyond the individual member's scope of authority, for malfeasance in office, for not maintaining the qualifications established in sections 38-164 and 38-165, for any cause for which a credential in the profession or business involved may be suspended or revoked under section 38-178 or 38-179, or for a lack of a credential in the profession or business involved.

(2) The State Board of Health shall have full access to such complaints or investigational records as necessary and appropriate in the discharge of its duties under subsection (1) of this section and section 38-158.

Source: Laws 1927, c. 167, § 18, p. 458; C.S.1929, § 71-308; R.S.1943, § 71-118; Laws 1979, LB 427, § 9; Laws 1986, LB 286, § 35; Laws 1986, LB 579, § 27; Laws 1987, LB 473, § 12; Laws 1993, LB 187, § 6; Laws 1994, LB 1210, § 20; Laws 1999, LB 828, § 22; R.S.1943, (2003), § 71-118; Laws 2007, LB463, § 60.

Cross References

Administrative Procedure Act, see section 84-920.

38-161 Boards; purpose; duties; advisory committees or bodies authorized.

(1) The purpose of each board is to protect the health, safety, and welfare of the public as prescribed in the Uniform Credentialing Act.

(2) The duties of each board include, but are not limited to, (a) setting the minimum standards of proficiency and competency in accordance with section 38-126, (b) providing recommendations in accordance with section 38-149, (c) providing recommendations related to the issuance or denial of credentials, disciplinary action, and changes in legislation, and (d) providing the depart-

ment with recommendations on regulations to carry out the Uniform Credentialing Act in accordance with section 38-126.

(3) Each board may appoint advisory committees or other advisory bodies as necessary for specific purposes. At least one board member shall serve on each advisory committee or body, and other members may be appointed from outside the board.

Source: Laws 1982, LB 448, § 3; Laws 1987, LB 473, § 7; Laws 1999, LB 828, § 16; R.S.1943, (2003), § 71-112.03; Laws 2007, LB463, § 61.

38-162 Boards; membership.

Except as otherwise provided in the Uniform Credentialing Act:

- (1) Each board shall consist of four members;
- (2) Each board shall have at least one public member; and
- (3) If a board has eleven or more members, it shall have at least three public members.

Source: Laws 1927, c. 167, § 13, p. 457; C.S.1929, § 71-303; Laws 1943, c. 150, § 5, p. 540; R.S.1943, § 71-113; Laws 1963, c. 408, § 4, p. 1311; Laws 1971, LB 587, § 2; Laws 1978, LB 406, § 5; Laws 1979, LB 427, § 6; Laws 1980, LB 94, § 3; Laws 1983, LB 476, § 1; Laws 1984, LB 481, § 10; Laws 1985, LB 129, § 6; Laws 1986, LB 277, § 6; Laws 1986, LB 286, § 33; Laws 1986, LB 579, § 25; Laws 1986, LB 355, § 12; Laws 1987, LB 473, § 8; Laws 1988, LB 1100, § 9; Laws 1988, LB 557, § 17; Laws 1993, LB 669, § 7; Laws 1994, LB 1223, § 4; Laws 1995, LB 406, § 15; Laws 1999, LB 828, § 17; Laws 2004, LB 1083, § 108; Laws 2006, LB 994, § 80; R.S.Supp.,2006, § 71-113; Laws 2007, LB463, § 62.

38-163 Boards; members; term.

(1) The members of each board shall be appointed for terms of five years except as otherwise provided in the Uniform Credentialing Act. No member shall be appointed for or serve for more than two consecutive full five-year terms except as otherwise specifically provided in the act.

(2) The term of each member shall commence on the first day of December following the expiration of the term of the member whom such person succeeds except as otherwise provided in the act.

Source: Laws 1943, c. 150, § 8, p. 541; R.S.1943, § 71-116; Laws 1957, c. 298, § 10, p. 1079; Laws 1963, c. 408, § 5, p. 1311; Laws 1971, LB 587, § 4; Laws 1978, LB 406, § 7; Laws 1979, LB 297, § 3; Laws 1979, LB 428, § 2; Laws 1981, LB 451, § 4; Laws 1983, LB 476, § 2; Laws 1984, LB 481, § 12; Laws 1985, LB 129, § 8; Laws 1986, LB 286, § 34; Laws 1986, LB 579, § 26; Laws 1986, LB 926, § 7; Laws 1987, LB 473, § 11; Laws 1988, LB 1100, § 11; Laws 1993, LB 669, § 9; Laws 1994, LB 1210, § 19; Laws 1994, LB 1223, § 5; Laws 1999, LB 828, § 20; Laws 2004, LB 1083, § 110; R.S.Supp.,2006, § 71-116; Laws 2007, LB463, § 63.

38-164 Boards; professional members; qualifications.

(1) A professional member of a board appointed under the Uniform Licensing Law prior to December 1, 2008, shall remain subject to the requirements of the original appointment until reappointed under the Uniform Credentialing Act. Except as otherwise provided in the Uniform Credentialing Act, every professional member of a board appointed on or after December 1, 2008, shall have held and maintained an active credential and be and have been actively engaged in the practice of his or her profession for a period of five years just preceding his or her appointment and shall maintain such credential and practice while serving as a board member. For purposes of this section, active practice means devoting a substantial portion of time to rendering professional services.

(2) Each professional member of a board shall have been a resident of Nebraska for one year and shall remain a resident of Nebraska while serving as a board member.

Source: Laws 1927, c. 167, § 14, p. 458; C.S.1929, § 71-304; Laws 1935, c. 142, § 31, p. 530; C.S.Supp.,1941, § 71-304; Laws 1943, c. 150, § 6, p. 540; R.S.1943, § 71-114; Laws 1957, c. 298, § 9, p. 1078; Laws 1978, LB 406, § 6; Laws 1979, LB 427, § 7; Laws 1984, LB 481, § 11; Laws 1985, LB 129, § 7; Laws 1986, LB 926, § 5; Laws 1987, LB 473, § 9; Laws 1988, LB 1100, § 10; Laws 1988, LB 557, § 18; Laws 1993, LB 669, § 8; Laws 1994, LB 1210, § 18; Laws 1995, LB 406, § 16; Laws 1999, LB 828, § 18; Laws 2004, LB 1083, § 109; R.S.Supp.,2006, § 71-114; Laws 2007, LB463, § 64.

38-165 Boards; public members; qualifications.

A public member of a board appointed under the Uniform Licensing Law prior to December 1, 2008, shall remain subject to the requirements of the original appointment until reappointed under the Uniform Credentialing Act. At the time of appointment and while serving as a board member, a public member appointed to a board on or after December 1, 2008, shall:

- (1) Have been a resident of this state for one year;
- (2) Remain a resident of Nebraska while serving as a board member;
- (3) Have attained the age of nineteen years;
- (4) Represent the interests and viewpoints of the public;
- (5) Not hold an active credential in any profession or business which is subject to the Uniform Credentialing Act, issued in Nebraska or in any other jurisdiction, at any time during the five years prior to appointment;
- (6) Not be eligible for appointment to a board which regulates a profession or business in which that person has ever held a credential;
- (7) Not be or not have been, at any time during the year prior to appointment, an employee of a member of a profession credentialed by the department, of a facility credentialed pursuant to the Health Care Facility Licensure Act, or of a business credentialed pursuant to the Uniform Credentialing Act;
- (8) Not be the parent, child, spouse, or household member of any person presently regulated by the board to which the appointment is being made;

(9) Have no material financial interest in the profession or business regulated by such board; and

(10) Not be a member or employee of the legislative or judicial branch of state government.

Source: Laws 2007, LB463, § 65.

Cross References

Health Care Facility Licensure Act, see section 71-401.

38-166 Initial board subject to act; additional qualifications for members.

For professions coming within the scope of the Uniform Credentialing Act for the first time:

(1) A professional member of a board shall not be required to have held and maintained an active credential for a period of five years just preceding his or her appointment. Members appointed during the first five years after a profession comes within the scope of the act shall be required to meet the minimum qualifications for credentialing and shall, insofar as possible, meet the requirements as to years of practice in this state otherwise provided by section 38-164;

(2) All professional members appointed to an initial board shall be credentialed within six months after being appointed to the board or within six months after the date by which members of the profession are required to be credentialed, whichever is later. If for any reason a professional member is not credentialed within such time period, a new professional member shall be appointed to take his or her place;

(3) Members shall be appointed to the initial board within thirty days after the effective or operative date, whichever is later, of the legislation providing for credentialing of the profession; and

(4) The terms of the initial board members shall be as follows: One member shall hold office until December 1 of the third year following the year in which the legislation providing for credentialing of the profession became effective; two, including one public member, until December 1 of the fourth year; and two, including one public member, until December 1 of the fifth year.

Source: Laws 2007, LB463, § 66.

38-167 Boards; designated; change in name; effect.

(1) Boards shall be designated as follows:

- (a) Board of Advanced Practice Registered Nurses;
- (b) Board of Alcohol and Drug Counseling;
- (c) Board of Athletic Training;
- (d) Board of Audiology and Speech-Language Pathology;
- (e) Board of Chiropractic;
- (f) Board of Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art;
- (g) Board of Dentistry;
- (h) Board of Emergency Medical Services;
- (i) Board of Registered Environmental Health Specialists;
- (j) Board of Funeral Directing and Embalming;

- (k) Board of Hearing Aid Instrument Dispensers and Fitters;
- (l) Board of Massage Therapy;
- (m) Board of Medical Nutrition Therapy;
- (n) Board of Medical Radiography;
- (o) Board of Medicine and Surgery;
- (p) Board of Mental Health Practice;
- (q) Board of Nursing;
- (r) Board of Nursing Home Administration;
- (s) Board of Occupational Therapy Practice;
- (t) Board of Optometry;
- (u) Board of Pharmacy;
- (v) Board of Physical Therapy;
- (w) Board of Podiatry;
- (x) Board of Psychology;
- (y) Board of Respiratory Care Practice;
- (z) Board of Veterinary Medicine and Surgery; and
- (aa) Water Well Standards and Contractors' Licensing Board.

(2) Any change made by the Legislature of the names of boards listed in this section shall not change the membership of such boards or affect the validity of any action taken by or the status of any action pending before any of such boards. Any such board newly named by the Legislature shall be the direct and only successor to the board as previously named.

Source: Laws 1927, c. 167, § 12, p. 457; C.S.1929, § 71-302; Laws 1935, c. 142, § 30, p. 530; C.S.Supp.,1941, § 71-302; Laws 1943, c. 150, § 4, p. 540; R.S.1943, § 71-112; Laws 1957, c. 298, § 8, p. 1078; Laws 1961, c. 337, § 6, p. 1053; Laws 1978, LB 406, § 4; Laws 1979, LB 427, § 5; Laws 1981, LB 451, § 3; Laws 1984, LB 481, § 9; Laws 1985, LB 129, § 5; Laws 1986, LB 277, § 5; Laws 1986, LB 286, § 32; Laws 1986, LB 579, § 24; Laws 1986, LB 355, § 11; Laws 1988, LB 1100, § 8; Laws 1988, LB 557, § 16; Laws 1989, LB 342, § 8; Laws 1993, LB 187, § 5; Laws 1993, LB 669, § 6; Laws 1995, LB 406, § 14; Laws 1999, LB 828, § 14; Laws 2000, LB 833, § 1; Laws 2001, LB 270, § 5; Laws 2002, LB 1021, § 7; Laws 2004, LB 1083, § 107; R.S.Supp.,2006, § 71-112; Laws 2007, LB236, § 5; Laws 2007, LB463, § 67.

38-168 Boards; conflict of interest.

The department may establish definitions of conflicts of interest for members of the boards and may establish procedures in the case such a conflict arises. For purposes of this section, conflict of interest includes financial, professional, or personal obligations that may compromise or present the appearance of

compromising the judgment of a member in the performance of his or her duties.

Source: Laws 1982, LB 448, § 5; Laws 1987, LB 473, § 10; Laws 1999, LB 828, § 19; R.S.1943, (2003), § 71-115.01; Laws 2007, LB463, § 68.

38-169 Board; organization.

Each board shall organize annually at its first meeting subsequent to December 1 and shall select a chairperson, a vice-chairperson, and a secretary from its own membership.

Source: Laws 1927, c. 167, § 20, p. 459; C.S.1929, § 71-310; R.S.1943, § 71-120; Laws 1999, LB 828, § 24; R.S.1943, (2003), § 71-120; Laws 2007, LB463, § 69.

38-170 Board; business; how transacted.

The department shall, as far as practicable, provide for the conducting of the business of the boards by mail and may hold meetings by teleconference or videoconference subject to the Open Meetings Act. Any official action or vote of the members of a board taken by mail shall be preserved in the records of the department and shall be recorded in the board's minutes by the department.

Source: Laws 1927, c. 167, § 21, p. 459; C.S.1929, § 71-311; Laws 1943, c. 150, § 9, p. 541; R.S.1943, § 71-121; Laws 1978, LB 406, § 8; Laws 1979, LB 427, § 11; Laws 1985, LB 129, § 9; Laws 1986, LB 926, § 8; Laws 1988, LB 1100, § 12; Laws 1997, LB 307, § 114; Laws 1999, LB 828, § 25; Laws 2004, LB 821, § 16; R.S.Supp.,2006, § 71-121; Laws 2007, LB463, § 70.

Cross References

Open Meetings Act, see section 84-1407.

38-171 Board; advisory committee or body; compensation; limitation; expenses.

Each member of a board shall, in addition to necessary traveling and lodging expenses, receive a per diem for each day actually engaged in the discharge of his or her duties, including compensation for the time spent in traveling to and from the place of conducting business. Traveling and lodging expenses shall be on the same basis as provided in sections 81-1174 to 81-1177. The compensation per day shall not exceed fifty dollars and shall be determined by each board with the approval of the department. Persons serving on an advisory committee or body under section 38-161 shall receive remuneration of expenses as provided in sections 81-1174 to 81-1177, including compensation for time spent in traveling to and from the place of conducting business, and a per diem of fifty dollars.

Source: Laws 1927, c. 167, § 22, p. 459; Laws 1929, c. 161, § 1, p. 556; C.S.1929, § 71-312; Laws 1935, c. 142, § 32, p. 531; C.S.Supp.,1941, § 71-312; R.S.1943, § 71-122; Laws 1955, c. 270, § 1, p. 849; Laws 1957, c. 298, § 11, p. 1079; Laws 1959, c. 318, § 1, p. 1165; Laws 1961, c. 337, § 7, p. 1053; Laws 1965, c. 410, § 1, p. 1315; Laws 1967, c. 438, § 1, p. 1347; Laws 1967, c. 439, § 16, p. 1364; Laws 1969, c. 561, § 1, p. 2287; Laws 1971,

LB 587, § 5; Laws 1972, LB 1385, § 1; Laws 1978, LB 406, § 9; Laws 1979, LB 427, § 12; Laws 1981, LB 451, § 5; Laws 1981, LB 204, § 108; Laws 1984, LB 481, § 13; Laws 1985, LB 129, § 10; Laws 1986, LB 926, § 10; Laws 1999, LB 828, § 27; Laws 2003, LB 242, § 17; R.S.1943, (2003), § 71-122; Laws 2007, LB463, § 71.

38-172 Board; national organization or related meetings; attendance.

Each board may select one or more of its members to attend the annual meeting of the national organization of state boards of such profession or other related meetings. Any member so selected shall receive his or her necessary traveling and lodging expenses in attending such meetings on the same basis as provided in sections 81-1174 to 81-1177.

Source: Laws 1927, c. 167, § 24, p. 460; C.S.1929, § 71-314; R.S.1943, § 71-124; Laws 1971, LB 587, § 7; Laws 1981, LB 204, § 110; Laws 1986, LB 926, § 12; Laws 1999, LB 828, § 29; R.S.1943, (2003), § 71-124; Laws 2007, LB463, § 72.

38-173 Board; liability; exemption; when.

No member of a board, no expert retained by the department, and no member of a profession who provides consultation to or testimony for the department shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or otherwise for any action taken or recommendation made within the scope of the functions of such board or expert or the consultation or testimony given by such person, if such board member, expert, or person acts without malice and in the reasonable belief that such action, recommendation, consultation, or testimony is warranted by the facts known to him or her after a reasonable effort is made to obtain the facts on which such action is taken, recommendation is made, or consultation or testimony is provided.

Source: Laws 1976, LB 877, § 24; Laws 1986, LB 286, § 71; Laws 1986, LB 579, § 63; Laws 1996, LB 1044, § 398; Laws 1999, LB 828, § 52; R.S.1943, (2003), § 71-161.19; Laws 2007, LB463, § 73.

38-174 Department; responsibilities; costs; how paid.

The department shall be responsible for the general administration of the activities of each of the boards. The cost of operation and administration of the boards shall be paid from the General Fund and the Professional and Occupational Credentialing Cash Fund.

Source: Laws 1972, LB 1385, § 3; Laws 1980, LB 958, § 1; Laws 1980, LB 847, § 1; Laws 1986, LB 926, § 9; Laws 1991, LB 10, § 1; Laws 1997, LB 307, § 115; Laws 1999, LB 828, § 26; Laws 2003, LB 242, § 16; Laws 2005, LB 256, § 20; R.S.Supp.,2006, § 71-121.01; Laws 2007, LB296, § 300; Laws 2007, LB463, § 74.

38-175 Licensee Assistance Program; authorized; participation; immunity from liability; referral; limitation.

(1) The department may contract to provide a Licensee Assistance Program to credential holders regulated by the department. The program shall be limited to providing education, referral assistance, and monitoring of compliance with treatment for abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance and shall be limited to voluntary participation by credential holders.

(2)(a) Participation in the program shall be confidential, except that if any evaluation by the program determines that the abuse, dependence, or active addiction may be of a nature which constitutes a danger to the public health and safety by the person's continued practice or if the person fails to comply with any term or condition of a treatment plan, the program shall report the same to the director.

(b) Participation in the program shall not preclude the investigation of alleged statutory violations which could result in disciplinary action against the person's credential or criminal action against the person.

(3) Any report from any person or from the program to the department indicating that a credential holder is suffering from abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance that impairs the ability to practice the profession shall be treated as a complaint against such credential and shall subject such credential holder to discipline under sections 38-186 to 38-1,100.

(4) No person who makes such a report to the program or from the program to the department shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or other criminal or civil action of any nature, whether direct or derivative, for making such report or providing information to the program or department in accordance with this section.

(5) Any person who contacts the department for information on or assistance in obtaining referral or treatment of himself or herself or any other person credentialed by the department for abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance that impairs the ability to practice the profession shall be referred to the program. Such inquiries shall not be used by the department as the basis for investigation for disciplinary action, except that such limitation shall not apply to complaints or any other reports or inquiries made to the department concerning persons who may be suffering from abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance that impairs the ability to practice the profession or when a complaint has been filed or an investigation or disciplinary or other administrative proceeding is in process.

Source: Laws 1991, LB 456, § 8; Laws 1994, LB 1223, § 13; Laws 1996, LB 1044, § 403; Laws 1997, LB 307, § 121; Laws 2001, LB 398, § 25; Laws 2003, LB 242, § 31; R.S.1943, (2003), § 71-172.01; Laws 2007, LB296, § 322; Laws 2007, LB463, § 75.

38-176 Director; jurisdiction of proceedings; grounds for denial of credential.

(1) The director shall have jurisdiction of proceedings (a) to deny the issuance of a credential, (b) to refuse renewal of a credential, and (c) to discipline a credential holder.

(2) Except as otherwise provided in section 38-1,119, if an applicant for an initial credential or for renewal of a credential to practice a profession does not meet all of the requirements for the credential, the department shall deny issuance or renewal of the credential.

Source: Laws 2007, LB463, § 76.

38-177 Disciplinary actions; terms, defined.

For purposes of sections 38-178, 38-179, and 38-184:

(1) Confidential information means information protected as privileged under applicable law;

(2) Conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere or non vult contendere made to a formal criminal charge or a judicial finding of guilt irrespective of the pronouncement of judgment or the suspension thereof and includes instances in which the imposition or the execution of sentence is suspended following a judicial finding of guilt and the defendant is placed on probation; and

(3) Pattern of incompetent or negligent conduct means a continued course of incompetent or negligent conduct in performing the duties of the profession.

Source: Laws 1976, LB 877, § 6; Laws 1978, LB 748, § 36; Laws 1986, LB 318, § 142; Laws 1988, LB 693, § 1; Laws 1988, LB 1100, § 21; R.S.1943, (2003), § 71-161.01; Laws 2007, LB463, § 77.

38-178 Disciplinary actions; grounds.

Except as otherwise provided in sections 38-1,119 to 38-1,123, a credential to practice a profession may be denied, refused renewal, or have other disciplinary measures taken against it in accordance with section 38-185 or 38-186 on any of the following grounds:

(1) Misrepresentation of material facts in procuring or attempting to procure a credential;

(2) Immoral or dishonorable conduct evidencing unfitness to practice the profession in this state;

(3) Abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance;

(4) Failure to comply with a treatment program or an aftercare program, including, but not limited to, a program entered into under the Licensee Assistance Program established pursuant to section 38-175;

(5) Conviction of (a) a misdemeanor or felony under Nebraska law or federal law, or (b) a crime in any jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony under Nebraska law and which has a rational connection with the fitness or capacity of the applicant or credential holder to practice the profession;

(6) Practice of the profession (a) fraudulently, (b) beyond its authorized scope, (c) with gross incompetence or gross negligence, or (d) in a pattern of incompetent or negligent conduct;

(7) Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, drugs, mind-altering substances, physical disability, mental disability, or emotional disability;

- (8) Physical or mental incapacity to practice the profession as evidenced by a legal judgment or a determination by other lawful means;
- (9) Illness, deterioration, or disability that impairs the ability to practice the profession;
- (10) Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a credential by a person not credentialed to do so;
- (11) Having had his or her credential denied, refused renewal, limited, suspended, revoked, or disciplined in any manner similar to section 38-196 by another state or jurisdiction based upon acts by the applicant or credential holder similar to acts described in this section;
- (12) Use of untruthful, deceptive, or misleading statements in advertisements;
- (13) Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;
- (14) Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes;
- (15) Violations of the Uniform Credentialing Act or the rules and regulations relating to the particular profession;
- (16) Unlawful invasion of the field of practice of any profession regulated by the Uniform Credentialing Act which the credential holder is not credentialed to practice;
- (17) Violation of the Uniform Controlled Substances Act or any rules and regulations adopted pursuant to the act;
- (18) Failure to file a report required by section 38-1,124 or 38-1,125;
- (19) Failure to maintain the requirements necessary to obtain a credential;
- (20) Violation of an order issued by the department;
- (21) Violation of an assurance of compliance entered into under section 38-1,108;
- (22) Failure to pay an administrative penalty;
- (23) Unprofessional conduct as defined in section 38-179; or
- (24) Violation of the Automated Medication Systems Act.

Source: Laws 1927, c. 167, § 46, p. 466; C.S.1929, § 71-601; Laws 1943, c. 150, § 10, p. 541; R.S.1943, § 71-147; Laws 1976, LB 877, § 1; Laws 1979, LB 95, § 1; Laws 1986, LB 286, § 45; Laws 1986, LB 579, § 37; Laws 1986, LB 926, § 24; Laws 1987, LB 473, § 15; Laws 1988, LB 1100, § 16; Laws 1991, LB 456, § 7; Laws 1992, LB 1019, § 37; Laws 1993, LB 536, § 44; Laws 1994, LB 1210, § 25; Laws 1994, LB 1223, § 6; Laws 1997, LB 622, § 79; Laws 1999, LB 366, § 8; Laws 2001, LB 398, § 20; Laws 2005, LB 301, § 9; R.S.Supp.,2006, § 71-147; Laws 2007, LB463, § 78; Laws 2008, LB308, § 10.
Operative date December 1, 2008.

Cross References

Automated Medication Systems Act, see section 71-2444.
Uniform Controlled Substances Act, see section 28-401.01.
Uniform Deceptive Trade Practices Act, see section 87-306.

“Grossly immoral” and “dishonorable” conduct under subdivision (2) of this section contemplates conduct that shows that a person guilty of it either is intellectually or morally incompetent to practice the profession or morally incompetent to practice the profession or has committed an act or acts of a nature likely to jeopardize the interest of the public; it does not authorize revocation for trivial reasons or for a mere breach of the generally accepted ethics of the profession. *Poor v. State*, 266 Neb. 183, 663 N.W.2d 109 (2003).

Pursuant to subsection (5)(d) of this section (subdivision (6)(d) of section 38-178), a district court is correct in concluding that a record lacks the quantum of evidence necessary to support a reasonable inference that a physician was grossly incompetent in treatment of a patient when: Experts testified that they would have found other procedures preferable, assessed the situation more thoroughly, or acted earlier in the course of treatment; experts agreed that the physician’s actions were not contrary to the indications and information he or she had received at the time; and positive assessments of the physician’s basic skill level were not contradicted by any evidence in the record. Pursuant to subsection (5)(d) of this section (subdivision (6)(d) of section 38-178), the term “gross incompetence” connotes such an extreme deficiency on the part of a physician in the basic knowledge and skill necessary for diagnosis and treatment that one may reasonably question the physician’s ability to practice medicine at the threshold level of professional competence. *Langvardt v. Horton*, 254 Neb. 878, 581 N.W.2d 60 (1998).

Under subsection (10) of this section (as it existed in 1993), the word “includes” is restricted by the language which speci-

fies the sources referred to. Thus, a violation of standards of the medical profession not defined by the statute or rules and regulations does not define unprofessional conduct for the purposes of the statute. *Curry v. State ex rel. Stenberg*, 242 Neb. 695, 496 N.W.2d 512 (1993).

Section is permissive, revocation following conviction for a serious criminal act was not abuse of discretion. *State ex rel. Meyer v. Eyen*, 184 Neb. 848, 172 N.W.2d 617 (1969).

A physician’s license may be revoked for unprofessional conduct before conviction in a competent court. *Mathews v. Hedlund*, 82 Neb. 825, 119 N.W. 17 (1908).

In proceedings to revoke a physician’s license on grounds of producing a criminal abortion, trial and conviction of such a charge by a competent court is not a condition precedent to said proceedings. *Munk v. Frink*, 81 Neb. 631, 116 N.W. 525 (1908), 17 L.R.A.N.S. 439 (1908).

State does not have to prove that a federal felony conviction under subsection (4) of this section (subdivision (5) of section 38-178) is also a violation of Nebraska law. *Sedivy v. State ex rel. Stenberg*, 5 Neb. App. 745, 567 N.W.2d 784 (1997).

The judiciary will not interfere with executive officers in the performance of duties which are discretionary in their nature or involve the exercise of judgment; there exists no power in the courts to act upon the officer so as to interfere with the exercise of that judgment while the matter is properly before the officer for action. *Roseberry v. Wright*, 2 Neb. App. 248, 508 N.W.2d 867 (1993).

38-179 Disciplinary actions; unprofessional conduct, defined.

For purposes of section 38-178, unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of a profession or the ethics of the profession, regardless of whether a person, consumer, or entity is injured, or conduct that is likely to deceive or defraud the public or is detrimental to the public interest, including, but not limited to:

- (1) Receipt of fees on the assurance that an incurable disease can be permanently cured;
- (2) Division of fees, or agreeing to split or divide the fees, received for professional services with any person for bringing or referring a consumer other than (a) with a partner or employee of the applicant or credential holder or his or her office or clinic, (b) with a landlord of the applicant or credential holder pursuant to a written agreement that provides for payment of rent based on gross receipts, (c) with a former partner or employee of the applicant or credential holder based on a retirement plan or separation agreement, or (d) by a person credentialed pursuant to the Water Well Standards and Contractors’ Practice Act;
- (3) Obtaining any fee for professional services by fraud, deceit, or misrepresentation, including, but not limited to, falsification of third-party claim documents;
- (4) Cheating on or attempting to subvert the credentialing examination;
- (5) Assisting in the care or treatment of a consumer without the consent of such consumer or his or her legal representative;
- (6) Use of any letters, words, or terms, either as a prefix, affix, or suffix, on stationery, in advertisements, or otherwise, indicating that such person is entitled to practice a profession for which he or she is not credentialed;

- (7) Performing, procuring, or aiding and abetting in the performance or procurement of a criminal abortion;
- (8) Knowingly disclosing confidential information except as otherwise permitted by law;
- (9) Commission of any act of sexual abuse, misconduct, or exploitation related to the practice of the profession of the applicant or credential holder;
- (10) Failure to keep and maintain adequate records of treatment or service;
- (11) Prescribing, administering, distributing, dispensing, giving, or selling any controlled substance or other drug recognized as addictive or dangerous for other than a medically accepted therapeutic purpose;
- (12) Prescribing any controlled substance to (a) oneself or (b) except in the case of a medical emergency (i) one's spouse, (ii) one's child, (iii) one's parent, (iv) one's sibling, or (v) any other person living in the same household as the prescriber;
- (13) Failure to comply with any federal, state, or municipal law, ordinance, rule, or regulation that pertains to the applicable profession;
- (14) Disruptive behavior, whether verbal or physical, which interferes with consumer care or could reasonably be expected to interfere with such care; and
- (15) Such other acts as may be defined in rules and regulations.

Nothing in this section shall be construed to exclude determination of additional conduct that is unprofessional by adjudication in individual contested cases.

Source: Laws 1927, c. 167, § 47, p. 466; C.S.1929, § 71-602; Laws 1935, c. 141, § 1, p. 518; C.S.Supp.,1941, § 71-602; Laws 1943, c. 146, § 11, p. 542; R.S.1943, § 71-148; Laws 1979, LB 95, § 2; Laws 1981, LB 466, § 1; Laws 1986, LB 286, § 46; Laws 1986, LB 579, § 38; Laws 1986, LB 926, § 25; Laws 1987, LB 473, § 16; Laws 1988, LB 273, § 9; Laws 1988, LB 1100, § 17; Laws 1991, LB 425, § 11; Laws 1991, LB 456, § 11; Laws 1993, LB 536, § 45; Laws 1994, LB 1210, § 27; Laws 1997, LB 23, § 5; R.S.1943, (2003), § 71-148; Laws 2007, LB463, § 79.

Cross References

Water Well Standards and Contractors' Practice Act, see section 46-1201.

Performance of a criminal abortion is immoral, unprofessional, and dishonorable conduct justifying revocation of license to practice medicine and surgery. *State ex rel. Sorensen v. Lake*, 121 Neb. 331, 236 N.W. 762 (1931).

Disclosure by a physician of the contagious or infectious nature of a patient's disease to a person who might become

exposed is not a betrayal of a professional secret which will constitute unprofessional conduct. *Simonsen v. Swenson*, 104 Neb. 224, 177 N.W. 831 (1920), 9 A.L.R. 1250 (1920).

38-180 Disciplinary actions; evidence of discipline by another state or jurisdiction.

For purposes of subdivision (11) of section 38-178, a certified copy of the record of denial, refusal of renewal, limitation, suspension, or revocation of a license, certificate, registration, or other similar credential or the taking of other disciplinary measures against it by another state or jurisdiction shall be conclusive evidence of a violation.

Source: Laws 2007, LB463, § 80.

38-181 Initial credential to operate business; renewal of credential; denial by department; powers of department.

If an applicant for an initial credential to operate a business does not meet all of the requirements for the credential, the department shall deny issuance of the credential. If an applicant for an initial credential to operate a business or a credential holder applying for renewal of the credential to operate a business has committed any of the acts set out in section 38-182, the department may deny issuance or refuse renewal of the credential or may issue or renew the credential subject to any of the terms imposed under section 38-196 in order to protect the public.

Source: Laws 2007, LB463, § 81.

38-182 Disciplinary actions; credential to operate business; grounds.

A credential to operate a business may be denied, refused renewal, or have disciplinary measures taken against it in accordance with section 38-196 on any of the following grounds:

- (1) Violation of the Uniform Credentialing Act or the rules and regulations adopted and promulgated under such act relating to the applicable business;
- (2) Committing or permitting, aiding, or abetting the commission of any unlawful act;
- (3) Conduct or practices detrimental to the health or safety of an individual served or employed by the business;
- (4) Failure to allow an agent or employee of the department access to the business for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the department; or
- (5) Discrimination or retaliation against an individual served or employed by the business who has submitted a complaint or information to the department or is perceived to have submitted a complaint or information to the department.

Source: Laws 2007, LB463, § 82.

38-183 Credential issued by department; temporary suspension or limitation; notice and hearing not required; when; duration.

(1) The department may temporarily suspend or temporarily limit any credential issued by the department without notice or a hearing if the director determines that there is reasonable cause to believe that grounds exist under section 38-178 or 38-182 for the revocation, suspension, or limitation of the credential and that the credential holder's continuation in practice or operation would constitute an imminent danger to the public health and safety. Simultaneously with any such action, the department shall institute proceedings for a hearing on the grounds for revocation, suspension, or limitation of the credential. Such hearing shall be held no later than fifteen days from the date of such temporary suspension or temporary limitation of the credential.

(2) A continuance of the hearing shall be granted by the department upon the written request of the credential holder, and such a continuance shall not exceed thirty days unless waived by the credential holder. A temporary suspension or temporary limitation order by the director shall take effect when served upon the credential holder.

(3) In no case shall a temporary suspension or temporary limitation of a credential under this section be in effect for a period of time in excess of ninety days unless waived by the credential holder. If a decision is not reached within ninety days, the credential shall be reinstated unless and until the department reaches a decision to revoke, suspend, or limit the credential or otherwise discipline the credential holder.

Source: Laws 1986, LB 926, § 26; Laws 1991, LB 456, § 10; Laws 1994, LB 1210, § 26; R.S.1943, (2003), § 71-147.02; Laws 2007, LB463, § 83.

38-184 Credential; disciplinary actions; time when taken.

If an applicant for a credential or a credential holder is convicted of an offense for which the credential may be denied or refused renewal or have other disciplinary measures taken against it in accordance with section 38-196, such denial, refusal of renewal, or disciplinary measures may be taken when the time for appeal of the conviction has elapsed or the conviction has been affirmed on appeal or an order granting probation is made suspending the imposition or the execution of sentence, irrespective of any subsequent order under any statute allowing such person to withdraw his or her plea of guilty, nolo contendere, or non vult contendere and to enter a plea of not guilty, or setting aside the verdict of guilty or the conviction, or releasing the person from probation, or dismissing the accusation, information, or indictment.

Source: Laws 2007, LB463, § 84.

38-185 Credential; denial; refuse renewal; notice; hearing.

To deny or refuse renewal of a credential, the department shall notify the applicant or credential holder in writing of the action taken and the reasons for the determination. The denial or refusal to renew shall become final thirty days after mailing the notice unless the applicant or credential holder, within such thirty-day period, requests a hearing in writing. The hearing shall be conducted in accordance with the Administrative Procedure Act.

Source: Laws 1927, c. 167, § 49, p. 467; C.S.1929, § 71-604; R.S.1943, § 71-150; Laws 1986, LB 286, § 48; Laws 1986, LB 579, § 40; Laws 1988, LB 1100, § 19; Laws 1991, LB 456, § 12; Laws 1994, LB 1210, § 29; Laws 1996, LB 1044, § 382; R.S.1943, (2003), § 71-150; Laws 2007, LB296, § 304; Laws 2007, LB463, § 85.

Cross References

Administrative Procedure Act, see section 84-920.

The judiciary will not interfere with executive officers in the performance of duties which are discretionary in their nature or involve the exercise of judgment; there exists no power in the courts to act upon the officer so as to interfere with the exercise

of that judgment while the matter is properly before the officer for action. *Roseberry v. Wright*, 2 Neb. App. 248, 508 N.W.2d 867 (1993).

38-186 Credential; discipline; petition by Attorney General; hearing; department; powers and duties.

(1) A petition shall be filed by the Attorney General in order for the director to discipline a credential obtained under the Uniform Credentialing Act to:

(a) Practice or represent oneself as being certified under any of the practice acts enumerated in subdivisions (1) through (17) and (19) through (31) of section 38-101; or

(b) Operate as a business for the provision of services in body art; cosmetology; emergency medical services; esthetics; funeral directing and embalming; massage therapy; and nail technology in accordance with subsection (3) of section 38-121.

(2) The petition shall be filed in the office of the director. The department may withhold a petition for discipline or a final decision from public access for a period of five days from the date of filing the petition or the date the decision is entered or until service is made, whichever is earliest.

(3) The proceeding shall be summary in its nature and triable as an equity action and shall be heard by the director or by a hearing officer designated by the director under rules and regulations of the department. Affidavits may be received in evidence in the discretion of the director or hearing officer. The department shall have the power to administer oaths, to subpoena witnesses and compel their attendance, and to issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as the district courts of the state. Depositions may be used by either party.

Source: Laws 2007, LB463, § 86.

38-187 Credential; discipline; petition; form; other pleadings.

The following rules shall govern the form of the petition in cases brought pursuant to section 38-186:

(1) The state shall be named as plaintiff and the credential holder as defendant;

(2) The charges against the credential holder shall be stated with reasonable definiteness;

(3) Amendments may be made as in ordinary actions in the district court; and

(4) All allegations shall be deemed denied, but the credential holder may plead thereto if he or she desires.

Source: Laws 1927, c. 167, § 51, p. 467; C.S.1929, § 71-606; R.S.1943, § 71-152; Laws 1986, LB 286, § 50; Laws 1986, LB 579, § 42; Laws 1994, LB 1210, § 31; R.S.1943, (2003), § 71-152; Laws 2007, LB463, § 87.

Under former law, the complaint was sufficient if it informed the accused of the nature of the wrong laid to his charge and of the particular instance of its perpetration. Munk v. Frink, 75 Neb. 172, 106 N.W. 425 (1905).

38-188 Credential; discipline; hearing; time; place.

Upon presentation of the petition to the director, he or she shall make an order fixing the time and place for the hearing, which shall not be less than thirty nor more than sixty days thereafter.

Source: Laws 1927, c. 167, § 52, p. 468; C.S.1929, § 71-607; R.S.1943, § 71-153; Laws 1986, LB 926, § 27; Laws 1996, LB 1044, § 383; R.S.1943, (2003), § 71-153; Laws 2007, LB296, § 306; Laws 2007, LB463, § 88.

38-189 Credential; discipline; hearing; notice; how served.

Notice of the filing of a petition pursuant to section 38-186 and of the time and place of hearing shall be served upon the credential holder at least ten days

before the hearing. The notice may be served by any method specified in section 25-505.01, or the director may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01.

Source: Laws 1927, c. 167, § 53, p. 468; C.S.1929, § 71-608; R.S.1943, § 71-154; Laws 1986, LB 286, § 51; Laws 1986, LB 579, § 43; Laws 1991, LB 456, § 13; Laws 1994, LB 1210, § 32; R.S.1943, (2003), § 71-154; Laws 2007, LB463, § 89.

38-190 Petition for disciplinary action; disposition prior to order; methods; Attorney General; duties.

(1) Any petition filed pursuant to section 38-186 may, at any time prior to the entry of any order by the director, be disposed of by stipulation, agreed settlement, consent order, or similar method as agreed to between the parties. A proposed settlement shall be submitted and considered in camera and shall not be a public record unless accepted by the director. The director may review the input provided to the Attorney General by the board pursuant to subsection (2) of this section. If the settlement is acceptable to the director, he or she shall make it the sole basis of any order he or she enters in the matter, and it may be modified or added to by the director only upon the mutual consent of both of the parties thereto. If the settlement is not acceptable to the director, it shall not be admissible in any subsequent hearing and it shall not be considered in any manner as an admission.

(2) The Attorney General shall not enter into any agreed settlement or dismiss any petition without first having given notice of the proposed action and an opportunity to the appropriate board to provide input into the terms of the settlement or on dismissal. The board shall have fifteen days from the date of the Attorney General's request to respond, but the recommendation of the board, if any, shall not be binding on the Attorney General. Meetings of the board for such purpose shall be in closed session, and any recommendation by the board to the Attorney General shall not be a public record until the pending action is complete, except that if the director reviews the input provided to the Attorney General by the board as provided in subsection (1) of this section, the credential holder shall also be provided a copy of the input and opportunity to respond in such manner as the director determines.

Source: Laws 1976, LB 877, § 8; Laws 1988, LB 1100, § 22; Laws 1991, LB 456, § 16; Laws 1994, LB 1223, § 8; Laws 1996, LB 1044, § 389; Laws 1999, LB 828, § 44; R.S.1943, (2003), § 71-161.03; Laws 2007, LB296, § 311; Laws 2007, LB463, § 90.

38-191 Credential; disciplinary action; hearing; failure to appear; effect.

If a credential holder fails to appear, either in person or by counsel, at the time and place designated in the notice required by section 38-189, the director, after receiving satisfactory evidence of the truth of the charges, shall order the credential revoked or suspended or shall take any or all of the other appropriate disciplinary measures authorized by section 38-196 against the credential.

Source: Laws 1927, c. 167, § 55, p. 468; C.S.1929, § 71-610; R.S.1943, § 71-156; Laws 1976, LB 877, § 4; Laws 1986, LB 286, § 54;

Laws 1986, LB 579, § 46; Laws 1994, LB 1210, § 34; Laws 1996, LB 1044, § 385; R.S.1943, (2003), § 71-156; Laws 2007, LB296, § 309; Laws 2007, LB463, § 91.

38-192 Credential; disciplinary action; director; sanctions; powers.

If the director determines upon completion of a hearing under section 38-186 that a violation has occurred, the director may, at his or her discretion, consult with the appropriate board concerning sanctions to be imposed or terms and conditions of the sanctions. When the director consults with a board, the credential holder and the Attorney General shall be provided with a copy of the director's request, the recommendation of the board, and an opportunity to respond in such manner as the director determines. The director shall have the authority through entry of an order to exercise in his or her discretion any or all of the sanctions authorized under section 38-196.

Source: Laws 2007, LB463, § 92.

38-193 Credential; disciplinary action; partial-birth abortion; director; powers and duties.

If the petition is brought with respect to subdivision (3) of section 38-2021, the director shall make findings as to whether the licensee's conduct was necessary to save the life of a mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself. The director shall have the authority through entry of an order to exercise in his or her discretion any or all of the sanctions authorized under section 38-196, irrespective of the petition.

Source: Laws 2007, LB463, § 93.

38-194 Credential; disciplinary action; costs; how taxed.

If the order issued regarding discipline of a credential is adverse to the credential holder, the costs shall be charged to him or her as in ordinary civil actions in the district court, but if the state is the unsuccessful party, the costs shall be paid out of any money in the Professional and Occupational Credentialing Cash Fund available for that purpose. Witness fees and costs may be taxed according to the rules prevailing in the district court.

Source: Laws 1927, c. 167, § 56, p. 468; C.S.1929, § 71-611; R.S.1943, § 71-157; Laws 1986, LB 286, § 55; Laws 1986, LB 579, § 47; Laws 1994, LB 1210, § 35; Laws 1996, LB 1044, § 386; Laws 1997, LB 307, § 118; Laws 2003, LB 242, § 21; R.S.1943, (2003), § 71-157; Laws 2007, LB463, § 94.

38-195 Credential; disciplinary action; costs; when not collectible; how paid.

All costs accrued at the instance of the state when it is the successful party in a proceeding to discipline a credential, which the Attorney General certifies cannot be collected from the defendant, shall be paid out of any available funds in the Professional and Occupational Credentialing Cash Fund.

Source: Laws 1927, c. 167, § 57, p. 468; C.S.1929, § 71-612; R.S.1943, § 71-158; Laws 1996, LB 1044, § 387; Laws 1997, LB 307, § 119; Laws 2003, LB 242, § 22; R.S.1943, (2003), § 71-158; Laws 2007, LB463, § 95.

38-196 Credential; disciplinary action; sanctions authorized.

Upon the completion of any hearing held regarding discipline of a credential, the director may dismiss the action or impose any of the following sanctions:

- (1) Censure;
- (2) Probation;
- (3) Limitation;
- (4) Civil penalty;
- (5) Suspension; or
- (6) Revocation.

Source: Laws 1927, c. 167, § 54, p. 468; C.S.1929, § 71-609; Laws 1943, c. 150, § 13, p. 544; R.S.1943, § 71-155; Laws 1976, LB 877, § 3; Laws 1984, LB 481, § 20; Laws 1986, LB 286, § 52; Laws 1986, LB 579, § 44; Laws 1986, LB 926, § 28; Laws 1988, LB 1100, § 20; Laws 1991, LB 456, § 14; Laws 1994, LB 1210, § 33; Laws 1994, LB 1223, § 7; Laws 1996, LB 1044, § 384; Laws 1997, LB 23, § 6; Laws 1999, LB 828, § 43; R.S.1943, (2003), § 71-155; Laws 2007, LB296, § 307; Laws 2007, LB463, § 96.

While a \$10,000 fine imposed under this section may well serve a punitive purpose in certain cases, it will not be assumed in a vacuum that a potential fine not actually imposed could serve only primarily punitive purposes. *State v. Wolf*, 250 Neb. 352, 549 N.W.2d 183 (1996).

The power of courts to review the action of a professional board of examiners in its refusal to recommend reinstatement of a revoked license is not decided, but if such power exists, it is limited to a determination based on whether or not the board's

action was arbitrary or capricious. *Coil v. Department of Health*, 189 Neb. 606, 204 N.W.2d 167 (1973).

Summary equity proceeding for revocation of physician's license was sustained. *State ex rel. Sorensen v. Lake*, 121 Neb. 331, 236 N.W. 762 (1931).

Under former law, proceedings before the state board were summary in nature and technical rules for trial were disregarded. *Munk v. Frink*, 81 Neb. 631, 116 N.W. 525 (1908), 17 L.R.A.N.S. 439 (1908).

38-197 Credential; disciplinary action; additional terms and conditions of discipline.

If any discipline is imposed pursuant to section 38-196, the director may, in addition to any other terms and conditions of that discipline:

- (1) Require the credential holder to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral or both and may be a practical or clinical examination or both or any or all of such combinations of written, oral, practical, and clinical, at the option of the director;
- (2) Require the credential holder to submit to a complete diagnostic examination by one or more physicians or other qualified professionals appointed by the director. If the director requires the credential holder to submit to such an examination, the director shall receive and consider any other report of a complete diagnostic examination given by one or more physicians or other qualified professionals of the credential holder's choice if the credential holder chooses to make available such a report or reports by his or her physician or physicians or other qualified professionals; and
- (3) Limit the extent, scope, or type of practice of the credential holder.

Source: Laws 1976, LB 877, § 7; Laws 1986, LB 286, § 56; Laws 1986, LB 579, § 48; Laws 1991, LB 456, § 15; Laws 1994, LB 1210, § 36; Laws 1996, LB 1044, § 388; R.S.1943, (2003), § 71-161.02; Laws 2007, LB296, § 310; Laws 2007, LB463, § 97.

38-198 Civil penalty; manner of collection; attorney's fees and costs; disposition.

If a civil penalty is imposed pursuant to section 38-196, it shall not exceed twenty thousand dollars. Any civil penalty assessed and unpaid shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. The department may also collect in such action attorney's fees and costs incurred in the collection of the civil penalty. The department shall, within thirty days from receipt, remit any collected civil penalty to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1986, LB 926, § 29; R.S.1943, (2003), § 71-155.03; Laws 2007, LB463, § 98.

38-199 Credential; disciplinary action; suspension; effect.

If suspension is imposed pursuant to section 38-196, the credential holder shall not engage in the practice of a profession during the time for which the credential is suspended. The suspension shall be for a definite period of time to be set by the director. The director may provide that the credential shall be (1) automatically reinstated upon expiration of such period, (2) reinstated if the terms and conditions as set by the director are satisfied, or (3) reinstated subject to probation or limitations or conditions upon the practice of the credential holder.

Source: Laws 2007, LB463, § 99.

38-1,100 Credential; disciplinary action; revocation; effect.

If revocation is imposed pursuant to section 38-196, the credential holder shall not engage in the practice of the profession after a credential to practice such profession is revoked. Such revocation shall be for all times, except that at any time after the expiration of two years, application may be made for reinstatement pursuant to section 38-148.

Source: Laws 2007, LB463, § 100.

38-1,101 Contested cases; chief medical officer; duties.

If a chief medical officer is appointed pursuant to section 81-3115, he or she shall perform the duties of the director for decisions in contested cases under the Uniform Credentialing Act other than contested cases under sections 38-1,119 to 38-1,123.

Source: Laws 1997, LB 622, § 78; Laws 2001, LB 398, § 21; Laws 2003, LB 245, § 11; R.S.1943, (2003), § 71-155.01; Laws 2007, LB296, § 308; Laws 2007, LB463, § 101.

38-1,102 Appeal; procedure.

Both parties to disciplinary proceedings under the Uniform Credentialing Act shall have the right of appeal, and the appeal shall be in accordance with the Administrative Procedure Act. The case shall be heard at a time fixed by the

district court. It shall be advanced and take precedence over all other cases upon the court calendar except worker's compensation and criminal cases.

Source: Laws 1927, c. 167, § 58, p. 469; C.S.1929, § 71-613; Laws 1943, c. 150, § 14, p. 544; R.S.1943, § 71-159; Laws 1976, LB 877, § 5; Laws 1988, LB 352, § 113; R.S.1943, (2003), § 71-159; Laws 2007, LB463, § 102.

Cross References

Administrative Procedure Act, see section 84-920.

The power of courts to review the action of a professional board of examiners in its refusal to recommend reinstatement of a revoked license is not decided, but if such power exists, it is limited to a determination based on whether or not the board's action was arbitrary or capricious. *Coil v. Department of Health*, 189 Neb. 606, 204 N.W.2d 167 (1973).

38-1,103 Consultant to department from board; authorized.

A board may designate one of its professional members to serve as a consultant to the department in reviewing complaints and on issues of professional practice that may arise during the course of an investigation. Such consultation shall not be required for the department to evaluate a complaint or to proceed with an investigation. A board may also recommend or confer with a consultant member of its profession to assist the board or department on issues of professional practice.

Source: Laws 2007, LB463, § 103.

38-1,104 Complaint; decision not to investigate; notice; review; notice to credential holder; when.

(1) If the department determines that a complaint will not be investigated, the department shall notify the complainant of such determination. At the request of the complainant, the appropriate board may review the complaint and provide its recommendation to the department on whether the complaint merits investigation.

(2) The department shall notify the credential holder that a complaint has been filed and that an investigation will be conducted except when the department determines that such notice may prejudice an investigation.

Source: Laws 2007, LB463, § 104.

38-1,105 Investigations; department; progress reports to appropriate board; board review; board; powers and duties; review by Attorney General; meetings in closed session.

(1) The department shall advise the appropriate board on the progress of investigations. If requested by the complainant, the identity of the complainant shall not be released to the board.

(2) When the department determines that an investigation is complete, the department shall consult with the board to obtain its recommendation for submission to the Attorney General. In making a recommendation, the board may review all investigative reports and have full access to the investigational file of the department and any previous investigational information in the files of the department on the credential holder that may be relevant to the investigation, except that (a) reports or other documents of any law enforcement agency provided to the department shall not be available for board review except to the extent such law enforcement agency gives permission for release

to the board and (b) reports provided by any other agency or public or private entity, which reports are confidential in that agency's or entity's possession and are provided with the express expectation that the report will not be disclosed, may be withheld from board review.

(3) The recommendation of the board shall be made part of the completed investigational report of the department and submitted to the Attorney General. The recommendation of the board shall include, but not be limited to:

(a) The specific violations of any statute, rule, or regulation that the board finds substantiated based upon the investigation;

(b) Matters which the board believes require additional investigation; and

(c) The disposition or possible dispositions that the board believes appropriate under the circumstances.

(4) If the department and the board disagree on the basis for investigation or if the board recommends additional investigation and the department and board disagree on the necessity of additional investigation, the matter shall be forwarded to the Attorney General for review and determination.

(5) All meetings of the boards or between a board and staff of the department or the Attorney General on investigatory matters shall be held in closed session, including the voting of the board on any matter pertaining to the investigation or recommendation.

Source: Laws 2007, LB463, § 105.

38-1,106 Reports, complaints, and records not public records; limitations on use; prohibited disclosure; penalty; application material; how treated.

(1) Reports under sections 38-1,129 to 38-1,136, complaints, and investigational records of the department shall not be public records, shall not be subject to subpoena or discovery, and shall be inadmissible in evidence in any legal proceeding of any kind or character except a contested case before the department. Such reports, complaints, or records shall be a public record if made part of the record of a contested case before the department. No person, including, but not limited to, department employees and members of a board, having access to such reports, complaints, or investigational records shall disclose such information in violation of this section, except that the department may exchange such information with law enforcement and other state licensing agencies as necessary and appropriate in the discharge of the department's duties and only under circumstances to ensure against unauthorized access to such information. Violation of this subsection is a Class I misdemeanor.

(2) Investigational records, reports, and files pertaining to an application for a credential shall not be a public record until action is taken to grant or deny the application and may be withheld from disclosure thereafter under section 84-712.05.

Source: Laws 2007, LB463, § 106.

38-1,107 Violations; department; Attorney General; powers and duties; applicability of section.

(1) Except as provided in subsection (2) of this section, the department shall provide the Attorney General with a copy of all complaints it receives and advise the Attorney General of investigations it makes which may involve any

possible violation of statutes or rules and regulations by a credential holder. The Attorney General shall then determine which, if any, statutes, rules, or regulations the credential holder has violated and the appropriate legal action to take. The Attorney General may (a) elect to file a petition under section 38-186 or not to file a petition, (b) negotiate a voluntary surrender or voluntary limitation pursuant to section 38-1,109, or (c) in cases involving a minor or insubstantial violation, refer the matter to the appropriate board for the opportunity to resolve the matter by recommending to the Attorney General that he or she enter into an assurance of compliance with the credential holder in lieu of filing a petition. An assurance of compliance shall not constitute discipline against a credential holder.

(2) This section does not apply to the following professions or businesses: Asbestos abatement, inspection, project design, and training; lead-based paint abatement, inspection, project design, and training; medical radiography; radon detection, measurement, and mitigation; water system operation; and constructing or decommissioning water wells and installing water well pumps and pumping equipment.

Source: Laws 1984, LB 481, § 2; Laws 1986, LB 286, § 76; Laws 1986, LB 579, § 68; Laws 1991, LB 456, § 25; Laws 1994, LB 1210, § 52; Laws 1999, LB 828, § 58; R.S.1943, (2003), § 71-171.01; Laws 2007, LB463, § 107.

38-1,108 Referral to board; assurance of compliance; recommendation.

Upon referral of a matter under section 38-1,107 by the Attorney General, the board may:

(1) Advise the Attorney General on the content of an agreement to serve as the basis of an assurance of compliance. The Attorney General may contact the credential holder to reach, by voluntary agreement, an assurance of compliance. The assurance shall include a statement of the statute, rule, or regulation in question, a description of the conduct that would violate such statute, rule, or regulation, the assurance of the credential holder that he or she will not engage in such conduct, and acknowledgment by the credential holder that violation of the assurance constitutes unprofessional conduct. Such assurance shall be signed by the credential holder and shall become a part of the public record of the credential holder. The credential holder shall not be required to admit to any violation of the law, and the assurance shall not be construed as such an admission; or

(2) Recommend that the Attorney General file a petition under section 38-186.

Source: Laws 1991, LB 456, § 26; Laws 1994, LB 1210, § 53; Laws 1997, LB 23, § 7; Laws 1999, LB 828, § 59; R.S.1943, (2003), § 71-171.02; Laws 2007, LB463, § 108.

38-1,109 Credential holder; voluntarily surrender or limit credential; department; powers; written order of director; violation of terms and conditions; effect.

(1) A credential holder may submit to the department an offer to voluntarily surrender or limit any credential issued by the department pursuant to the Uniform Credentialing Act. Any such offer may be made to surrender or limit the credential permanently, for an indefinite period of time, or for a specific or

definite period of time. The offer shall be made in writing and shall include (a) the reason for the offer of voluntary surrender or limitation, (b) whether the offer is for a permanent, indefinite, or definite period of time, and (c) any terms and conditions that the credential holder wishes to have the department consider and apply to the voluntary surrender or limitation of the credential.

(2) The department may accept an offer of voluntary surrender or limitation of a credential (a) based on an offer made by the credential holder on his or her own volition, (b) based on an offer made with the agreement of the Attorney General for cases brought under section 38-1,107 or the legal counsel of the department for cases brought under sections 38-1,119 to 38-1,123 to resolve a pending disciplinary matter, (c) in lieu of filing a petition for disciplinary action, or (d) in response to a notice of disciplinary action.

(3) The department may reject an offer of voluntary surrender of a credential under circumstances which include, but are not limited to, when such credential (a) is under investigation, (b) has a disciplinary action pending but a disposition has not been rendered, or (c) has had a disciplinary action taken against it.

(4) In all instances, the decision shall be issued in the form of a written order by the director. The order shall be issued within thirty days after receipt of the offer of voluntary surrender or limitation and shall specify (a) whether the department accepts or rejects the offer of voluntary surrender and (b)(i) the terms and conditions under which the voluntary surrender is accepted or (ii) the basis for a rejection of an offer of voluntary surrender. The terms and conditions governing the acceptance of a voluntary surrender shall include, but not be limited to, the duration of the surrender, whether the credential holder may apply to have the credential reinstated, and any terms and conditions for any such reinstatement.

(5) A limitation may be placed upon the right of the credential holder to practice a profession or operate a business to such extent, for such time, and under such conditions as imposed by the director.

(6) Violation of any of the terms and conditions of a voluntary surrender or limitation by the credential holder shall be due cause for the refusal of renewal of the credential, for the suspension or revocation of the credential, or for refusal to restore the credential.

Source: Laws 1976, LB 877, § 16; Laws 1986, LB 926, § 35; R.S.1943, (2003), § 71-161.11; Laws 2007, LB463, § 109.

38-1,110 Complaint alleging dependence or disability; director; investigation; report; review by board; finding; effect.

(1) When the department has received a complaint or report by any person or any report has been made to the director by the Licensee Assistance Program under section 38-175 alleging that an applicant for a credential or a person credentialed to practice any profession is suffering from abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance that impairs the ability to practice the profession or illness, deterioration, or disability that impairs the ability to practice the profession, the director shall investigate such complaint to determine if any reasonable cause exists to question the qualification of the applicant or credential holder to practice or to continue to practice such profession.

(2) If the director on the basis of such investigation or, in the absence of such complaint, upon the basis of his or her own independent knowledge finds that reasonable cause exists to question the qualification of the applicant or credential holder to practice such profession because of abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance that impairs the ability to practice the profession or illness, deterioration, or disability that impairs the ability to practice the profession, the director shall report such finding and evidence supporting it to the appropriate board.

(3) If such board agrees that reasonable cause exists to question the qualification of such applicant or credential holder, the board shall appoint a committee of three qualified physicians or other qualified professionals to examine the applicant or credential holder and to report their findings and conclusions to the board. The cost of the examination shall be treated as a base cost of credentialing under section 38-152. The board shall then consider the findings and the conclusions of the physicians or other qualified professionals and any other evidence or material which may be submitted to that board by the applicant or credential holder, by the director, or by any other person and shall then determine if the applicant or credential holder is qualified to practice or to continue to practice such profession in the State of Nebraska.

(4) If such board finds the applicant or credential holder to be not qualified to practice or to continue to practice such profession because of abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance that impairs the ability to practice the profession or illness, deterioration, or disability that impairs the ability to practice the profession, the board shall so certify that fact to the director with a recommendation for the denial, refusal of renewal, limitation, suspension, or revocation of such credential. The director shall thereupon deny, refuse renewal of, suspend, or revoke the credential or limit the ability of the credential holder to practice such profession in the state in such manner and to such extent as the director determines to be necessary for the protection of the public.

Source: Laws 1976, LB 877, § 18; Laws 1986, LB 286, § 65; Laws 1986, LB 579, § 57; Laws 1991, LB 456, § 20; Laws 1996, LB 1044, § 393; Laws 1999, LB 828, § 49; Laws 2001, LB 398, § 23; R.S.1943, (2003), § 71-161.13; Laws 2007, LB296, § 315; Laws 2007, LB463, § 110.

38-1,111 Credential; disciplinary action because of physical or mental disability; duration; when issued, returned, or reinstated; manner.

(1) The denial, refusal of renewal, limitation, or suspension of a credential as provided in section 38-1,110 shall continue in effect until reversed on appeal pursuant to section 38-1,113 or until the cause of such denial, refusal of renewal, limitation, or suspension no longer exists and the appropriate board finds, upon competent examination or evaluation by a qualified physician or other qualified professional selected or approved by the department, that the applicant or credential holder is qualified to engage in the practice of the profession. The cost of the examination or evaluation shall be paid by the applicant or credential holder.

(2) Upon such finding the director, notwithstanding the provision of any other statute, shall issue, return, or reinstate such credential or remove any limitation on such credential if the applicant or credential holder is otherwise

qualified as determined by the appropriate board to practice or to continue in the practice of the profession.

Source: Laws 1976, LB 877, § 19; Laws 1986, LB 286, § 66; Laws 1986, LB 579, § 58; Laws 1994, LB 1210, § 43; Laws 1996, LB 1044, § 394; Laws 1999, LB 828, § 50; R.S.1943, (2003), § 71-161.14; Laws 2007, LB296, § 316; Laws 2007, LB463, § 111.

38-1,112 Refusal to submit to physical or mental examination or chemical dependency evaluation; effect.

Refusal of an applicant or credential holder to submit to a physical or mental examination or chemical dependency evaluation requested by the appropriate board or the department pursuant to section 38-1,110 or 38-1,111 to determine his or her qualifications to practice or to continue in the practice of the profession for which application was made or for which he or she is credentialed by the department shall be just cause for denial of the application or for refusal of renewal or suspension of his or her credential automatically by the director until such examination or evaluation has been made.

Source: Laws 1976, LB 877, § 20; Laws 1986, LB 286, § 67; Laws 1986, LB 579, § 59; Laws 1994, LB 1210, § 44; Laws 1996, LB 1044, § 395; Laws 1999, LB 828, § 51; R.S.1943, (2003), § 71-161.15; Laws 2007, LB463, § 112.

38-1,113 Disciplinary action involving dependence or disability; appeal.

Any applicant or credential holder shall have the right to request a hearing on an order denying, refusing renewal of, limiting, suspending, or revoking a credential to practice a profession because of abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance that impairs the ability to practice the profession or illness, deterioration, or disability that impairs the ability to practice the profession. Such hearing shall be conducted in accordance with the Administrative Procedure Act. The denial, refusal of renewal, limitation, suspension, or revocation of a credential as provided in section 38-1,110 shall continue in effect until reversed on appeal unless otherwise disposed of pursuant to section 38-1,111.

Source: Laws 1976, LB 877, § 21; Laws 1986, LB 286, § 68; Laws 1986, LB 579, § 60; Laws 1988, LB 352, § 115; Laws 1991, LB 456, § 21; Laws 1996, LB 1044, § 396; Laws 2001, LB 398, § 24; R.S.1943, (2003), § 71-161.16; Laws 2007, LB296, § 317; Laws 2007, LB463, § 113.

Cross References

Administrative Procedure Act, see section 84-920.

38-1,114 Practicing profession or business without credential; injunction.

Any person engaging in the practice of any profession or business without the appropriate credential may be restrained by temporary and permanent injunctions.

Source: Laws 1927, c. 167, § 63, p. 471; C.S.1929, § 71-801; Laws 1943, c. 150, § 17, p. 546; R.S.1943, § 71-164; Laws 1994, LB 1210, § 48; R.S.1943, (2003), § 71-164; Laws 2007, LB463, § 114.

A person engaging in the practice of medicine and surgery without the required statutory license may be restrained by injunction. *State ex rel. Johnson v. Wagner*, 139 Neb. 471, 297 N.W. 906 (1941).

Under former statute, an injunction would not lie to prevent an unlicensed chiropractor from practicing, as a criminal action was deemed to afford an adequate remedy at law. *State v. Maltby*, 108 Neb. 578, 188 N.W. 175 (1922).

38-1,115 Prima facie evidence of practice without being credentialed; conditions.

It shall be prima facie evidence of practice without being credentialed when any of the following conditions exist:

- (1) The person admits to engaging in practice;
- (2) Staffing records or other reports from the employer of the person indicate that the person was engaged in practice;
- (3) Billing or payment records document the provision of service, care, or treatment by the person;
- (4) Service, care, or treatment records document the provision of service, care, or treatment by the person;
- (5) Appointment records indicate that the person was engaged in practice;
- (6) Water well registrations or other government records indicate that the person was engaged in practice; and
- (7) The person opens a business or practice site and announces or advertises that the business or site is open to provide service, care, or treatment.

Source: Laws 2007, LB463, § 115.

38-1,116 Practicing without credential; operating business without credential; administrative penalty; procedure; disposition; attorney's fees and costs.

(1) The department may assess an administrative penalty of ten dollars per day for each day that evidence exists of practice prior to issuance, renewal after expiration, or reinstatement of a credential to practice a profession or operate a business. The total penalty shall not exceed one thousand dollars.

(2) When the department assesses an administrative penalty, the department shall provide written notice of the assessment to the person. The notice shall be delivered in the manner prescribed by the department and shall include notice of the opportunity for a hearing.

(3) The department shall, within thirty days after receipt, remit an administrative penalty to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska. An administrative penalty assessed and unpaid under this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. The department may also collect in such action attorney's fees and costs incurred directly in the collection of the administrative penalty.

Source: Laws 2003, LB 242, § 29; R.S.1943, (2003), § 71-164.01; Laws 2007, LB463, § 116.

38-1,117 False impersonation; fraud; aiding and abetting; use of false documents; penalty.

Any person who (1) presents to the department a document which is false or of which he or she is not the rightful owner for the purpose of procuring a

credential, (2) falsely impersonates anyone to whom a credential has been issued by the department, (3) falsely holds himself or herself out to be a person credentialed by the department, (4) aids and abets another who is not credentialed to practice a profession that requires a credential, or (5) files or attempts to file with the department any false or forged diploma, certificate, or affidavit of identification or qualification shall be guilty of a Class IV felony.

Source: Laws 1927, c. 167, § 65, p. 471; C.S.1929, § 71-803; R.S.1943, § 71-166; Laws 1977, LB 39, § 141; Laws 1986, LB 286, § 73; Laws 1986, LB 579, § 65; Laws 1986, LB 926, § 38; Laws 1994, LB 1210, § 49; R.S.1943, (2003), § 71-166; Laws 2007, LB463, § 117.

38-1,118 General violations; penalty; second offenses; penalty.

Any person violating any of the provisions of the Uniform Credentialing Act, except as specific penalties are otherwise imposed in the act, shall be guilty of a Class III misdemeanor. Any person for a second violation of any of the provisions of the act, for which another specific penalty is not expressly imposed, shall be guilty of a Class II misdemeanor.

Source: Laws 1927, c. 167, § 66, p. 471; C.S.1929, § 71-804; R.S.1943, § 71-167; Laws 1977, LB 39, § 142; R.S.1943, (2003), § 71-167; Laws 2007, LB463, § 118.

Each treatment on different days constitutes a separate offense. *Harvey v. State*, 96 Neb. 786, 148 N.W. 924 (1914).

38-1,119 Certain professions and businesses; sections applicable; initial credential; renewal of credential; denial or refusal to renew; department; powers.

(1) Sections 38-1,119 to 38-1,123 apply to the following professions and businesses: Asbestos abatement, inspection, project design, and training; lead-based paint abatement, inspection, project design, and training; medical radiography; radon detection, measurement, and mitigation; water system operation; and constructing or decommissioning water wells and installing water well pumps and pumping equipment.

(2) If an applicant for an initial credential to practice a profession or operate a business does not meet all of the requirements for the credential, the department shall deny issuance of the credential. If an applicant for an initial credential or a credential holder applying for renewal of the credential has committed any of the acts set out in section 38-178 or 38-182, as applicable, the department may deny issuance or refuse renewal of the credential or may issue or renew the credential subject to any of the terms imposed under section 38-196 in order to protect the public.

Source: Laws 2007, LB463, § 119.

38-1,120 Certain professions and businesses; disciplinary actions; grounds; advice of board; notice; hearing; director; decision; review.

(1) A credential to practice a profession or operate a business subject to section 38-1,119 may be denied, refused renewal, or have disciplinary measures taken against it in accordance with section 38-196 on any of the grounds set out in section 38-178 or 38-182, as applicable. The department shall obtain the advice of the appropriate board in carrying out these duties. If the department

determines to deny, refuse renewal of, or take disciplinary action against a credential, the department shall send to the applicant or credential holder a notice to the last address of record. The notice shall state the determination of the department, the reasons for the determination, a description of the nature of the violation and the statute, rule, or regulation violated, and the nature of the action being taken. The denial, refusal to renew, or disciplinary action shall become final thirty days after the mailing of the notice unless the applicant or credential holder, during such thirty-day period, makes a written request for a hearing.

(2) The hearing shall be held according to rules and regulations of the department for administrative hearings in contested cases. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by rule and regulation. On the basis of such hearing, the director shall affirm, modify, or rescind the determination of the department. Any party to the decision shall have a right to judicial review under the Administrative Procedure Act.

Source: Laws 2007, LB463, § 120.

Cross References

Administrative Procedure Act, see section 84-920.

38-1,121 Certain professions and businesses; disciplinary actions; complaint confidential; immunity.

A complaint submitted to the department regarding a credential holder subject to section 38-1,119 shall be confidential. A person making such a complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for filing a complaint or for disclosure of documents, records, or other information to the department.

Source: Laws 2007, LB463, § 121.

38-1,122 Certain professions and businesses; disciplinary actions; emergency; department; powers; hearing; director; decision; review.

(1) If the department determines that an emergency exists requiring immediate action against a credential subject to section 38-1,119, the department may, without notice or hearing, issue an order reciting the existence of such emergency and requiring such action be taken as the department deems necessary to meet the emergency, including, but not limited to, suspension or limitation of the credential. Such order shall become effective immediately. Any credential holder to whom such order is directed shall comply immediately. Such order shall become final ten days after mailing of the order unless the credential holder, during such period, makes a written request for a hearing.

(2) The hearing shall be held as soon as possible and not later than fifteen days after the request for hearing. The hearing shall be held according to rules and regulations of the department for administrative hearings in contested cases. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by rule and regulation. On the basis of such hearing, the director shall affirm, modify, or rescind the order. Any party to the decision shall have a right to judicial review under the Administrative Procedure Act.

Source: Laws 2007, LB463, § 122.

Cross References

Administrative Procedure Act, see section 84-920.

38-1,123 Certain professions and businesses; disciplinary actions; costs; how paid.

If an order issued after a hearing under section 38-1,120 or 38-1,122 is adverse to the credential holder, the costs shall be charged to him or her as in ordinary civil actions in the district court, but if the department is the unsuccessful party, the department shall pay the costs. Witness fees and costs may be taxed according to the rules prevailing in the district court. All costs accrued at the instance of the department when it is the successful party, which the department certifies cannot be collected from the other party, shall be paid out of any available funds in the Professional and Occupational Credentialing Cash Fund.

Source: Laws 2007, LB463, § 123.

38-1,124 Enforcement; investigations; violations; credential holder; duty to report; cease and desist order; violation; penalty; loss or theft of controlled substance; duty to report.

(1) The department shall enforce the Uniform Credentialing Act and for that purpose shall make necessary investigations. Every credential holder and every member of a board shall furnish the department such evidence as he or she may have relative to any alleged violation which is being investigated.

(2) Every credential holder shall report to the department the name of every person without a credential that he or she has reason to believe is engaged in practicing any profession or operating any business for which a credential is required by the Uniform Credentialing Act. The department may, along with the Attorney General and other law enforcement agencies, investigate such reports or other complaints of unauthorized practice. The appropriate board may issue an order to cease and desist the unauthorized practice of such profession or the unauthorized operation of such business as a measure to obtain compliance with the applicable credentialing requirements by the person prior to referral of the matter to the Attorney General for action. Practice of such profession or operation of such business without a credential after receiving a cease and desist order is a Class III felony.

(3) Any credential holder who is required to file a report of loss or theft of a controlled substance to the federal Drug Enforcement Administration shall provide a copy of such report to the department.

Source: Laws 1927, c. 167, § 67, p. 472; C.S.1929, § 71-901; R.S.1943, § 71-168; Laws 1986, LB 286, § 74; Laws 1986, LB 579, § 66; Laws 1991, LB 456, § 23; Laws 1994, LB 1210, § 50; Laws 1994, LB 1223, § 10; Laws 1995, LB 563, § 2; Laws 1996, LB 414, § 1; Laws 1997, LB 138, § 42; Laws 1997, LB 222, § 4; Laws 1999, LB 828, § 55; Laws 2000, LB 1115, § 12; Laws 2005, LB 256, § 21; Laws 2005, LB 306, § 3; Laws 2005, LB 361, § 32; Laws 2005, LB 382, § 5; R.S.Supp.,2006, § 71-168; Laws 2007, LB236, § 7; Laws 2007, LB463, § 124.

38-1,125 Credential holder except pharmacist intern and pharmacy technician; incompetent, gross negligent, or unprofessional conduct; impaired or disabled person; duty to report.

(1) Every credential holder, except pharmacist interns and pharmacy technicians, shall, within thirty days of an occurrence described in this subsection, report to the department in such manner and form as the department may require whenever he or she:

(a) Has first-hand knowledge of facts giving him or her reason to believe that any person in his or her profession:

(i) Has acted with gross incompetence or gross negligence;

(ii) Has engaged in a pattern of incompetent or negligent conduct as defined in section 38-177;

(iii) Has engaged in unprofessional conduct as defined in section 38-179;

(iv) Has been practicing while his or her ability to practice is impaired by alcohol, controlled substances, mind-altering substances, or physical, mental, or emotional disability; or

(v) Has otherwise violated the regulatory provisions governing the practice of the profession;

(b) Has first-hand knowledge of facts giving him or her reason to believe that any person in another profession:

(i) Has acted with gross incompetence or gross negligence; or

(ii) Has been practicing while his or her ability to practice is impaired by alcohol, controlled substances, mind-altering substances, or physical, mental, or emotional disability; or

(c) Has been the subject of any of the following actions:

(i) Loss of privileges in a hospital or other health care facility due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment or the voluntary limitation of privileges or resignation from the staff of any health care facility when that occurred while under formal or informal investigation or evaluation by the facility or a committee of the facility for issues of clinical competence, unprofessional conduct, or physical, mental, or chemical impairment;

(ii) Loss of employment due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(iii) An adverse judgment, settlement, or award arising out of a professional liability claim, including a settlement made prior to suit in which the consumer releases any professional liability claim against the credentialed person, or adverse action by an insurance company affecting professional liability coverage. The department may define what constitutes a settlement that would be reportable when a credential holder refunds or reduces a fee or makes no charge for reasons related to a consumer complaint other than costs;

(iv) Denial of a credential or other form of authorization to practice by any jurisdiction due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(v) Disciplinary action against any credential or other form of permit he or she holds taken by any jurisdiction, the settlement of such action, or any

voluntary surrender of or limitation on any such credential or other form of permit;

(vi) Loss of membership in, or discipline of a credential related to the applicable profession by, a professional organization due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment; or

(vii) Conviction of any misdemeanor or felony in this or any other jurisdiction.

(2) The requirement to file a report under subdivision (1)(a) or (b) of this section shall not apply:

(a) To the spouse of the credential holder;

(b) To a practitioner who is providing treatment to such credential holder in a practitioner-consumer relationship concerning information obtained or discovered in the course of treatment unless the treating practitioner determines that the condition of the credential holder may be of a nature which constitutes a danger to the public health and safety by the credential holder's continued practice; or

(c) When a credential holder who is chemically impaired enters the Licensee Assistance Program authorized by section 38-175 except as otherwise provided in such section.

(3) A report submitted by a professional liability insurance company on behalf of a credential holder within the thirty-day period prescribed in subsection (1) of this section shall be sufficient to satisfy the credential holder's reporting requirement under subsection (1) of this section.

Source: Laws 2007, LB247, § 61; Laws 2007, LB463, § 125.

38-1,126 Report; confidential; immunity; use of documents.

(1) A report made to the department under section 38-1,124 or 38-1,125 shall be confidential.

(2) Any person making such a report to the department, except a person who is self-reporting, shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under section 38-1,124 or 38-1,125.

(3) Persons who are members of committees established under the Patient Safety Improvement Act or sections 25-12,123, 71-2046 to 71-2048, and 71-7901 to 71-7903 or witnesses before such committees shall not be required to report under section 38-1,124 or 38-1,125. Any person who is a witness before such a committee shall not be excused from reporting matters of first-hand knowledge that would otherwise be reportable under section 38-1,124 or 38-1,125 only because he or she attended or testified before such committee.

(4) Documents from original sources shall not be construed as immune from discovery or use in actions under section 38-1,125.

Source: Laws 2007, LB463, § 126.

Cross References

Patient Safety Improvement Act, see section 71-8701.

38-1,127 Health care facility, peer review organization, or professional association; violations; duty to report; confidentiality; immunity; civil penalty.

(1) A health care facility licensed under the Health Care Facility Licensure Act or a peer review organization or professional association of a profession regulated under the Uniform Credentialing Act shall report to the department, on a form and in the manner specified by the department, any facts known to the facility, organization, or association, including, but not limited to, the identity of the credential holder and consumer, when the facility, organization, or association:

(a) Has made payment due to adverse judgment, settlement, or award of a professional liability claim against it or a credential holder, including settlements made prior to suit, arising out of the acts or omissions of the credential holder; or

(b) Takes action adversely affecting the privileges or membership of a credential holder in such facility, organization, or association due to alleged incompetence, professional negligence, unprofessional conduct, or physical, mental, or chemical impairment.

The report shall be made within thirty days after the date of the action or event.

(2) A report made to the department under this section shall be confidential. The facility, organization, association, or person making such report shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. Nothing in this subsection shall be construed to require production of records protected by section 25-12,123, 71-2048, or 71-7903 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in any of such sections or such act.

(3) Any health care facility, peer review organization, or professional association that fails or neglects to make a report or provide information as required under this section is subject to a civil penalty of five hundred dollars for the first offense and a civil penalty of up to one thousand dollars for a subsequent offense. Any civil penalty collected under this subsection shall be remitted to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska.

(4) For purposes of this section, the department shall accept reports made to it under the Nebraska Hospital-Medical Liability Act or in accordance with national practitioner data bank requirements of the federal Health Care Quality Improvement Act of 1986, as the act existed on January 1, 2007, and may require a supplemental report to the extent such reports do not contain the information required by the department.

Source: Laws 1994, LB 1223, § 12; Laws 1995, LB 563, § 3; Laws 1996, LB 414, § 2; Laws 1997, LB 138, § 43; Laws 1997, LB 222, § 5; Laws 2000, LB 819, § 84; Laws 2000, LB 1115, § 13; Laws 2005, LB 256, § 22; Laws 2005, LB 361, § 33; R.S.Supp., 2006, § 71-168.02; Laws 2007, LB 463, § 127.

Cross References

Health Care Facility Licensure Act, see section 71-401.

Nebraska Hospital-Medical Liability Act, see section 44-2855.
Patient Safety Improvement Act, see section 71-8701.

38-1,128 Peer review committee; health practitioners; immunity from liability; when.

No member of a peer review committee of a state or local association or society composed of persons credentialed under the Uniform Credentialing Act shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or otherwise for any action taken or recommendation made within the scope of the functions of such committee, if such committee member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to such member after a reasonable effort is made to obtain the facts on which such action is taken or recommendation is made.

Source: Laws 1976, LB 586, § 1; R.S.1943, (2003), § 71-147.01; Laws 2007, LB463, § 128.

38-1,129 Insurer; report violation to department.

Unless such knowledge or information is based on confidential medical records protected by the confidentiality provisions of the federal Public Health Services Act, 42 U.S.C. 290dd-2, and federal administrative rules and regulations, as such act and rules and regulations existed on January 1, 2007:

(1) Any insurer having knowledge of any violation of any of the Uniform Credentialing Act governing the profession of the person being reported whether or not such person is credentialed shall report the facts of such violation as known to such insurer to the department; and

(2) All insurers shall cooperate with the department and provide such information as requested by the department concerning any possible violations by any person required to be credentialed whether or not such person is credentialed.

Source: Laws 1982, LB 421, § 2; Laws 1994, LB 1223, § 20; Laws 1999, LB 828, § 133; R.S.1943, (2003), § 71-1,199; Laws 2007, LB463, § 129.

38-1,130 Insurer; report to department; form.

Any insurer shall report to the department, on a form and in the manner specified by the department by rule and regulation, any facts known to the insurer, including, but not limited to, the identity of the credential holder and consumer, when the insurer:

(1) Has reasonable grounds to believe that a person required to be credentialed has committed a violation of the provisions of the Uniform Credentialing Act governing the profession of such person whether or not such person is credentialed;

(2) Has made payment due to an adverse judgment, settlement, or award resulting from a professional liability claim against the insurer, a health care facility or health care service as defined in the Health Care Facility Licensure Act, or a person required to be credentialed whether or not such person is credentialed, including settlements made prior to suit in which the consumer releases any professional liability claim against the insurer, health care facility

or health care service, or person required to be credentialed, arising out of the acts or omissions of such person;

(3) Takes an adverse action affecting the coverage provided by the insurer to a person required to be credentialed, whether or not such person is credentialed, due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment. For purposes of this section, adverse action does not include raising rates for professional liability coverage unless it is based upon grounds that would be reportable and no prior report has been made to the department; or

(4) Has been requested by the department to provide information.

Source: Laws 1982, LB 421, § 3; Laws 1991, LB 456, § 30; Laws 1994, LB 1223, § 21; Laws 1999, LB 828, § 134; Laws 2000, LB 819, § 93; R.S.1943, (2003), § 71-1,200; Laws 2007, LB152, § 1; Laws 2007, LB247, § 62; Laws 2007, LB463, § 130.

Cross References

Health Care Facility Licensure Act, see section 71-401.

38-1,131 Insurer; report to department; when.

A report made under section 38-1,129 or 38-1,130 shall be made within thirty days after the date of the violation, action, event, or request. Nothing in such sections shall be construed to require an insurer to report based on information gained due to the filing of a claim for payment under a health insurance policy by or on behalf of a person required to be credentialed whether or not such person is credentialed.

Source: Laws 2007, LB463, § 131.

38-1,132 Insurer; alternative reports authorized; supplemental report.

For purposes of sections 38-1,129 and 38-1,130, the department shall accept reports made to it under the Nebraska Hospital-Medical Liability Act or in accordance with national practitioner data bank requirements of the federal Health Care Quality Improvement Act of 1986, as such act existed on January 1, 2007, and may require a supplemental report to the extent such reports do not contain the information required by the department. For purposes of sections 38-1,129 and 38-1,130, the department shall accept a copy of a report made to any governmental agency charged by law with carrying out any of the provisions of the Uniform Credentialing Act or any person authorized by law to make arrests within the State of Nebraska and may require a supplemental report to the extent such copy does not contain the information required by the department.

Source: Laws 2007, LB463, § 132.

Cross References

Nebraska Hospital-Medical Liability Act, see section 44-2855.

38-1,133 Insurer; failure to make report or provide information; penalty.

Any insurer who fails or neglects to make a report to or provide such information as requested by the department pursuant to section 38-1,129 or 38-1,130 within thirty days after the violation, action, event, or request is guilty

of a Class III misdemeanor. Any insurer who violates this section a second or subsequent time is guilty of a Class II misdemeanor.

Source: Laws 1982, LB 421, § 4; Laws 1999, LB 828, § 135; R.S.1943, (2003), § 71-1,201; Laws 2007, LB463, § 133.

38-1,134 Insurer; reports; disclosure restricted.

To the extent that reports made under section 38-1,129 or 38-1,130 contain or relate to privileged communications between consumer and credential holder, such reports shall be treated by the department as privileged communications and shall be considered to be part of the investigational records of the department. Such reports may not be obtained by legal discovery proceedings or otherwise disclosed unless the privilege is waived by the consumer involved or the reports are made part of the record in a contested case under section 38-186, in which case such reports shall only be disclosed to the extent they are made a part of such record.

Source: Laws 1982, LB 421, § 5; Laws 1991, LB 456, § 31; Laws 1994, LB 1223, § 22; R.S.1943, (2003), § 71-1,202; Laws 2007, LB463, § 134.

38-1,135 Insurer; immunity from liability.

Any insurer or employee of an insurer making a report as required by section 38-1,129 or 38-1,130 shall be immune from criminal penalty of any kind or from civil liability or other penalty for slander, libel, defamation, breach of the privilege between consumer and physician or between consumer and professional counselor, or violation of the laws of the State of Nebraska relating to the business of insurance that may be incurred or imposed on account of or in connection with the making of such report.

Source: Laws 1982, LB 421, § 7; Laws 1993, LB 130, § 5; Laws 1994, LB 1223, § 23; R.S.1943, (2003), § 71-1,204; Laws 2007, LB463, § 135.

38-1,136 Violation of credential holder-consumer privilege; sections, how construed.

Nothing contained in sections 38-1,129 to 38-1,136 shall be construed so as to require any credential holder to violate a privilege between a credential holder and a consumer.

Source: Laws 1982, LB 421, § 8; R.S.1943, (2003), § 71-1,205; Laws 2007, LB463, § 136.

38-1,137 Clerk of county or district court; report convictions and judgments of credentialed person; Attorney General or prosecutor; duty.

The clerk of any county or district court in this state shall report to the department the conviction of any person credentialed by the department under the Uniform Credentialing Act of any felony or of any misdemeanor involving the use, sale, distribution, administration, or dispensing of a controlled substance, alcohol or chemical impairment, or substance abuse and shall also report a judgment against any such credential holder arising out of a claim of professional liability. The Attorney General or city or county prosecutor prosecuting any such criminal action and plaintiff in any such civil action shall

provide the court with information concerning the credential of the defendant or party. Notice to the department shall be filed within thirty days after the date of conviction or judgment in a manner agreed to by the director and the State Court Administrator.

Source: Laws 1994, LB 1223, § 24; Laws 1995, LB 563, § 39; Laws 1996, LB 414, § 10; Laws 1996, LB 1044, § 480; Laws 1997, LB 138, § 45; Laws 2000, LB 1115, § 24; Laws 2005, LB 256, § 32; R.S.Supp.,2006, § 71-1,339; Laws 2007, LB296, § 362; Laws 2007, LB463, § 137.

38-1,138 Complaint; investigation; confidentiality; immunity; department; powers and duties.

(1) Any person may make a complaint and request investigation of an alleged violation of the Uniform Credentialing Act or rules and regulations issued under such act. A complaint submitted to the department shall be confidential, and a person making a complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for filing a complaint or for disclosure of documents, records, or other information to the department.

(2) The department shall review all complaints and determine whether to conduct an investigation and in making such determination may consider factors such as:

(a) Whether the complaint pertains to a matter within the authority of the department to enforce;

(b) Whether the circumstances indicate that a complaint is made in good faith and is not malicious, frivolous, or vexatious;

(c) Whether the complaint is timely or has been delayed too long to justify present evaluation of its merit;

(d) Whether the complainant may be a necessary witness if action is taken and is willing to identify himself or herself and come forward to testify; or

(e) Whether the information provided or within the knowledge of the complainant is sufficient to provide a reasonable basis to believe that a violation has occurred or to secure necessary evidence from other sources.

Source: Laws 1991, LB 456, § 6; Laws 1993, LB 536, § 46; Laws 1994, LB 1223, § 11; Laws 1999, LB 828, § 56; R.S.1943, (2003), § 71-168.01; Laws 2007, LB463, § 138.

38-1,139 Violations; prosecution; duty of Attorney General and county attorney.

Upon the request of the department, the Attorney General shall institute in the name of the state the proper civil or criminal proceedings against any person regarding whom a complaint has been made, charging him or her with violation of any of the provisions of the Uniform Credentialing Act, and the county attorney, at the request of the Attorney General or of the department, shall appear and prosecute such action when brought in his or her county.

Source: Laws 1927, c. 167, § 70, p. 472; C.S.1929, § 71-904; R.S.1943, § 71-171; Laws 1991, LB 456, § 24; R.S.1943, (2003), § 71-171; Laws 2007, LB463, § 139.

38-1,140 Consultation with licensed veterinarian; zoological park or garden; conduct authorized.

Any person who holds a valid credential in the State of Nebraska in a health care profession or occupation regulated under the Uniform Credentialing Act may consult with a licensed veterinarian who has contracted with or is employed by an accredited zoological park or garden regarding an animal on behalf of such zoological park or garden or perform collaborative animal health care tasks on an animal under the care of such veterinarian for such zoological park or garden if all such tasks are performed under the immediate supervision of such veterinarian. Engaging in such conduct is hereby authorized and shall not be considered a part of the credential holder's scope of practice or a violation of the credential holder's scope of practice.

Source: Laws 2008, LB928, § 3.
Operative date December 1, 2008.

ARTICLE 2

ADVANCED PRACTICE REGISTERED NURSE PRACTICE ACT

Cross References

Alcohol or controlled substance testing, agent of state, see sections 37-1254.06, 60-4,164.01, and 60-6,202.
Certified Nurse Midwifery Practice Act, see section 38-601.
Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Child abuse, duty to report, see section 28-711.
Clinical Nurse Specialist Practice Act, see section 38-901.
Community nurses, see sections 71-1637 to 71-1639.
Division of Public Health of the Department of Health and Human Services, see section 81-3113.
Emergency Box Drug Act, see section 71-2410.
Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.
Good Samaritan provisions, see section 25-21,186.
Health and Human Services Act, see section 81-3110.
Health Care Facility Licensure Act, see section 71-401.
Health Care Professional Credentialing Verification Act, see section 44-7001.
Home health aides, see section 71-6601 et seq.
License Suspension Act, see section 43-3301.
Licensed Practical Nurse-Certified Practice Act, see section 38-1601.
Lien for services, see section 52-401.
Medication Aide Act, see section 71-6718.
Nebraska Center for Nursing Act, see section 71-1796.
Nebraska Hospital-Medical Liability Act, see section 44-2855.
Nebraska Nursing Home Act, see section 71-6037.
Nebraska Regulation of Health Professions Act, see section 71-6201.
Nurse Licensure Compact, see section 71-1795.
Nurse Practice Act, see section 38-2201.
Nurse Practitioner Practice Act, see section 38-2301.
Nursing Faculty Student Loan Act, see section 71-17,108.
Nursing Home Administrator Practice Act, see section 38-2401.
Nursing Student Loan Act, see section 71-17,101.
Patient Safety Improvement Act, see section 71-8701.
Rural Health Systems and Professional Incentive Act, see section 71-5650.
State Board of Health, duties, see section 71-2610 et seq.
Statewide Trauma System Act, see section 71-8201.
Uniform Controlled Substances Act, see section 28-401.01.

Section

38-201. Act, how cited.
 38-202. Legislative findings and declarations.
 38-203. Definition, where found.
 38-204. Board, defined.
 38-205. Board; members; qualifications; terms.
 38-206. Board; duties.
 38-207. License; issuance; department; powers and duties.
 38-208. License; qualifications.
 38-209. License; renewal; requirements.
 38-210. Expiration of license; conditions.

Section
38-211. Fees.
38-212. Use of title.

38-201 Act, how cited.

Sections 38-201 to 38-212 shall be known and may be cited as the Advanced Practice Registered Nurse Practice Act.

Source: Laws 2005, LB 256, § 36; R.S.Supp.,2006, § 71-17,131; Laws 2007, LB463, § 140.

38-202 Legislative findings and declarations.

The Legislature finds and declares that:

(1) Because of the geographic maldistribution of health care services in Nebraska, it is necessary to utilize the skills and proficiency of existing health professionals more efficiently;

(2) It is necessary to encourage the more effective utilization of the skills of registered nurses by enabling them to perform advanced roles in nursing; and

(3) The purpose of the Advanced Practice Registered Nurse Practice Act is to encourage registered nurses to perform advanced roles in nursing.

Source: Laws 2005, LB 256, § 37; R.S.Supp.,2006, § 71-17,132; Laws 2007, LB463, § 141.

38-203 Definition, where found.

For purposes of the Advanced Practice Registered Nurse Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definition found in section 38-204 applies.

Source: Laws 2005, LB 256, § 38; R.S.Supp.,2006, § 71-17,133; Laws 2007, LB463, § 142.

38-204 Board, defined.

Board means the Board of Advanced Practice Registered Nurses.

Source: Laws 2007, LB463, § 143.

38-205 Board; members; qualifications; terms.

(1) Until July 1, 2007, the board shall consist of (a) five advanced practice registered nurses representing different advanced practice registered nurse specialties for which a license has been issued, (b) five physicians licensed under the Uniform Licensing Law to practice medicine in Nebraska, at least three of whom shall have a current collaborating relationship with an advanced practice registered nurse, (c) three consumer members, and (d) one licensed pharmacist.

(2) On and after July 1, 2007, the board shall consist of:

(a) One nurse practitioner holding a license under the Nurse Practitioner Practice Act, one certified nurse midwife holding a license under the Certified Nurse Midwifery Practice Act, one certified registered nurse anesthetist holding a license under the Certified Registered Nurse Anesthetist Practice Act, and one clinical nurse specialist holding a license under the Clinical Nurse Specialist Practice Act, except that the initial clinical nurse specialist appointee may be a

clinical nurse specialist practicing pursuant to the Nurse Practice Act as such act existed prior to July 1, 2007. Of the initial appointments under this subdivision, one shall be for a two-year term, one shall be for a three-year term, one shall be for a four-year term, and one shall be for a five-year term. All subsequent appointments under this subdivision shall be for five-year terms;

(b) Three physicians, one of whom shall have a professional relationship with a nurse practitioner, one of whom shall have a professional relationship with a certified nurse midwife, and one of whom shall have a professional relationship with a certified registered nurse anesthetist. Of the initial appointments under this subdivision, one shall be for a three-year term, one shall be for a four-year term, and one shall be for a five-year term. All subsequent appointments under this subdivision shall be for five-year terms; and

(c) Two public members. Of the initial appointments under this subdivision, one shall be for a three-year term, and one shall be for a four-year term. All subsequent appointments under this subdivision shall be for five-year terms.

(3) Members of the board serving immediately before July 1, 2007, shall serve until members are appointed and qualified under subsection (2) of this section.

Source: Laws 1996, LB 414, § 27; Laws 2000, LB 1115, § 42; R.S.1943, (2003), § 71-1718.01; Laws 2005, LB 256, § 39; R.S.Supp.,2006, § 71-17,134; Laws 2007, LB185, § 36; Laws 2007, LB463, § 144.

Cross References

Certified Nurse Midwifery Practice Act, see section 38-601.

Certified Registered Nurse Anesthetist Practice Act, see section 38-701.

Clinical Nurse Specialist Practice Act, see section 38-901.

Nurse Practice Act, see section 38-2201.

Nurse Practitioner Practice Act, see section 38-2301.

38-206 Board; duties.

The board shall:

(1) Establish standards for integrated practice agreements between collaborating physicians and certified nurse midwives, and nurse practitioners;

(2) Monitor the scope of practice by certified nurse midwives, certified registered nurse anesthetists, clinical nurse specialists, and nurse practitioners;

(3) Recommend disciplinary action relating to licenses of advanced practice registered nurses, certified nurse midwives, certified registered nurse anesthetists, clinical nurse specialists, and nurse practitioners;

(4) Engage in other activities not inconsistent with the Advanced Practice Registered Nurse Practice Act, the Certified Nurse Midwifery Practice Act, the Certified Registered Nurse Anesthetist Practice Act, the Clinical Nurse Specialist Practice Act, and the Nurse Practitioner Practice Act; and

(5) Adopt rules and regulations to implement the Advanced Practice Registered Nurse Practice Act, the Certified Nurse Midwifery Practice Act, the Certified Registered Nurse Anesthetist Practice Act, the Clinical Nurse Specialist Practice Act, and the Nurse Practitioner Practice Act, for promulgation by the department as provided in section 38-126. Such rules and regulations shall

also include: (a) Approved certification organizations and approved certification programs; and (b) professional liability insurance.

Source: Laws 1996, LB 414, § 28; Laws 2000, LB 1115, § 43; Laws 2002, LB 1021, § 56; R.S.1943, (2003), § 71-1718.02; Laws 2005, LB 256, § 40; R.S.Supp.,2006, § 71-17,135; Laws 2007, LB185, § 37; Laws 2007, LB463, § 145.

Cross References

Certified Nurse Midwifery Practice Act, see section 38-601.
Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Clinical Nurse Specialist Practice Act, see section 38-901.
Nurse Practitioner Practice Act, see section 38-2301.

38-207 License; issuance; department; powers and duties.

The department shall issue a license as an advanced practice registered nurse to a registered nurse who meets the requirements of subsection (1) or (3) of section 38-208. The department may issue a license as an advanced practice registered nurse to a registered nurse pursuant to subsection (2) of section 38-208.

Source: Laws 2005, LB 256, § 41; R.S.Supp.,2006, § 71-17,136; Laws 2007, LB463, § 146.

38-208 License; qualifications.

(1) An applicant for initial licensure as an advanced practice registered nurse shall:

(a) Be licensed as a registered nurse under the Nurse Practice Act or have authority based on the Nurse Licensure Compact to practice as a registered nurse in Nebraska;

(b) Be a graduate of or have completed a graduate-level advanced practice registered nurse program in a clinical specialty area of certified registered nurse anesthetist, clinical nurse specialist, certified nurse midwife, or nurse practitioner, which program is accredited by a national accrediting body;

(c) Be certified as a certified registered nurse anesthetist, a clinical nurse specialist, a certified nurse midwife, or a nurse practitioner, by an approved certifying body or an alternative method of competency assessment approved by the board, pursuant to the Certified Nurse Midwifery Practice Act, the Certified Registered Nurse Anesthetist Practice Act, the Clinical Nurse Specialist Practice Act, or the Nurse Practitioner Practice Act, as appropriate to the applicant's educational preparation;

(d) Provide evidence as required by rules and regulations; and

(e) Have committed no acts or omissions which are grounds for disciplinary action in another jurisdiction or, if such acts have been committed and would be grounds for discipline under the Nurse Practice Act, the board has found after investigation that sufficient restitution has been made.

(2) The department may issue a license under this section to an applicant who holds a license from another jurisdiction if the licensure requirements of such other jurisdiction meet or exceed the requirements for licensure as an advanced practice registered nurse under the Advanced Practice Registered Nurse Practice Act. An applicant under this subsection shall submit documentation as required by rules and regulations.

(3) A person licensed as an advanced practice registered nurse or certified as a certified registered nurse anesthetist or a certified nurse midwife in this state on July 1, 2007, shall be issued a license by the department as an advanced practice registered nurse on such date.

Source: Laws 2005, LB 256, § 42; R.S.Supp.,2006, § 71-17,137; Laws 2007, LB185, § 38; Laws 2007, LB463, § 147.

Cross References

Certified Nurse Midwifery Practice Act, see section 38-601.
Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Clinical Nurse Specialist Practice Act, see section 38-901.
Nurse Licensure Compact, see section 71-1795.
Nurse Practice Act, see section 38-2201.
Nurse Practitioner Practice Act, see section 38-2301.
Uniform Credentialing Act, see section 38-101.

38-209 License; renewal; requirements.

The license of each person licensed under the Advanced Practice Registered Nurse Practice Act shall be renewed at the same time and in the same manner as renewal of a license for a registered nurse and shall require that the applicant have (1) a license as a registered nurse issued by the state or have the authority based on the Nurse Licensure Compact to practice as a registered nurse in Nebraska, (2) documentation of continuing competency, either by reference, peer review, examination, or one or more of the continuing competency activities listed in section 38-145 and established by the board in rules and regulations, and (3) met any specific requirements for renewal under the Certified Nurse Midwifery Practice Act, the Certified Registered Nurse Anesthetist Practice Act, the Clinical Nurse Specialist Practice Act, or the Nurse Practitioner Practice Act, as applicable.

Source: Laws 2005, LB 256, § 43; R.S.Supp.,2006, § 71-17,138; Laws 2007, LB185, § 39; Laws 2007, LB463, § 148.

Cross References

Certified Nurse Midwifery Practice Act, see section 38-601.
Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Clinical Nurse Specialist Practice Act, see section 38-901.
Nurse Licensure Compact, see section 71-1795.
Nurse Practitioner Practice Act, see section 38-2301.
Uniform Credentialing Act, see section 38-101.

38-210 Expiration of license; conditions.

An advanced practice registered nurse's license expires if he or she does not renew his or her license to practice as a registered nurse or is not authorized to practice as a registered nurse in this state under the Nurse Licensure Compact.

Source: Laws 2005, LB 256, § 45; R.S.Supp.,2006, § 71-17,140; Laws 2007, LB185, § 41; Laws 2007, LB463, § 149.

Cross References

Nurse Licensure Compact, see section 71-1795.

38-211 Fees.

The department shall establish and collect fees for initial licensure and renewal under the Advanced Practice Registered Nurse Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 150.

38-212 Use of title.

A person licensed as an advanced practice registered nurse in this state may use the title advanced practice registered nurse and the abbreviation APRN.

Source: Laws 2007, LB463, § 151.

ARTICLE 3**ALCOHOL AND DRUG COUNSELING PRACTICE ACT****Cross References**

Nebraska Behavioral Health Services Act, see section 71-801.

State Advisory Committee on Substance Abuse Services, see section 71-815.

Section

- 38-301. Act, how cited.
- 38-302. Definitions, where found.
- 38-303. Alcohol and drug counseling, defined.
- 38-304. Alcohol and drug counselor, defined.
- 38-305. Alcohol or drug abuse, defined.
- 38-306. Alcohol or drug dependence, defined.
- 38-307. Alcohol or drug disorder, defined.
- 38-308. Board, defined.
- 38-309. Core functions, defined.
- 38-310. Membership on board; qualifications.
- 38-311. Scope of practice.
- 38-312. License required; exceptions.
- 38-313. License; application; provisional license.
- 38-314. Provisional alcohol and drug counselor; license requirements.
- 38-315. Practical training supervisor; requirements; duties.
- 38-316. Alcohol and drug counselor; license requirements.
- 38-317. Clinical supervisor; requirements; duties.
- 38-318. Licensure; substitute requirements.
- 38-319. Reciprocity.
- 38-320. Fees.
- 38-321. Rules and regulations.

38-301 Act, how cited.

Sections 38-301 to 38-321 shall be known and may be cited as the Alcohol and Drug Counseling Practice Act.

Source: Laws 2007, LB463, § 152.

38-302 Definitions, where found.

For purposes of the Alcohol and Drug Counseling Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-303 to 38-309 apply.

Source: Laws 2004, LB 1083, § 115; R.S.Supp.,2006, § 71-1,351; Laws 2007, LB463, § 153.

38-303 Alcohol and drug counseling, defined.

Alcohol and drug counseling means providing or performing the core functions of an alcohol and drug counselor for remuneration.

Source: Laws 2007, LB463, § 154.

38-304 Alcohol and drug counselor, defined.

Alcohol and drug counselor means a person engaged in alcohol and drug counseling.

Source: Laws 2007, LB463, § 155.

38-305 Alcohol or drug abuse, defined.

Alcohol or drug abuse means the abuse of alcohol or other drugs which have significant mood or perception changing capacities, which are likely to be physiologically or psychologically addictive, and the use of which have negative physical, social, or psychological consequences.

Source: Laws 2007, LB463, § 156.

38-306 Alcohol or drug dependence, defined.

Alcohol or drug dependence means cognitive, behavioral, and psychological symptoms indicating the continued use of alcohol or other drugs despite significant alcohol or drug-related problems.

Source: Laws 2007, LB463, § 157.

38-307 Alcohol or drug disorder, defined.

Alcohol or drug disorder means a substance-related disorder as defined by the department in rules and regulations substantially similar with the definitions of the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders.

Source: Laws 2007, LB463, § 158.

38-308 Board, defined.

Board means the Board of Alcohol and Drug Counseling.

Source: Laws 2007, LB463, § 159.

38-309 Core functions, defined.

Core functions means the following twelve activities an alcohol and drug counselor performs in the role of counselor: Screening, intake, orientation, assessment, treatment planning, counseling (individual, group, and significant others), case management, crisis intervention, client education, referral, reports and record keeping, and consultation with other professionals in regard to client treatment and services.

Source: Laws 2007, LB463, § 160.

38-310 Membership on board; qualifications.

Membership on the board shall consist of seven professional members and two public members appointed pursuant to section 38-158. The members shall meet the requirements of sections 38-164 and 38-165. Three of the professional members shall be licensed alcohol and drug counselors who may also be licensed as psychologists or mental health practitioners, three of the professional members shall be licensed alcohol and drug counselors who are not licensed as psychologists or mental health practitioners, and one of the professional members shall be a psychiatrist, psychologist, or mental health practitioner.

Source: Laws 2007, LB463, § 161.

38-311 Scope of practice.

(1) The scope of practice for alcohol and drug counseling is the application of general counseling theories and treatment methods adapted to specific addiction theory and research for the express purpose of treating any alcohol or drug abuse, dependence, or disorder. The practice of alcohol and drug counseling consists of the following performance areas which encompass the twelve core functions: Clinical evaluation; treatment planning; counseling; education; documentation; and professional and ethical standards.

(2) The performance area of clinical evaluation consists of screening and assessment of alcohol and drug problems, screening of other presenting problems for which referral may be necessary, and diagnosis of alcohol and drug disorders. Clinical evaluation does not include mental health assessment or treatment. An alcohol and drug counselor shall refer a person with co-occurring mental disorders unless such person is under the care of, or previously assessed or diagnosed by, an appropriate practitioner within a reasonable amount of time.

(3) The performance area of treatment planning consists of case management, including implementing the treatment plan, consulting, and continuing assessment and treatment planning; referral; and client advocacy.

(4) The performance area of counseling consists of individual counseling, group counseling, and family or significant other counseling.

(5) The performance area of education consists of education for clients, family of clients, and the community.

Source: Laws 2004, LB 1083, § 116; R.S.Supp.,2006, § 71-1,352; Laws 2007, LB463, § 162.

38-312 License required; exceptions.

No person shall engage in alcohol and drug counseling or hold himself or herself out as an alcohol and drug counselor unless he or she is licensed for such purpose pursuant to the Uniform Credentialing Act, except that this section shall not be construed to prevent:

(1) Qualified members of other professions who are credentialed by this state from practice of any alcohol and drug counseling consistent with the scope of practice of their respective professions;

(2) Teaching or the conduct of research related to alcohol and drug counseling with organizations or institutions if such teaching, research, or consultation does not involve the delivery or supervision of alcohol and drug counseling to individuals or groups of individuals who are themselves, rather than a third party, the intended beneficiaries of such services;

(3) The delivery of alcohol and drug counseling by:

(a) Students, interns, or residents whose activities constitute a part of the course of study for medicine, psychology, nursing, school psychology, social work, clinical social work, counseling, marriage and family therapy, alcohol and drug counseling, compulsive gambling counseling, or other health care or mental health service professions; or

(b) Individuals seeking to fulfill postgraduate requirements for licensure when those individuals are supervised by a licensed professional consistent with the applicable regulations of the appropriate professional board;

(4) Duly recognized members of the clergy from providing alcohol and drug counseling in the course of their ministerial duties and consistent with the codes of ethics of their profession if they do not represent themselves to be alcohol and drug counselors;

(5) The incidental exchange of advice or support by persons who do not represent themselves as engaging in alcohol and drug counseling, including participation in self-help groups when the leaders of such groups receive no compensation for their participation and do not represent themselves as alcohol and drug counselors or their services as alcohol and drug counseling;

(6) Any person providing emergency crisis intervention or referral services; or

(7) Staff employed in a program designated by an agency of state government to provide rehabilitation and support services to individuals with alcohol or drug disorders from completing a rehabilitation assessment or preparing, implementing, and evaluating an individual rehabilitation plan.

Source: Laws 2004, LB 1083, § 117; R.S.Supp.,2006, § 71-1,353; Laws 2007, LB463, § 163.

38-313 License; application; provisional license.

(1) A person may apply for a license as an alcohol and drug counselor if he or she meets the requirements provided in section 38-316.

(2) A person may apply for a license as a provisional alcohol and drug counselor which permits such person to practice and acquire the supervised clinical work experience required for licensure as an alcohol and drug counselor. Provisional status may be granted once and held for a time period not to exceed six years, except that if an individual does not complete the supervised clinical work experience required for licensure within the specified six-year period due to unforeseen circumstances as determined by the department, with the recommendation of the board, the individual may apply for one additional provisional license. An individual who is so licensed shall not render services without clinical supervision. An individual who holds provisional licensure shall inform all clients that he or she holds a provisional certification and is practicing under supervision and shall identify the supervisor. An applicant shall meet the requirements provided in section 38-314.

Source: Laws 2004, LB 1083, § 118; R.S.Supp.,2006, § 71-1,354; Laws 2007, LB463, § 164.

Cross References

Uniform Credentialing Act, see section 38-101.

38-314 Provisional alcohol and drug counselor; license requirements.

To be licensed to practice as a provisional alcohol and drug counselor, an applicant shall:

(1) Have a high school diploma or its equivalent;

(2) Have two hundred seventy hours of education related to the knowledge and skills of alcohol and drug counseling which shall include:

(a) A minimum of forty-five hours in counseling theories and techniques coursework;

(b) A minimum of forty-five hours in group counseling coursework;

- (c) A minimum of thirty hours in human growth and development coursework;
 - (d) A minimum of fifteen hours in professional ethics and issues coursework;
 - (e) A minimum of thirty hours in alcohol and drug assessment, case planning, and management coursework;
 - (f) A minimum of thirty hours in multicultural counseling coursework;
 - (g) A minimum of forty-five hours in medical and psychosocial aspects of alcohol and drug use, abuse, and addiction coursework; and
 - (h) A minimum of thirty hours in clinical treatment issues in chemical dependency coursework; and
- (3) Have supervised practical training which shall:
- (a) Include performing a minimum of three hundred hours in the counselor core functions in a work setting where alcohol and drug counseling is provided;
 - (b) Be a formal, systematic process that focuses on skill development and integration of knowledge;
 - (c) Include training hours documented by performance date and core function performance areas; and
 - (d) Include the performance of all counselor core functions with no single function performed less than ten hours.

Source: Laws 2004, LB 1083, § 119; R.S.Supp.,2006, § 71-1,355; Laws 2007, LB463, § 165.

Cross References

Uniform Credentialing Act, see section 38-101.

38-315 Practical training supervisor; requirements; duties.

- (1)(a) The practical training supervisor for supervised practical training required under section 38-314 shall hold one of the following credentials:
- (i) Licensure as an alcohol and drug counselor;
 - (ii) If the practical training is acquired outside of Nebraska, a reciprocity level alcohol and drug counselor credential issued by a member jurisdiction of the International Certification and Reciprocity Consortium, Alcohol and Other Drug Abuse, Inc., or its successor; or
 - (iii) Licensure as a physician or psychologist under the Uniform Credentialing Act, or an equivalent credential from another jurisdiction, and sufficient training as determined by the Board of Medicine and Surgery for physicians or the Board of Psychologists for psychologists, in consultation with the Board of Alcohol and Drug Counseling, and adopted and promulgated by the department in rules and regulations.
- (b) The practical training supervisor shall not be a family member.
- (c) The credential requirement of this subsection applies to the work setting supervisor and not to a practicum coordinator or instructor of a postsecondary educational institution.
- (2) The practical training supervisor shall assume responsibility for the performance of the individual in training and shall be onsite at the work setting when core function activities are performed by the individual in training. A minimum of one hour of evaluative face-to-face supervision for each ten hours of core function performance shall be documented. Supervisory methods shall

include, as a minimum, individual supervisory sessions, formal case staffings, and conjoint, cotherapy sessions. Supervision shall be directed towards teaching the knowledge and skills of professional alcohol and drug counseling.

Source: Laws 2004, LB 1083, § 120; Laws 2005, LB 551, § 1; R.S.Supp.,2006, § 71-1,356; Laws 2007, LB463, § 166.

38-316 Alcohol and drug counselor; license requirements.

(1) To be licensed to practice as an alcohol and drug counselor, an applicant shall meet the requirements for licensure as a provisional alcohol and drug counselor under section 38-314, shall receive a passing score on an examination approved by the board, and shall have six thousand hours of supervised clinical work experience providing alcohol and drug counseling services to alcohol and other drug clients for remuneration. The experience shall be polydrug counseling experience.

(2) The experience shall include carrying a client caseload as the primary alcohol and drug counselor performing the core functions of assessment, treatment planning, counseling, case management, referral, reports and record keeping, and consultation with other professionals for those clients. The experience shall also include responsibility for performance of the five remaining core functions although these core functions need not be performed by the applicant with each client in their caseload.

(3) Experience that shall not count towards licensure shall include, but not be limited to:

(a) Providing services to individuals who do not have a diagnosis of alcohol and drug abuse or dependence such as prevention, intervention, and codependency services or other mental health disorder counseling services, except that this shall not exclude counseling services provided to a client's significant others when provided in the context of treatment for the diagnosed alcohol or drug client; and

(b) Providing services when the experience does not include primary case responsibility for alcohol or drug treatment or does not include responsibility for the performance of all of the core functions.

(4) The maximum number of hours of experience that may be accrued are forty hours per week or two thousand hours per year.

(5)(a) A postsecondary educational degree may be substituted for part of the supervised clinical work experience. The degree shall be from a regionally accredited postsecondary educational institution or the educational program shall be accredited by a nationally recognized accreditation agency.

(b) An associate's degree in addictions or chemical dependency may be substituted for one thousand hours of supervised clinical work experience.

(c) A bachelor's degree with a major in counseling, addictions, social work, sociology, or psychology may be substituted for two thousand hours of supervised clinical work experience.

(d) A master's degree or higher in counseling, addictions, social work, sociology, or psychology may be substituted for four thousand hours of supervised clinical work experience.

(e) A substitution shall not be made for more than one degree.

Source: Laws 2004, LB 1083, § 121; R.S.Supp.,2006, § 71-1,357; Laws 2007, LB463, § 167.

Cross References

Uniform Credentialing Act, see section 38-101.

38-317 Clinical supervisor; requirements; duties.

(1)(a) The clinical supervisor for supervised clinical work experience under section 38-316 shall hold one of the following credentials:

(i) Licensure as an alcohol and drug counselor;

(ii) If the clinical work is acquired outside of Nebraska, a reciprocity level alcohol and drug counselor credential issued by a member jurisdiction of the International Certification and Reciprocity Consortium, Alcohol and Other Drug Abuse, Inc., or its successor;

(iii) The highest level alcohol and drug counselor credential issued by a jurisdiction that is not a member of the International Certification and Reciprocity Consortium, Alcohol and Other Drug Abuse, Inc., or its successor if the credential is based on education, experience, and examination that is substantially similar to the license issued in this state as determined by the board; or

(iv) Licensure as a physician or psychologist under the Uniform Credentialing Act, or an equivalent credential from another jurisdiction, and sufficient training as determined by the Board of Medicine and Surgery for physicians or the Board of Psychologists for psychologists, in consultation with the Board of Alcohol and Drug Counseling, and adopted and promulgated by the department in rules and regulations.

(b) The clinical supervisor shall be formally affiliated with the program or agency in which the work experience is gained.

(c) The clinical supervisor shall not be a family member.

(2) There shall be one hour of evaluative face-to-face clinical supervision for each forty hours of paid alcohol and drug counseling work experience. The format for supervision shall be either one-on-one or small group. Methods of supervision may include case review and discussion or direct observation of a counselor's clinical work.

Source: Laws 2004, LB 1083, § 122; Laws 2005, LB 551, § 2; R.S.Supp.,2006, § 71-1,358; Laws 2007, LB463, § 168.

38-318 Licensure; substitute requirements.

(1) An individual who is licensed as a provisional alcohol and drug counselor at the time of application for licensure as an alcohol and drug counselor is deemed to have met the requirements of a high school diploma or its equivalent, the two hundred seventy hours of education related to alcohol and drug counseling, and the supervised practical training requirement.

(2) An applicant who is licensed as a provisional mental health practitioner or a mental health practitioner at the time of application for licensure is deemed to have met the requirements of subdivisions (2)(a), (b), (c), (d), and (f) of section 38-314.

Source: Laws 2004, LB 1083, § 123; R.S.Supp.,2006, § 71-1,359; Laws 2007, LB463, § 169.

38-319 Reciprocity.

The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who meets the requirements of the Alcohol and Drug Counseling Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board.

Source: Laws 2007, LB463, § 170.

38-320 Fees.

The department shall establish and collect fees for initial licensure and renewal under the Alcohol and Drug Counseling Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 171.

38-321 Rules and regulations.

(1) The department, with the recommendation of the board, shall adopt and promulgate rules and regulations to administer the Alcohol and Drug Counseling Practice Act, including rules and regulations governing:

(a) Ways of clearly identifying students, interns, and other persons providing alcohol and drug counseling under supervision;

(b) The rights of persons receiving alcohol and drug counseling;

(c) The rights of clients to gain access to their records, except that records relating to substance abuse may be withheld from a client if an alcohol and drug counselor determines, in his or her professional opinion, that release of the records to the client would not be in the best interest of the client or would pose a threat to another person, unless the release of the records is required by court order;

(d) The contents and methods of distribution of disclosure statements to clients of alcohol and drug counselors; and

(e) Standards of professional conduct and a code of ethics.

(2) The rules and regulations governing certified alcohol and drug counselors shall remain in effect to govern licensure until modified under this section, except that if there is any conflict with the Alcohol and Drug Counseling Practice Act, the provisions of the act shall prevail.

Source: Laws 2004, LB 1083, § 125; R.S.Supp.,2006, § 71-1,361; Laws 2007, LB463, § 172.

ARTICLE 4**ATHLETIC TRAINING PRACTICE ACT**

Section

38-401. Act, how cited.

38-402. Definitions, where found.

38-403. Athletic injuries, defined.

38-404. Athletic trainer, defined.

38-405. Athletic training, defined.

38-406. Board, defined.

38-407. Practice site, defined.

38-408. Athletic trainers; authorized physical modalities.

38-409. License required; exceptions.

Section

- 38-410. Licensure requirements; exemptions.
- 38-411. Applicant for licensure; qualifications; examination.
- 38-412. Continuing competency requirements.
- 38-413. Reciprocity; continuing competency requirements.
- 38-414. Fees.

38-401 Act, how cited.

Sections 38-401 to 38-414 shall be known and may be cited as the Athletic Training Practice Act.

Source: Laws 2007, LB463, § 173.

38-402 Definitions, where found.

For purposes of the Athletic Training Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-403 to 38-407 apply.

Source: Laws 1986, LB 355, § 1; Laws 1996, LB 1044, § 477; Laws 1999, LB 178, § 2; Laws 1999, LB 828, § 140; Laws 2003, LB 242, § 65; R.S.1943, (2003), § 71-1,238; Laws 2007, LB296, § 359; Laws 2007, LB463, § 174.

38-403 Athletic injuries, defined.

Athletic injuries means the types of musculoskeletal injury or common illness and conditions which athletic trainers are educated to treat or refer, incurred by athletes, which prevent or limit participation in sports or recreation.

Source: Laws 2007, LB463, § 175.

38-404 Athletic trainer, defined.

Athletic trainer means a person who is responsible for the prevention, emergency care, first aid, treatment, and rehabilitation of athletic injuries under guidelines established with a licensed physician and who is licensed to perform the functions set out in section 38-408. When athletic training is provided in a hospital outpatient department or clinic or an outpatient-based medical facility, the athletic trainer will perform the functions described in section 38-408 with a referral from a licensed physician for athletic training.

Source: Laws 2007, LB463, § 176.

38-405 Athletic training, defined.

Athletic training means the prevention, evaluation, emergency care, first aid, treatment, and rehabilitation of athletic injuries utilizing the treatments set out in section 38-408.

Source: Laws 2007, LB463, § 177.

38-406 Board, defined.

Board means the Board of Athletic Training.

Source: Laws 2007, LB463, § 178.

38-407 Practice site, defined.

Practice site means the location where the athletic trainer practices athletic training.

Source: Laws 2007, LB463, § 179.

38-408 Athletic trainers; authorized physical modalities.

(1) Athletic trainers shall be authorized to use the following physical modalities in the treatment of athletic injuries under guidelines established with a licensed physician:

- (a) Application of electrotherapy;
- (b) Application of ultrasound;
- (c) Use of medical diathermies;
- (d) Application of infrared light; and
- (e) Application of ultraviolet light.

(2) The application of heat, cold, air, water, or exercise shall not be restricted by the Athletic Training Practice Act.

Source: Laws 2007, LB463, § 180.

38-409 License required; exceptions.

No person shall be authorized to perform the physical modalities set out in section 38-408 on any person unless he or she first obtains a license as an athletic trainer or unless such person is licensed as a physician, osteopathic physician, chiropractor, nurse, physical therapist, or podiatrist. No person shall hold himself or herself out to be an athletic trainer unless licensed under the Athletic Training Practice Act.

Source: Laws 1986, LB 355, § 3; Laws 1989, LB 342, § 27; Laws 1999, LB 178, § 3; Laws 2003, LB 242, § 67; R.S.1943, (2003), § 71-1,240; Laws 2007, LB463, § 181.

38-410 Licensure requirements; exemptions.

(1) An individual who accompanies an athletic team or organization from another state or jurisdiction as the athletic trainer is exempt from the licensure requirements of the Athletic Training Practice Act.

(2) An individual who is a graduate student in athletic training and who is practicing under the supervision of a licensed athletic trainer is exempt from the licensure requirements of the Athletic Training Practice Act.

Source: Laws 1999, LB 178, § 4; Laws 2003, LB 242, § 66; R.S.1943, (2003), § 71-1,239.01; Laws 2007, LB463, § 182.

38-411 Applicant for licensure; qualifications; examination.

(1) An applicant for licensure as an athletic trainer shall at the time of application provide proof to the department that he or she meets one or more of the following qualifications:

- (a) Graduation after successful completion of the athletic training curriculum requirements of an accredited college or university approved by the board; or
- (b) Graduation with a four-year degree from an accredited college or university and completion of at least two consecutive years, military duty excepted, as

a student athletic trainer under the supervision of an athletic trainer approved by the board.

(2) In order to be licensed as an athletic trainer, an applicant shall, in addition to the requirements of subsection (1) of this section, successfully complete an examination approved by the board.

Source: Laws 1986, LB 355, § 4; R.S.1943, (2003), § 71-1,241; Laws 2007, LB463, § 183.

Cross References

Uniform Credentialing Act, see section 38-101.

38-412 Continuing competency requirements.

An applicant for licensure as an athletic trainer who has met the education and examination requirements in section 38-411, who passed the examination more than three years prior to the time of application for licensure, and who is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 184.

38-413 Reciprocity; continuing competency requirements.

An applicant for licensure as an athletic trainer who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 185.

38-414 Fees.

The department shall establish and collect fees for initial licensure and renewal under the Athletic Training Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 186.

ARTICLE 5

AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY PRACTICE ACT

Cross References

Hearing Aid Instrument Dispensers and Fitters Practice Act, see section 38-1501.

Section

- 38-501. Act, how cited.
- 38-502. Definitions, where found.
- 38-503. Audiologist, defined.
- 38-504. Board, defined.
- 38-505. Audiology or speech-language pathology assistant, defined.
- 38-506. Dysphagia, defined.
- 38-507. Practice of audiology, defined.
- 38-508. Practice of speech-language pathology, defined.

Section

- 38-509. Speech-language pathologist, defined.
- 38-510. Membership on board; qualifications.
- 38-511. Practice of audiology or speech-language pathology; act, how construed.
- 38-512. Sale of hearing aids; audiologist; applicability of act.
- 38-513. Licensed professional; nonresident; practice of audiology or speech-language pathology; act, how construed.
- 38-514. Audiologist; initiate aural rehabilitation; when.
- 38-515. Practice of audiology or speech-language pathology; license; applicant; requirements.
- 38-516. Continuing competency requirements.
- 38-517. Reciprocity; continuing competency requirements.
- 38-518. Practice of audiology or speech-language pathology; temporary license; granted; when.
- 38-519. Audiology or speech-language pathology assistant; registration; requirements.
- 38-520. Audiologist or speech-language pathology assistant; supervision; termination.
- 38-521. Audiology or speech-language pathology assistant; initial training.
- 38-522. Audiology or speech-language pathology assistant; aural rehabilitation programs; training.
- 38-523. Audiology or speech-language assistant; duties and activities.
- 38-524. Audiology or speech-language pathology assistant; acts prohibited.
- 38-525. Audiology or speech-language pathology assistant; supervisor; duties.
- 38-526. Audiology or speech-language pathology assistant; evaluation, supervision, training; supervisor; report required.
- 38-527. Fees.

38-501 Act, how cited.

Sections 38-501 to 38-527 shall be known and may be cited as the Audiology and Speech-Language Pathology Practice Act.

Source: Laws 2007, LB247, § 63; Laws 2007, LB463, § 187.

38-502 Definitions, where found.

For purposes of the Audiology and Speech-Language Pathology Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-503 to 38-509 apply.

Source: Laws 1978, LB 406, § 13; Laws 1985, LB 129, § 14; Laws 1988, LB 1100, § 66; Laws 1999, LB 828, § 130; R.S.1943, (2003), § 71-1,186; Laws 2007, LB247, § 27; Laws 2007, LB247, § 64; Laws 2007, LB463, § 188.

38-503 Audiologist, defined.

Audiologist means an individual who practices audiology and who presents himself or herself to the public by any title or description of services incorporating the words audiologist, hearing clinician, or hearing therapist or any similar title or description of services.

Source: Laws 2007, LB463, § 189.

38-504 Board, defined.

Board means the Board of Audiology and Speech-Language Pathology.

Source: Laws 2007, LB463, § 190.

38-505 Audiology or speech-language pathology assistant, defined.

Audiology or speech-language pathology assistant or any individual who presents himself or herself to the public by any title or description with the same duties means any person who, following specified training and receiving specified supervision, provides specified limited structured communication or swallowing services, which are developed and supervised by a licensed audiologist or licensed speech-language pathologist, in the areas in which the supervisor holds licenses.

Source: Laws 2007, LB247, § 65; Laws 2007, LB463, § 191.

38-506 Dysphagia, defined.

Dysphagia means disorders of swallowing.

Source: Laws 2007, LB247, § 66.

38-507 Practice of audiology, defined.

Practice of audiology means the application of evidence-based practice in clinical decisionmaking for the prevention, assessment, habilitation, rehabilitation, and maintenance of persons with hearing, auditory function, and vestibular function impairments and related impairments, including (1) cerumen removal from the cartilaginous outer one-third portion of the external auditory canal when the presence of cerumen may affect the accuracy of hearing evaluations or impressions of the ear canal for amplification devices and (2) evaluation, selection, fitting, and dispensing of hearing aids, external processors of implantable hearing aids, and assistive technology devices as part of a comprehensive audiological rehabilitation program. Practice of audiology does not include the practice of medical diagnosis, medical treatment, or surgery.

Source: Laws 2007, LB247, § 67; Laws 2007, LB463, § 192.

38-508 Practice of speech-language pathology, defined.

Practice of speech-language pathology means the application of principles and methods associated with the development and disorders of human communication skills and with dysphagia, which principles and methods include screening, assessment, evaluation, treatment, prevention, consultation, and restorative modalities for speech, voice, language, language-based learning, hearing, swallowing, or other upper aerodigestive functions for the purpose of improving quality of life by reducing impairments of body functions and structures, activity limitations, participation restrictions, and environmental barriers. Practice of speech-language pathology does not include the practice of medical diagnosis, medical treatment, or surgery.

Source: Laws 2007, LB247, § 68; Laws 2007, LB463, § 193.

38-509 Speech-language pathologist, defined.

Speech-language pathologist means an individual who presents himself or herself to the public by any title or description of services incorporating the words speech-language pathologist, speech therapist, speech correctionist, speech clinician, language pathologist, language therapist, language clinician, logopedist, communicologist, aphasiologist, aphasia therapist, voice pathologist, voice therapist, voice clinician, phoniatriest, or any similar title, term, or description of services.

Source: Laws 2007, LB463, § 194.

38-510 Membership on board; qualifications.

Membership on the board shall consist of four professional members and one public member appointed pursuant to section 38-158. The members shall meet the requirements of sections 38-164 and 38-165. Two of the professional members shall be audiologists, and two of the professional members shall be speech-language pathologists.

Source: Laws 2007, LB463, § 195.

38-511 Practice of audiology or speech-language pathology; act, how construed.

Nothing in the Audiology and Speech-Language Pathology Practice Act shall be construed to prevent or restrict:

(1) The practice of audiology or speech-language pathology or the use of the official title of such practice by a person employed as a speech-language pathologist or audiologist by the federal government;

(2) A physician from engaging in the practice of medicine and surgery or any individual from carrying out any properly delegated responsibilities within the normal practice of medicine and surgery under the supervision of a physician;

(3) A person licensed as a hearing aid fitter and dealer in this state from engaging in the fitting, selling, and servicing of hearing aids or performing such other duties as defined in the Hearing Aid Instrument Dispensers and Fitters Practice Act;

(4) The practice of audiology or speech-language pathology or the use of the official title of such practice by a person who holds a valid and current credential as a speech-language pathologist or audiologist issued by the State Department of Education, if such person performs speech-language pathology or audiology services solely as a part of his or her duties within an agency, institution, or organization for which no fee is paid directly or indirectly by the recipient of such service and under the jurisdiction of the State Department of Education, but such person may elect to be within the jurisdiction of the Audiology and Speech-Language Pathology Practice Act;

(5) The clinical practice in audiology or speech-language pathology required for students enrolled in an accredited college or university pursuing a major in audiology or speech-language pathology, if such clinical practices are supervised by a person licensed to practice audiology or speech-language pathology and if the student is designated by a title such as student clinician or other title clearly indicating the training status; or

(6) The utilization of a speech aide or other personnel employed by a public school, educational service unit, or other private or public educational institution working under the direct supervision of a credentialed speech-language pathologist.

Source: Laws 1978, LB 406, § 14; Laws 1985, LB 129, § 15; Laws 1990, LB 828, § 1; Laws 2001, LB 209, § 11; R.S.1943, (2003), § 71-1,187; Laws 2007, LB247, § 28; Laws 2007, LB463, § 196.

Cross References

Hearing Aid Instrument Dispensers and Fitters Practice Act, see section 38-1501.

38-512 Sale of hearing aids; audiologist; applicability of act.

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Any audiologist who engages in the sale of hearing aids shall not be exempt from the Hearing Aid Instrument Dispensers and Fitters Practice Act.

Source: Laws 1978, LB 406, § 23; R.S.1943, (2003), § 71-1,196; Laws 2007, LB463, § 197.

Cross References

Hearing Aid Instrument Dispensers and Fitters Practice Act, see section 38-1501.

38-513 Licensed professional; nonresident; practice of audiology or speech-language pathology; act, how construed.

Nothing in the Audiology and Speech-Language Pathology Practice Act shall be construed to prevent or restrict (1) a qualified person licensed in this state from engaging in the profession for which he or she is licensed if he or she does not present himself or herself to be an audiologist or speech-language pathologist or (2) the performance of audiology or speech-language pathology services in this state by any person not a resident of this state who is not licensed under the act, if such services are performed for not more than thirty days in any calendar year, if such person meets the qualifications and requirements for application for licensure under the act, if such person is working under the supervision of a person licensed to practice speech-language pathology or audiology, and if such person registers with the board prior to initiation of professional services.

Source: Laws 1978, LB 406, § 15; Laws 1985, LB 129, § 16; Laws 1990, LB 828, § 2; R.S.1943, (2003), § 71-1,188; Laws 2007, LB463, § 198.

38-514 Audiologist; initiate aural rehabilitation; when.

Before any audiologist initiates any aural rehabilitation for an individual, the audiologist shall have in his or her possession evidence of a current otologic examination performed by a physician or the audiologist shall issue a written statement that the individual has been informed that he or she may have a medically or surgically remediable hearing loss and should seek the advice of a physician. The audiologist and the individual receiving aural rehabilitation shall sign the statement and a copy of the statement shall be provided to the individual. All vestibular testing performed by an audiologist shall be done at the referral of a physician and, whenever possible, at the referral of an otolaryngologist or neurologist.

Source: Laws 1978, LB 406, § 16; Laws 1985, LB 129, § 17; R.S.1943, (2003), § 71-1,189; Laws 2007, LB463, § 199.

38-515 Practice of audiology or speech-language pathology; license; applicant; requirements.

(1) Every applicant for a license to practice audiology shall (a)(i) for applicants graduating prior to September 1, 2007, present proof of a master's degree, a doctoral degree, or the equivalent of a master's degree or doctoral degree in audiology from an academic program approved by the board, and (ii) for applicants graduating on or after September 1, 2007, present proof of a doctoral degree or its equivalent in audiology, (b) present proof of no less than thirty-six weeks of full-time professional experience or equivalent half-time

professional experience in audiology, supervised in the area in which licensure is sought, and (c) successfully complete an examination approved by the board.

(2) Every applicant for a license to practice speech-language pathology shall (a) present proof of a master's degree, a doctoral degree, or the equivalent of a master's degree or doctoral degree in speech-language pathology from an academic program approved by the board, (b) present proof of no less than thirty-six weeks of full-time professional experience or equivalent half-time professional experience in speech-language pathology, supervised in the area in which licensure is sought, and (c) successfully complete an examination approved by the board.

(3) Presentation of official documentation of certification by a nationwide professional accrediting organization approved by the board shall be deemed equivalent to the requirements of this section.

Source: Laws 1978, LB 406, § 17; Laws 1985, LB 129, § 18; Laws 1988, LB 1100, § 67; R.S.1943, (2003), § 71-1,190; Laws 2007, LB463, § 200; Laws 2007, LB463, § 1178.

Cross References

Uniform Credentialing Act, see section 38-101.

38-516 Continuing competency requirements.

An applicant for licensure to practice audiology or speech-language pathology who has met the education, professional experience, and examination requirements in section 38-515, who passed the examination more than three years prior to the time of application for licensure, and who is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 201.

38-517 Reciprocity; continuing competency requirements.

An applicant for licensure to practice audiology or speech-language pathology who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 202.

38-518 Practice of audiology or speech-language pathology; temporary license; granted; when.

A temporary license to practice audiology or speech-language pathology may be granted to persons who establish residence in Nebraska and (1) who meet all the requirements for a license except passage of the examination required by section 38-515, which temporary license shall be valid only until the date on which the results of the next licensure examination are available to the department and shall not be renewed, or (2) who meet all the requirements for a license except completion of the professional experience required by section

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38-515, which temporary license shall be valid only until the sooner of completion of such professional experience or eighteen months and shall not be renewed.

Source: Laws 1978, LB 406, § 21; Laws 1985, LB 129, § 22; Laws 1988, LB 1100, § 68; Laws 1991, LB 456, § 28; Laws 2001, LB 209, § 12; Laws 2003, LB 242, § 59; R.S.1943, (2003), § 71-1,194; Laws 2007, LB463, § 203.

38-519 Audiology or speech-language pathology assistant; registration; requirements.

(1) Upon application and payment of the registration fee, the department shall register to practice as an audiology or speech-language pathology assistant any person who:

(a)(i) Holds a bachelor's degree or its equivalent in communication disorders, (ii) holds an associate degree or its equivalent in communication disorders from an accredited training program, or (iii) between the period of June 1, 2005, and June 1, 2007, was registered as and practiced as a communication assistant for at least thirty hours per week for a minimum of nine months per year;

(b) Has successfully completed all required training pursuant to sections 38-521 and 38-522 and any inservice training required pursuant to section 38-526; and

(c) Has demonstrated ability to reliably maintain records and provide treatment under the supervision of a licensed audiologist or speech-language pathologist.

(2) Such registration shall be valid for one year from the date of issuance.

Source: Laws 1985, LB 129, § 23; Laws 1988, LB 1100, § 69; Laws 2002, LB 1021, § 27; Laws 2003, LB 242, § 60; R.S.1943, (2003), § 71-1,195.01; Laws 2007, LB247, § 29; Laws 2007, LB463, § 204.

Cross References

Uniform Credentialing Act, see section 38-101.

38-520 Audiologist or speech-language pathology assistant; supervision; termination.

(1) The department, with the recommendation of the board, shall approve an application submitted by an audiologist or speech-language pathologist for supervision of an audiology or speech-language pathology assistant when:

(a) The audiology or speech-language pathology assistant meets the requirements for registration pursuant to section 38-519;

(b) The audiologist or speech-language pathologist has a valid Nebraska license; and

(c) The audiologist or speech-language pathologist practices in Nebraska.

(2) Any audiologist or speech-language pathologist seeking approval for supervision of an audiology or speech-language pathology assistant shall submit an application which is signed by the audiology or speech-language pathology assistant and the audiologist or speech-language pathologist with whom he or she is associated. Such application shall (a) identify the settings within which the audiology or speech-language pathology assistant is authorized to practice,

(b) describe the agreed-upon functions that the audiology or speech-language pathology assistant may perform as provided in section 38-523, and (c) describe the provision for supervision by an alternate audiologist or speech-language pathologist when necessary.

(3) If the supervision of an audiology or speech-language pathology assistant is terminated by the audiologist, speech-language pathologist, or audiology or speech-language pathology assistant, the audiologist or speech-language pathologist shall notify the department of such termination. An audiologist or speech-language pathologist who thereafter assumes the responsibility for such supervision shall obtain a certificate of approval to supervise an audiology or speech-language pathology assistant from the department prior to the use of the audiology or speech-language pathology assistant in the practice of audiology or speech-language pathology.

Source: Laws 1985, LB 129, § 24; Laws 1987, LB 473, § 30; Laws 1988, LB 1100, § 70; R.S.1943, (2003), § 71-1,195.02; Laws 2007, LB247, § 30; Laws 2007, LB463, § 205.

38-521 Audiology or speech-language pathology assistant; initial training.

Initial training for an audiology or speech-language pathology assistant shall consist of graduation from an accredited program with a focus on communication disorders which shall include:

- (1) An overview of speech, language, and dysphagia and the practice of audiology and speech-language pathology;
- (2) Ethical and legal responsibilities;
- (3) Normal language, speech, and hearing functions and swallowing physiology;
- (4) Observing and recording patient progress;
- (5) Behavior management and modification; and
- (6) Record keeping.

Source: Laws 1985, LB 129, § 26; Laws 1988, LB 1100, § 72; R.S.1943, (2003), § 71-1,195.04; Laws 2007, LB247, § 32; Laws 2007, LB463, § 206.

38-522 Audiology or speech-language pathology assistant; aural rehabilitation programs; training.

In addition to the initial training required by section 38-521, an audiology or speech-language pathology assistant assigned to provide aural rehabilitation programs shall have additional training which shall include, but not be limited to:

- (1) Information concerning the nature of hearing loss;
- (2) Purposes and principles of auditory and visual training;
- (3) Maintenance and use of amplification devices; and
- (4) Such other subjects as the department may deem appropriate.

Source: Laws 1985, LB 129, § 27; Laws 1988, LB 1100, § 73; R.S.1943, (2003), § 71-1,195.05; Laws 2007, LB247, § 33; Laws 2007, LB463, § 207.

38-523 Audiology or speech-language assistant; duties and activities.

An audiology or speech-language pathology assistant may, under the supervision of a licensed audiologist or speech-language pathologist, perform the following duties and activities:

- (1) Implement programs and procedures designed by a licensed audiologist or speech-language pathologist;
- (2) Maintain records of implemented procedures which document a patient's responses to treatment;
- (3) Provide input for interdisciplinary treatment planning, inservice training, and other activities directed by a licensed audiologist or speech-language pathologist;
- (4) Prepare instructional material to facilitate program implementation as directed by a licensed audiologist or speech-language pathologist;
- (5) Follow plans, developed by the licensed audiologist or speech-language pathologist, that provide specific sequences of treatment to individuals with communicative disorders or dysphagia; and
- (6) Chart or log patient responses to the treatment plan.

Source: Laws 1985, LB 129, § 28; Laws 1988, LB 1100, § 74; R.S.1943, (2003), § 71-1,195.06; Laws 2007, LB247, § 34; Laws 2007, LB463, § 208.

38-524 Audiology or speech-language pathology assistant; acts prohibited.

An audiology or speech-language pathology assistant shall not:

- (1) Evaluate or diagnose any type of communication disorder;
- (2) Evaluate or diagnose any type of dysphagia;
- (3) Interpret evaluation results or treatment progress;
- (4) Consult or counsel, independent of the licensed audiologist or speech-language pathologist, with a patient, a patient's family, or staff regarding the nature or degree of communication disorders or dysphagia;
- (5) Plan patient treatment programs;
- (6) Represent himself or herself as an audiologist or speech-language pathologist or as a provider of speech, language, swallowing, or hearing treatment or assessment services;
- (7) Independently initiate, modify, or terminate any treatment program; or
- (8) Fit or dispense hearing aids.

Source: Laws 1985, LB 129, § 29; Laws 1988, LB 1100, § 75; R.S.1943, (2003), § 71-1,195.07; Laws 2007, LB247, § 35; Laws 2007, LB463, § 209.

38-525 Audiology or speech-language pathology assistant; supervisor; duties.

(1) When supervising an audiology or speech-language pathology assistant, the supervising audiologist or speech-language pathologist shall:

- (a) Provide supervision for no more than two audiology or speech-language pathology assistants at one time;

(b) Provide direct onsite supervision for the first two treatment sessions of each patient's care;

(c) Provide direct onsite supervision of at least twenty percent of all subsequent treatment sessions per quarter;

(d) Provide at least ten hours of inservice training per registration period, either formal or informal, which is directly related to the particular services provided by the audiology or speech-language pathology assistant; and

(e) Prepare semiannual performance evaluations of the audiology or speech-language pathology assistant to be reviewed with the audiology or speech-language pathology assistant on a one-to-one basis.

(2) The supervising audiologist or speech-language pathologist shall be responsible for all aspects of patient treatment.

Source: Laws 1985, LB 129, § 30; Laws 1988, LB 1100, § 76; R.S.1943, (2003), § 71-1,195.08; Laws 2007, LB247, § 36; Laws 2007, LB463, § 210.

38-526 Audiology or speech-language pathology assistant; evaluation, supervision, training; supervisor; report required.

The supervising audiologist or speech-language pathologist shall provide annual reports to the department verifying that evaluation, supervision, and training required by section 38-525 has been completed. The audiologist or speech-language pathologist shall keep accurate records of such evaluation, supervision, and training.

Source: Laws 1985, LB 129, § 31; Laws 1988, LB 1100, § 77; R.S.1943, (2003), § 71-1,195.09; Laws 2007, LB247, § 37; Laws 2007, LB247, § 69; Laws 2007, LB463, § 211.

38-527 Fees.

The department shall establish and collect fees for initial licensure and registration and renewal of licensure and registration under the Audiology and Speech-Language Pathology Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 212.

ARTICLE 6

CERTIFIED NURSE MIDWIFERY PRACTICE ACT

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Alcohol or controlled substance testing, agent of state, see sections 37-1254.06, 60-4,164.01, and 60-6,202.
Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Child abuse, duty to report, see section 28-711.
Clinical Nurse Specialist Practice Act, see section 38-901.
Community nurses, see sections 71-1637 to 71-1639.
Division of Public Health of the Department of Health and Human Services, see section 81-3113.
Emergency Box Drug Act, see section 71-2410.
Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.
Good Samaritan provisions, see section 25-21,186.
Health and Human Services Act, see section 81-3110.
Health Care Facility Licensure Act, see section 71-401.
Health Care Professional Credentialing Verification Act, see section 44-7001.
Home health aides, see section 71-6601 et seq.
License Suspension Act, see section 43-3301.
Licensed Practical Nurse-Certified Practice Act, see section 38-1601.
Lien for services, see section 52-401.

Medication Aide Act, see section 71-6718.
Nebraska Center for Nursing Act, see section 71-1796.
Nebraska Hospital-Medical Liability Act, see section 44-2855.
Nebraska Nursing Home Act, see section 71-6037.
Nebraska Regulation of Health Professions Act, see section 71-6201.
Nurse Licensure Compact, see section 71-1795.
Nurse Practice Act, see section 38-2201.
Nurse Practitioner Practice Act, see section 38-2301.
Nursing Faculty Student Loan Act, see section 71-17,108.
Nursing Home Administrator Practice Act, see section 38-2401.
Nursing Student Loan Act, see section 71-17,101.
Patient Safety Improvement Act, see section 71-8701.
Rural Health Systems and Professional Incentive Act, see section 71-5650.
State Board of Health, duties, see section 71-2610 et seq.
Statewide Trauma System Act, see section 71-8201.
Uniform Controlled Substances Act, see section 28-401.01.

Section

- 38-601. Act, how cited.
- 38-602. Legislative findings.
- 38-603. Definitions, where found.
- 38-604. Approved certified nurse midwifery education program, defined.
- 38-605. Board, defined.
- 38-606. Certified nurse midwife, defined.
- 38-607. Collaboration, defined.
- 38-608. Licensed practitioner, defined.
- 38-609. Practice agreement, defined.
- 38-610. Supervision, defined.
- 38-611. Certified nurse midwife; authorized activities.
- 38-612. Unlicensed person; acts not prohibited.
- 38-613. Permitted practice described in practice agreement; supervision; settings; subject to review by board; rules and regulations.
- 38-614. Change in practice; new or amended agreement.
- 38-615. Licensure as nurse midwife; application; requirements; temporary licensure.
- 38-616. License; renewal.
- 38-617. Certified nurse midwife; right to use title or abbreviation.
- 38-618. Act, how interpreted.

38-601 Act, how cited.

Sections 38-601 to 38-618 shall be known and may be cited as the Certified Nurse Midwifery Practice Act.

Source: Laws 1984, LB 761, § 1; Laws 2005, LB 256, § 82; R.S.Supp.,2006, § 71-1738; Laws 2007, LB463, § 213.

38-602 Legislative findings.

The Legislature hereby finds and declares that the Certified Nurse Midwifery Practice Act is necessary to safeguard public life, health, safety, and welfare, to assure the highest degree of professional conduct by practitioners of certified nurse midwifery, and to insure the availability of high quality midwifery services to persons desiring such services.

Source: Laws 1984, LB 761, § 2; R.S.1943, (2003), § 71-1739; Laws 2007, LB463, § 214.

38-603 Definitions, where found.

For purposes of the Certified Nurse Midwifery Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-604 to 38-610 apply.

Source: Laws 1984, LB 761, § 3; Laws 1999, LB 828, § 160; R.S.1943, (2003), § 71-1740; Laws 2007, LB463, § 215.

38-604 Approved certified nurse midwifery education program, defined.

Approved certified nurse midwifery education program means a certified nurse midwifery education program approved by the board. The board may require such program to be accredited by the American College of Nurse-Midwives.

Source: Laws 1984, LB 761, § 12; Laws 2005, LB 256, § 85; R.S.Supp.,2006, § 71-1749; Laws 2007, LB185, § 21; Laws 2007, LB463, § 216.

38-605 Board, defined.

Board means the Board of Advanced Practice Registered Nurses.

Source: Laws 1984, LB 761, § 6; Laws 1993, LB 536, § 74; Laws 1999, LB 828, § 161; Laws 2005, LB 256, § 83; R.S.Supp.,2006, § 71-1743; Laws 2007, LB463, § 217.

38-606 Certified nurse midwife, defined.

Certified nurse midwife means a person certified by a board-approved certifying body and licensed under the Advanced Practice Registered Nurse Practice Act to practice certified nurse midwifery in the State of Nebraska. Nothing in the Certified Nurse Midwifery Practice Act is intended to restrict the practice of registered nurses.

Source: Laws 1984, LB 761, § 11; R.S.1943, (2003), § 71-1748; Laws 2007, LB185, § 20; Laws 2007, LB463, § 218.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.

38-607 Collaboration, defined.

Collaboration means a process and relationship in which a certified nurse midwife works together with other health professionals to deliver health care within the scope of practice of certified nurse midwifery as provided in the Certified Nurse Midwifery Practice Act. The collaborative relationship between the physician and the nurse midwife shall be subject to the control and regulation of the board.

Source: Laws 1984, LB 761, § 10; Laws 2005, LB 256, § 84; R.S.Supp.,2006, § 71-1747; Laws 2007, LB463, § 219.

38-608 Licensed practitioner, defined.

Licensed practitioner means any physician licensed to practice pursuant to the Medicine and Surgery Practice Act, whose practice includes obstetrics.

Source: Laws 1984, LB 761, § 9; R.S.1943, (2003), § 71-1746; Laws 2007, LB463, § 220.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.

38-609 Practice agreement, defined.

Practice agreement means the written agreement authored and signed by the certified nurse midwife and the licensed practitioner with whom he or she is associated which:

- (1) Identifies the settings within which the certified nurse midwife is authorized to practice;
- (2) Names the collaborating licensed practitioner or, if more than one licensed practitioner is a party to such practice agreement, names all of the collaborating licensed practitioners;
- (3) Defines or describes the medical functions to be performed by the certified nurse midwife, which are not inconsistent with the Certified Nurse Midwifery Practice Act, as agreed to by the nurse midwife and the collaborating licensed practitioner; and
- (4) Contains such other information as required by the board.

Source: Laws 1984, LB 761, § 13; Laws 2005, LB 256, § 86; R.S.Supp.,2006, § 71-1750; Laws 2007, LB463, § 221.

38-610 Supervision, defined.

Supervision means the ready availability of a collaborating licensed practitioner for consultation and direction of the activities of the certified nurse midwife related to delegated medical functions as outlined in the practice agreement.

Source: Laws 1984, LB 761, § 14; R.S.1943, (2003), § 71-1751; Laws 2007, LB463, § 222.

38-611 Certified nurse midwife; authorized activities.

A certified nurse midwife may, under the provisions of a practice agreement, (1) attend cases of normal childbirth, (2) provide prenatal, intrapartum, and postpartum care, (3) provide normal obstetrical and gynecological services for women, and (4) provide care for the newborn immediately following birth. The conditions under which a certified nurse midwife is required to refer cases to a collaborating licensed practitioner shall be specified in the practice agreement.

Source: Laws 1984, LB 761, § 15; R.S.1943, (2003), § 71-1752; Laws 2007, LB185, § 22; Laws 2007, LB463, § 223.

38-612 Unlicensed person; acts not prohibited.

The Certified Nurse Midwifery Practice Act shall not prohibit the performance of the functions of a certified nurse midwife by an unlicensed person if performed:

- (1) In an emergency situation;
- (2) By a legally qualified person from another state employed by the United States Government and performing official duties in this state; or
- (3) By a person enrolled in an approved program for the preparation of certified nurse midwives as part of such approved program.

Source: Laws 1984, LB 761, § 28; R.S.1943, (2003), § 71-1765; Laws 2007, LB185, § 27; Laws 2007, LB463, § 224.

38-613 Permitted practice described in practice agreement; supervision; settings; subject to review by board; rules and regulations.

(1) The specific medical functions to be performed by a certified nurse midwife within the scope of permitted practice prescribed by section 38-611 shall be described in the practice agreement which shall be reviewed and approved by the board. A copy of the agreement shall be maintained on file with the board as a condition of lawful practice under the Certified Nurse Midwifery Practice Act.

(2) A certified nurse midwife shall perform the functions detailed in the practice agreement only under the supervision of the licensed practitioner responsible for the medical care of the patients described in the practice agreement. If the collaborating licensed practitioner named in the practice agreement becomes temporarily unavailable, the certified nurse midwife may perform the authorized medical functions only under the supervision of another licensed practitioner designated as a temporary substitute for that purpose by the collaborating licensed practitioner.

(3) A certified nurse midwife may perform authorized medical functions only in the following settings:

(a) In a licensed or certified health care facility as an employee or as a person granted privileges by the facility;

(b) In the primary office of a licensed practitioner or in any setting authorized by the collaborating licensed practitioner, except that a certified nurse midwife shall not attend a home delivery; or

(c) Within an organized public health agency.

(4) The department shall, after consultations with the board, adopt and promulgate rules and regulations to carry out the Certified Nurse Midwifery Practice Act.

Source: Laws 1984, LB 761, § 16; Laws 1993, LB 536, § 75; Laws 2005, LB 256, § 87; R.S.Supp.,2006, § 71-1753; Laws 2007, LB463, § 225.

38-614 Change in practice; new or amended agreement.

If a certified nurse midwife intends to alter his or her practice status by reason of a change in the setting, supervision by a different licensed practitioner, modification of the authorized medical functions, or for any other reason, he or she shall submit a new or amended practice agreement to the board for approval before any change may be permitted.

Source: Laws 1984, LB 761, § 17; Laws 2005, LB 256, § 88; R.S.Supp.,2006, § 71-1754; Laws 2007, LB463, § 226.

38-615 Licensure as nurse midwife; application; requirements; temporary licensure.

(1) An applicant for licensure under the Advanced Practice Registered Nurse Practice Act to practice as a certified nurse midwife shall submit such evidence as the board requires showing that the applicant is currently licensed as a registered nurse by the state or has the authority based on the Nurse Licensure Compact to practice as a registered nurse in Nebraska, has successfully completed an approved certified nurse midwifery education program, and is certified as a nurse midwife by a board-approved certifying body.

(2) The department may, with the approval of the board, grant temporary licensure as a certified nurse midwife for up to one hundred twenty days upon

application (a) to graduates of an approved nurse midwifery program pending results of the first certifying examination following graduation and (b) to nurse midwives currently licensed in another state pending completion of the application for a Nebraska license. A temporary license issued pursuant to this section may be extended for up to one year with the approval of the board.

(3) An individual holding a temporary certificate or permit as a nurse midwife on July 1, 2007, shall be deemed to be holding a temporary license under this section on such date. The holder of such temporary certificate or permit may continue to practice under such certificate or permit as a temporary license until it would have expired under its terms.

(4) If more than five years have elapsed since the completion of the nurse midwifery program or since the applicant has practiced as a nurse midwife, the applicant shall meet the requirements in subsection (1) of this section and provide evidence of continuing competency, as may be determined by the board, either by means of a reentry program, references, supervised practice, examination, or one or more of the continuing competency activities listed in section 38-145.

Source: Laws 1984, LB 761, § 18; Laws 1993, LB 536, § 76; Laws 1997, LB 752, § 175; Laws 2002, LB 1021, § 63; Laws 2003, LB 242, § 107; Laws 2005, LB 256, § 89; R.S.Supp.,2006, § 71-1755; Laws 2007, LB185, § 23; Laws 2007, LB463, § 227.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.

Nurse Licensure Compact, see section 71-1795.

Uniform Credentialing Act, see section 38-101.

38-616 License; renewal.

To renew a license as a certified nurse midwife, the applicant shall have a current certification by a board-approved certifying body to practice nurse midwifery.

Source: Laws 1984, LB 761, § 20; Laws 1986, LB 926, § 57; Laws 1993, LB 536, § 77; Laws 1994, LB 1223, § 42; Laws 2002, LB 1021, § 64; Laws 2002, LB 1062, § 48; Laws 2003, LB 242, § 108; Laws 2005, LB 256, § 90; R.S.Supp.,2006, § 71-1757; Laws 2007, LB185, § 25; Laws 2007, LB463, § 228.

38-617 Certified nurse midwife; right to use title or abbreviation.

Any person who holds a license to practice nurse midwifery in this state shall have the right to use the title certified nurse midwife and the abbreviation CNM. No other person shall use such title or abbreviation to indicate that he or she is licensed under the Advanced Practice Registered Nurse Practice Act to practice certified nurse midwifery.

Source: Laws 1984, LB 761, § 19; R.S.1943, (2003), § 71-1756; Laws 2007, LB185, § 24; Laws 2007, LB463, § 229.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.

38-618 Act, how interpreted.

Nothing in the Certified Nurse Midwifery Practice Act shall be interpreted to permit independent practice.

Source: Laws 1984, LB 761, § 26; R.S.1943, (2003), § 71-1763; Laws 2007, LB463, § 230.

ARTICLE 7

CERTIFIED REGISTERED NURSE ANESTHETIST PRACTICE ACT

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Alcohol or controlled substance testing, agent of state, see sections 37-1254.06, 60-4,164.01, and 60-6,202.
Certified Nurse Midwifery Practice Act, see section 38-601.
Child abuse, duty to report, see section 28-711.
Clinical Nurse Specialist Practice Act, see section 38-901.
Community nurses, see sections 71-1637 to 71-1639.
Division of Public Health of the Department of Health and Human Services, see section 81-3113.
Emergency Box Drug Act, see section 71-2410.
Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.
Good Samaritan provisions, see section 25-21,186.
Health and Human Services Act, see section 81-3110.
Health Care Facility Licensure Act, see section 71-401.
Health Care Professional Credentialing Verification Act, see section 44-7001.
Home health aides, see section 71-6601 et seq.
License Suspension Act, see section 43-3301.
Licensed Practical Nurse-Certified Practice Act, see section 38-1601.
Lien for services, see section 52-401.
Medication Aide Act, see section 71-6718.
Nebraska Center for Nursing Act, see section 71-1796.
Nebraska Hospital-Medical Liability Act, see section 44-2855.
Nebraska Nursing Home Act, see section 71-6037.
Nebraska Regulation of Health Professions Act, see section 71-6201.
Nurse Licensure Compact, see section 71-1795.
Nurse Practice Act, see section 38-2201.
Nurse Practitioner Practice Act, see section 38-2301.
Nursing Faculty Student Loan Act, see section 71-17,108.
Nursing Home Administrator Practice Act, see section 38-2401.
Nursing Student Loan Act, see section 71-17,101.
Patient Safety Improvement Act, see section 71-8701.
Rural Health Systems and Professional Incentive Act, see section 71-5650.
State Board of Health, duties, see section 71-2610 et seq.
Statewide Trauma System Act, see section 71-8201.
Uniform Controlled Substances Act, see section 28-401.01.

Section

- 38-701. Act, how cited.
- 38-702. Definitions, where found.
- 38-703. Board, defined.
- 38-704. Certified registered nurse anesthetist, defined.
- 38-705. Licensed practitioner, defined.
- 38-706. Practice of anesthesia, defined; activities not subject to act.
- 38-707. Certified registered nurse anesthetist; license; requirements.
- 38-708. Certified registered nurse anesthetist; temporary license; permit.
- 38-709. Certified registered nurse anesthetist; license; renewal.
- 38-710. Use of title and abbreviation.
- 38-711. Certified registered nurse anesthetist; performance of duties.

38-701 Act, how cited.

Sections 38-701 to 38-711 shall be known and may be cited as the Certified Registered Nurse Anesthetist Practice Act.

Source: Laws 2005, LB 256, § 73; R.S.Supp.,2006, § 71-1728; Laws 2007, LB463, § 231.

38-702 Definitions, where found.

For purposes of the Certified Registered Nurse Anesthetist Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-703 to 38-706 apply.

Source: Laws 2007, LB463, § 232.

38-703 Board, defined.

Board means the Board of Advanced Practice Registered Nurses.

Source: Laws 2007, LB463, § 233.

38-704 Certified registered nurse anesthetist, defined.

Certified registered nurse anesthetist means a licensed registered nurse certified by a board-approved certifying body and licensed under the Advanced Practice Registered Nurse Practice Act to practice as a certified registered nurse anesthetist in the State of Nebraska.

Source: Laws 2007, LB463, § 234.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.

38-705 Licensed practitioner, defined.

Licensed practitioner means any physician or osteopathic physician licensed to prescribe, diagnose, and treat as prescribed in the Medicine and Surgery Practice Act.

Source: Laws 2007, LB463, § 235.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.

38-706 Practice of anesthesia, defined; activities not subject to act.

(1) Practice of anesthesia means (a) the performance of or the assistance in any act involving the determination, preparation, administration, or monitoring of any drug used to render an individual insensible to pain for procedures requiring the presence of persons educated in the administration of anesthetics or (b) the performance of any act commonly the responsibility of educated anesthesia personnel. Practice of anesthesia includes the use of those techniques which are deemed necessary for adequacy in performance of anesthesia administration.

(2) Nothing in the Certified Registered Nurse Anesthetist Practice Act prohibits (a) routine administration of a drug by a duly licensed registered nurse, licensed practical nurse, or other duly authorized person for the alleviation of pain or (b) the practice of anesthesia by students enrolled in an accredited school of nurse anesthesia when the services performed are a part of the course of study and are under the supervision of a licensed practitioner or certified registered nurse anesthetist.

Source: Laws 1981, LB 379, § 26; Laws 1992, LB 1019, § 73; Laws 2002, LB 1062, § 47; Laws 2005, LB 256, § 74; R.S.Supp.,2006, § 71-1729; Laws 2007, LB185, § 14; Laws 2007, LB296, § 485; Laws 2007, LB463, § 236.

38-707 Certified registered nurse anesthetist; license; requirements.

(1) An applicant for a license under the Advanced Practice Registered Nurse Practice Act to practice as a certified registered nurse anesthetist shall:

(a) Hold a license as a registered nurse in the State of Nebraska or have the authority based on the Nurse Licensure Compact to practice as a registered nurse in Nebraska;

(b) Submit evidence of successful completion of a course of study in anesthesia in a school of nurse anesthesia accredited or approved by or under the auspices of the department or the Council on Accreditation of Nurse Anesthesia and Educational Programs; and

(c) Submit evidence of current certification by the Council on Certification of Nurse Anesthetists.

(2) If more than five years have elapsed since the applicant completed the nurse anesthetist program or since the applicant has practiced as a nurse anesthetist, he or she shall meet the requirements of subsection (1) of this section and shall provide evidence of continuing competency as determined by the board, including, but not limited to, a reentry program, supervised practice, examination, or one or more of the continuing competency activities listed in section 38-145.

Source: Laws 1981, LB 379, § 27; Laws 1984, LB 724, § 29; Laws 1992, LB 1019, § 74; Laws 1996, LB 414, § 44; Laws 1997, LB 752, § 174; Laws 1999, LB 828, § 155; Laws 2002, LB 1021, § 61; Laws 2003, LB 242, § 105; Laws 2005, LB 256, § 78; R.S.Supp.,2006, § 71-1730; Laws 2007, LB185, § 15; Laws 2007, LB463, § 237.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.

Nurse Licensure Compact, see section 71-1795.

Uniform Credentialing Act, see section 38-101.

38-708 Certified registered nurse anesthetist; temporary license; permit.

The department may, with the approval of the board, grant a temporary license in the practice of anesthesia for up to one hundred twenty days upon application (1) to graduates of an accredited school of nurse anesthesia pending results of the first certifying examination following graduation and (2) to registered nurse anesthetists currently licensed in another state pending completion of the application for a Nebraska license. A temporary license issued pursuant to this section may be extended at the discretion of the board with the approval of the department. An individual holding a temporary permit as a registered nurse anesthetist on July 1, 2007, shall be deemed to be holding a temporary license under this section on such date. The permit holder may continue to practice under such temporary permit as a temporary license until it would have expired under its terms.

Source: Laws 1981, LB 379, § 28; Laws 1984, LB 724, § 30; Laws 1992, LB 1019, § 75; Laws 1996, LB 414, § 45; Laws 1999, LB 828, § 156; Laws 2005, LB 256, § 79; R.S.Supp.,2006, § 71-1731; Laws 2007, LB185, § 16; Laws 2007, LB463, § 238.

38-709 Certified registered nurse anesthetist; license; renewal.

To renew a license to practice as a certified registered nurse anesthetist, the applicant shall have current certification by the Council on Certification of Nurse Anesthetists.

Source: Laws 1981, LB 379, § 32; Laws 1993, LB 536, § 73; Laws 1995, LB 563, § 42; Laws 1996, LB 414, § 46; Laws 1999, LB 828, § 157; Laws 2000, LB 1115, § 61; Laws 2002, LB 1021, § 62; Laws 2003, LB 242, § 106; Laws 2005, LB 256, § 80; R.S.Supp.,2006, § 71-1735; Laws 2007, LB185, § 18; Laws 2007, LB463, § 239.

Cross References

Nurse Licensure Compact, see section 71-1795.

38-710 Use of title and abbreviation.

A person licensed as a certified registered nurse anesthetist has the right to use the title certified registered nurse anesthetist and the abbreviation C.R.N.A.

Source: Laws 2007, LB463, § 240.

38-711 Certified registered nurse anesthetist; performance of duties.

(1) The determination and administration of total anesthesia care shall be performed by the certified registered nurse anesthetist or a nurse anesthetist temporarily licensed pursuant to section 38-708 in consultation and collaboration with and with the consent of the licensed practitioner.

(2) The following duties and functions shall be considered as specific expanded role functions of the certified registered nurse anesthetist:

(a) Preanesthesia evaluation including physiological studies to determine proper anesthetic management and obtaining informed consent;

(b) Selection and application of appropriate monitoring devices;

(c) Selection and administration of anesthetic techniques;

(d) Evaluation and direction of proper postanesthesia management and dismissal from postanesthesia care;

(e) Evaluation and recording of postanesthesia course of patients; and

(f) Use of fluoroscopy in conjunction with a licensed medical radiographer in connection with the performance of authorized duties and functions upon (i) the successful completion of appropriate education and training as approved jointly by the department and the board and promulgated by the department in rules and regulations pursuant to section 71-3508 and (ii) a determination regarding the scope and supervision of such use consistent with subsection (3) of this section.

(3) The determination of other duties that are normally considered medically delegated duties to the certified registered nurse anesthetist or to a nurse anesthetist temporarily licensed pursuant to section 38-708 shall be the joint responsibility of the governing board of the hospital, medical staff, and nurse anesthetist personnel of any duly licensed hospital or, if in an office or clinic, the joint responsibility of the duly licensed practitioner and nurse anesthetist.

All such duties, except in cases of emergency, shall be in writing in the form prescribed by hospital or office policy.

Source: Laws 1981, LB 379, § 31; Laws 1992, LB 1019, § 76; R.S.1943, (2003), § 71-1734; Laws 2007, LB185, § 17; Laws 2007, LB463, § 241; Laws 2008, LB928, § 4.
Operative date December 1, 2008.

ARTICLE 8

CHIROPRACTIC PRACTICE ACT

Cross References

Access to medical records, see section 71-8401 et seq.

Death certificates, see section 71-605.

Insurance coverage of chiropractic services, see section 44-513.

Medicaid coverage, see section 68-911.

Nebraska Workers' Compensation Act, physician defined to include chiropractor, see section 48-151.

State Board of Health, see section 71-2601 et seq.

Section

- 38-801. Act, how cited.
- 38-802. Definitions, where found.
- 38-803. Accredited college of chiropractic, defined.
- 38-804. Board, defined.
- 38-805. Practice of chiropractic, defined.
- 38-806. Chiropractic practice; persons excepted.
- 38-807. Chiropractic; license; qualifications required.
- 38-808. Continuing competency requirements.
- 38-809. Reciprocity; continuing competency requirements.
- 38-810. Fees.
- 38-811. Chiropractic practitioner; powers and duties.

38-801 Act, how cited.

Sections 38-801 to 38-811 shall be known and may be cited as the Chiropractic Practice Act.

Source: Laws 2007, LB463, § 242.

38-802 Definitions, where found.

For purposes of the Chiropractic Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-803 to 38-805 apply.

Source: Laws 2007, LB463, § 243.

38-803 Accredited college of chiropractic, defined.

An accredited college of chiropractic means (1) one which is approved by the board, (2) a legally chartered college of chiropractic requiring for admission a diploma from an accredited high school or its equivalent and, beginning with students entering a college of chiropractic on or after January 1, 1974, at least two years credit from an accredited college or university of this or some other state, which requirement shall be regularly published in each prospectus or catalog issued by such institution, (3) one which conducts a clinic for patients in which its students are required to regularly participate in the care and adjustment of patients, (4) one giving instruction in anatomy, orthopedics, physiology, embryology, chemistry, pathology, health ecology, bacteriology, symptomatology, histology, spinal analysis, diagnosis, roentgenology, neurolo-

gy, and principles and practice of chiropractic, and (5) one requiring an actual attendance for four college years totaling not less than four thousand hours.

Source: Laws 1927, c. 167, § 79, p. 475; C.S.1929, § 71-1104; R.S.1943, § 71-180; Laws 1945, c. 163, § 1, p. 528; Laws 1973, LB 115, § 1; Laws 1996, LB 1044, § 405; Laws 1999, LB 828, § 67; R.S.1943, (2003), § 71-180; Laws 2007, LB463, § 244.

38-804 Board, defined.

Board means the Board of Chiropractic.

Source: Laws 2007, LB463, § 245.

38-805 Practice of chiropractic, defined.

(1) Practice of chiropractic means one or a combination of the following, without the use of drugs or surgery:

(a) The diagnosis and analysis of the living human body for the purpose of detecting ailments, disorders, and disease by the use of diagnostic X-ray, physical and clinical examination, and routine procedures including urine analysis; or

(b) The science and art of treating human ailments, disorders, and disease by locating and removing any interference with the transmission and expression of nerve energy in the human body by chiropractic adjustment, chiropractic physiotherapy, and the use of exercise, nutrition, dietary guidance, and colonic irrigation.

(2) The use of X-rays beyond the axial skeleton as described in subdivision (1)(a) of this section shall be solely for diagnostic purposes and shall not expand the practice of chiropractic to include the treatment of human ailments, disorders, and disease not permitted when the use of X-rays was limited to the axial skeleton.

Source: Laws 1927, c. 167, § 76, p. 474; C.S.1929, § 71-1101; R.S.1943, § 71-177; Laws 1983, LB 142, § 1; Laws 1990, LB 348, § 1; R.S.1943, (2003), § 71-177; Laws 2007, LB463, § 246.

38-806 Chiropractic practice; persons excepted.

The Chiropractic Practice Act shall not be construed to include the following classes of persons:

(1) Licensed physicians and surgeons and licensed osteopathic physicians who are exclusively engaged in the practice of their respective professions;

(2) Physicians who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;

(3) Chiropractors licensed in another state when incidentally called into this state in consultation with a chiropractor licensed in this state; or

(4) Students enrolled in an accredited college of chiropractic when the services performed are a part of the course of study and are under the direct supervision of a licensed chiropractor.

Source: Laws 1927, c. 167, § 77, p. 474; C.S.1929, § 71-1102; R.S.1943, § 71-178; Laws 1989, LB 342, § 14; Laws 1990, LB 1064, § 12; R.S.1943, (2003), § 71-178; Laws 2007, LB463, § 247.

38-807 Chiropractic; license; qualifications required.

Every applicant for a license to practice chiropractic shall present proof of graduation from an accredited college of chiropractic and (1) pass an examination given by the National Board of Chiropractic Examiners which consists of Parts I, II, III, IV, and physiotherapy or (2) pass an examination approved by the Board of Chiropractic.

Source: Laws 1927, c. 167, § 78, p. 475; C.S.1929, § 71-1103; R.S.1943, § 71-179; Laws 1965, c. 413, § 1, p. 1321; Laws 1975, LB 92, § 2; Laws 1988, LB 1100, § 29; Laws 1999, LB 828, § 65; R.S.1943, (2003), § 71-179; Laws 2007, LB463, § 248.

Cross References

Uniform Credentialing Act, see section 38-101.

The practice of chiropractic is a skilled profession, and as such, chiropractic testimony may qualify as "competent medical testimony" under workers' compensation rules. *Rodgers v. Sparks*, 228 Neb. 191, 421 N.W.2d 785 (1988).

38-808 Continuing competency requirements.

An applicant for licensure to practice chiropractic who has met the education and examination requirements in section 38-807, who passed the examination more than three years prior to the time of application for licensure, and who is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 249.

38-809 Reciprocity; continuing competency requirements.

An applicant for licensure to practice chiropractic who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the two years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 1927, c. 167, § 80, p. 475; C.S.1929, § 71-1105; R.S.1943, § 71-181; Laws 1996, LB 1044, § 406; R.S.1943, (2003), § 71-181; Laws 2007, LB296, § 324; Laws 2007, LB463, § 250.

38-810 Fees.

The department shall establish and collect fees for initial licensure and renewal under the Chiropractic Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 251.

38-811 Chiropractic practitioner; powers and duties.

Chiropractic practitioners shall observe and be subject to all state and municipal laws and regulations relative to the control of contagious and infectious diseases, and all matters pertaining to public health. They shall report to the proper health officers the same as other practitioners. Chiropractic practitioners may sign death certificates. When performing acupuncture, a

chiropractor licensed under the Uniform Credentialing Act shall provide the same standard of care to patients as that provided by a person licensed under the Uniform Credentialing Act to practice medicine and surgery, osteopathy, or osteopathic medicine and surgery when such person performs acupuncture.

Source: Laws 1927, c. 167, § 81, p. 475; C.S.1929, § 71-1106; R.S.1943, § 71-182; Laws 1945, c. 164, § 1, p. 529; Laws 2001, LB 270, § 15; R.S.1943, (2003), § 71-182; Laws 2007, LB463, § 252.

ARTICLE 9

CLINICAL NURSE SPECIALIST PRACTICE ACT

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Alcohol or controlled substance testing, agent of state, see sections 37-1254.06, 60-4,164.01, and 60-6,202.
Certified Nurse Midwifery Practice Act, see section 38-601.
Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Child abuse, duty to report, see section 28-711.
Community nurses, see sections 71-1637 to 71-1639.
Division of Public Health of the Department of Health and Human Services, see section 81-3113.
Emergency Box Drug Act, see section 71-2410.
Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.
Good Samaritan provisions, see section 25-21,186.
Health and Human Services Act, see section 81-3110.
Health Care Facility Licensure Act, see section 71-401.
Health Care Professional Credentialing Verification Act, see section 44-7001.
Home health aides, see section 71-6601 et seq.
License Suspension Act, see section 43-3301.
Licensed Practical Nurse-Certified Practice Act, see section 38-1601.
Lien for services, see section 52-401.
Medication Aide Act, see section 71-6718.
Nebraska Center for Nursing Act, see section 71-1796.
Nebraska Hospital-Medical Liability Act, see section 44-2855.
Nebraska Nursing Home Act, see section 71-6037.
Nebraska Regulation of Health Professions Act, see section 71-6201.
Nurse Licensure Compact, see section 71-1795.
Nurse Practice Act, see section 38-2201.
Nurse Practitioner Practice Act, see section 38-2301.
Nursing Faculty Student Loan Act, see section 71-17,108.
Nursing Home Administrator Practice Act, see section 38-2401.
Nursing Student Loan Act, see section 71-17,101.
Patient Safety Improvement Act, see section 71-8701.
Rural Health Systems and Professional Incentive Act, see section 71-5650.
State Board of Health, duties, see section 71-2610 et seq.
Statewide Trauma System Act, see section 71-8201.
Uniform Controlled Substances Act, see section 28-401.01.

Section

38-901. Act, how cited.
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 38-908. Licensure; eligibility; application.
 38-909. License; renewal; qualifications.
 38-910. Use of title and abbreviation.

38-901 Act, how cited.

Sections 38-901 to 38-910 shall be known and may be cited as the Clinical Nurse Specialist Practice Act.

Source: Laws 2005, LB 256, § 1; R.S.Supp.,2006, § 71-17,117; Laws 2007, LB463, § 253.

38-902 Definitions, where found.

For purposes of the Clinical Nurse Specialist Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-903 to 38-905 apply.

Source: Laws 2007, LB463, § 254.

38-903 Approved certifying body, defined.

Approved certifying body means a national certification organization which (1) is approved by the board, (2) certifies qualified licensed registered nurses for advanced practice, (3) has eligibility requirements related to education and practice, and (4) offers an examination in an area of practice which meets psychometric guidelines and tests approved by the board.

Source: Laws 2005, LB 256, § 2; R.S.Supp.,2006, § 71-17,118; Laws 2007, LB185, § 28; Laws 2007, LB296, § 493; Laws 2007, LB463, § 255.

38-904 Board, defined.

Board means the Board of Advanced Practice Registered Nurses.

Source: Laws 2007, LB463, § 256.

38-905 Clinical nurse specialist, defined.

Clinical nurse specialist means a registered nurse certified as described in section 38-908 and licensed under the Advanced Practice Registered Nurse Practice Act to practice as a clinical nurse specialist in the State of Nebraska.

Source: Laws 2007, LB463, § 257.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.

38-906 Clinical nurse specialist practice, defined.

The practice of a clinical nurse specialist includes health promotion, health supervision, illness prevention, and disease management, including assessing patients, synthesizing and analyzing data, and applying advanced nursing practice. A clinical nurse specialist conducts and applies research, advocates, serves as an agent of change, engages in systems management, and assesses and intervenes in complex health care problems within the selected clinical specialty.

Source: Laws 2005, LB 256, § 4; R.S.Supp.,2006, § 71-17,120; Laws 2007, LB463, § 258.

38-907 Exemptions from act.

The Clinical Nurse Specialist Practice Act does not prohibit the performance of the professional activities of a clinical nurse specialist by a person not holding a license issued under the act if performed:

(1) In an emergency situation;

(2) By a legally qualified person from another state employed by the United States and performing official duties in this state; or

(3) By a person enrolled in an approved clinical nurse specialist program for the education of clinical nurse specialists as part of that approved program.

Source: Laws 2005, LB 256, § 12; R.S.Supp.,2006, § 71-17,128; Laws 2007, LB185, § 34; Laws 2007, LB463, § 259.

38-908 Licensure; eligibility; application.

An applicant for licensure under the Advanced Practice Registered Nurse Practice Act to practice as a clinical nurse specialist shall be licensed as a registered nurse under the Nurse Practice Act or have the authority based on the Nurse Licensure Compact to practice as a registered nurse in Nebraska and shall submit to the department the following:

(1) Evidence that the applicant holds a graduate degree in a nursing clinical specialty area or has a graduate degree in nursing and has successfully completed a graduate-level clinical nurse specialist education program; and

(2) Evidence of certification issued by an approved certifying body or, when such certification is not available, an alternative method of competency assessment by any means approved by the board.

Source: Laws 2005, LB 256, § 3; R.S.Supp.,2006, § 71-17,119; Laws 2007, LB185, § 29; Laws 2007, LB463, § 260.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.

Nurse Licensure Compact, see section 71-1795.

Nurse Practice Act, see section 38-2201.

Uniform Credentialing Act, see section 38-101.

38-909 License; renewal; qualifications.

To renew a license as a clinical nurse specialist, the applicant shall have current certification by an approved certifying body as a clinical nurse specialist or, when such certification is not available, an alternative method of competency assessment by any means approved by the board.

Source: Laws 2007, LB463, § 261.

38-910 Use of title and abbreviation.

A person licensed as a clinical nurse specialist has the right to use the title Clinical Nurse Specialist and the abbreviation CNS.

Source: Laws 2005, LB 256, § 5; R.S.Supp.,2006, § 71-17,121; Laws 2007, LB185, § 30; Laws 2007, LB463, § 262.

ARTICLE 10

COSMETOLOGY, ELECTROLOGY, ESTHETICS, NAIL TECHNOLOGY, AND BODY ART PRACTICE ACT

Cross References

Barber Act, see section 71-224.

Division of Public Health of the Department of Health and Human Services, see section 81-3113.

Health and Human Services Act, see section 81-3110.

Health Care Facility Licensure Act, see section 71-401.

License Suspension Act, see section 43-3301.

Nebraska Regulation of Health Professions Act, see section 71-6201.

State Board of Health, duties, see section 71-2610 et seq.

Section
38-1001. Act, how cited.

HEALTH OCCUPATIONS AND PROFESSIONS

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38-1003.	Legislative intent.
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38-1006.	Apprentice salon, defined.
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38-1001 Act, how cited.

Sections 38-1001 to 38-10171 shall be known and may be cited as the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act.

Source: Laws 1986, LB 318, § 1; Laws 1995, LB 83, § 1; Laws 1999, LB 68, § 1; Laws 2001, LB 209, § 13; Laws 2002, LB 241, § 1; Laws 2004, LB 906, § 3; R.S.Supp.,2006, § 71-340; Laws 2007, LB463, § 263.

38-1002 Legislative findings.

The Legislature finds that: (1) A great number of Nebraska citizens regularly demand and receive cosmetology, nail technology, esthetics, electrology, and body art services; (2) the practices of cosmetology, nail technology, esthetics, electrology, and body art involve the use of implements and chemicals that, if used or applied improperly, can be hazardous to human health and safety; (3) inadequate sanitation in the practice of cosmetology, nail technology, esthetics, electrology, or body art can encourage the spread of contagious diseases, infections, and infestations to the detriment of the health and safety of the public; (4) the knowledge of proper sanitation techniques and the proper use of implements and chemicals can best be gained by rigorous and extensive training in cosmetology, nail technology, and esthetics at institutions operated exclusively for such purposes; (5) the need of the public to be served by well-trained persons and the need of cosmetology, nail technology, and esthetics students to receive an appropriate education can best be met through the enactment of standards for the approval of schools of cosmetology, nail technology schools, and schools of esthetics; (6) the effectiveness of cosmetology, nail technology, esthetics, or electrology training and the competency to practice can best be demonstrated by the passage of an impartially administered examination before a person is permitted to practice; (7) continuing competency can best be demonstrated by participation in continuing competency activities; (8) the establishment and maintenance of a safe environment in places where cosmetology, nail technology, esthetics, electrology, or body art is practiced can best be ensured through the establishment of operating and sanitary requirements for the safe and sanitary operation of such places; (9) the protection of the health and safety of its citizens is a principal concern and duty of the State of Nebraska; and (10) the reasonable regulation and limitation of a field of practice or occupation for the purpose of protecting the health and safety of the public is a legitimate and justified exercise of the police power of the state.

Source: Laws 1986, LB 318, § 2; Laws 1995, LB 83, § 2; Laws 1999, LB 68, § 2; Laws 2002, LB 241, § 2; Laws 2002, LB 1021, § 38; Laws 2004, LB 906, § 4; Laws 2004, LB 1005, § 19; R.S.Supp.,2006, § 71-341; Laws 2007, LB463, § 264.

38-1003 Legislative intent.

The Legislature declares its intent to implement the findings specified in section 38-1002 through the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, to regulate the practices and professions of cosmetology, nail technology, esthetics, electrology, and body art and cosmetology, nail technology, esthetics, and body art education in all forms, to limit the practice and teaching of cosmetology, nail technology, esthetics, or body art to

persons and institutions as stipulated in the act and to penalize persons violating the act. The Legislature directs that all interpretations of the act be made with full cognizance of the findings and intentions expressed in this section and section 38-1002.

Source: Laws 1986, LB 318, § 3; Laws 1995, LB 83, § 3; Laws 1999, LB 68, § 3; Laws 2002, LB 241, § 3; Laws 2004, LB 906, § 5; Laws 2004, LB 1005, § 20; R.S.Supp.,2006, § 71-342; Laws 2007, LB463, § 265.

38-1004 Definitions, where found.

For purposes of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1005 to 38-1056 apply.

Source: Laws 1986, LB 318, § 4; Laws 1995, LB 83, § 4; Laws 1999, LB 68, § 4; Laws 2002, LB 241, § 4; Laws 2004, LB 906, § 6; R.S.Supp.,2006, § 71-343; Laws 2007, LB463, § 266.

38-1005 Apprentice, defined.

Apprentice means a person registered under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to engage in the study of any or all of the practices of cosmetology under the supervision of an instructor in an apprentice salon.

Source: Laws 1986, LB 318, § 5; R.S.1943, (2003), § 71-344; Laws 2007, LB463, § 267.

38-1006 Apprentice salon, defined.

Apprentice salon means a cosmetology salon licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for the teaching of any or all of the practices of cosmetology to apprentices.

Source: Laws 1986, LB 318, § 6; R.S.1943, (2003), § 71-345; Laws 2007, LB463, § 268.

38-1007 Board, defined.

Board means the Board of Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art.

Source: Laws 1986, LB 318, § 7; R.S.1943, (2003), § 71-346; Laws 2007, LB463, § 269.

38-1008 Body art, defined.

Body art means body piercing, branding, permanent color technology, and tattooing.

Source: Laws 2004, LB 906, § 7; R.S.Supp.,2006, § 71-346.01; Laws 2007, LB463, § 270.

38-1009 Body art facility, defined.

Body art facility means any room or space or any part thereof where body art is performed or where the business of body art is conducted.

Source: Laws 2004, LB 906, § 8; R.S.Supp.,2006, § 71-346.02; Laws 2007, LB463, § 271.

38-1010 Body piercing, defined.

Body piercing means puncturing the skin of a person by aid of needles or other instruments designed or used to puncture the skin for the purpose of inserting removable jewelry or other objects through the human body, except that body piercing does not include puncturing the external part of the human earlobe.

Source: Laws 2004, LB 906, § 9; R.S.Supp.,2006, § 71-346.03; Laws 2007, LB463, § 272.

38-1011 Branding, defined.

Branding means a permanent mark made on human tissue by burning with a hot iron or other instrument.

Source: Laws 2004, LB 906, § 10; R.S.Supp.,2006, § 71-346.04; Laws 2007, LB463, § 273.

38-1012 Charitable administration, defined.

Charitable administration means the performance of any or all of the practices of cosmetology or nail technology without compensation for the benefit of charitable purposes or organizations.

Source: Laws 1986, LB 318, § 8; Laws 1999, LB 68, § 5; R.S.1943, (2003), § 71-347; Laws 2007, LB463, § 274.

38-1013 Cosmetic establishment, defined.

Cosmetic establishment means a fixed structure or part thereof licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for the retail sale of cosmetics or other esthetics products when such activity includes any application of the products to customers other than self-application.

Source: Laws 1986, LB 318, § 9; Laws 2002, LB 241, § 5; R.S.1943, (2003), § 71-348; Laws 2007, LB463, § 275.

38-1014 Cosmetician, defined.

Cosmetician means a person registered under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to apply cosmetics.

Source: Laws 1986, LB 318, § 10; R.S.1943, (2003), § 71-349; Laws 2007, LB463, § 276.

38-1015 Cosmetologist, defined.

Cosmetologist means a person licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to perform all of the practices of cosmetology.

Source: Laws 1986, LB 318, § 11; R.S.1943, (2003), § 71-350; Laws 2007, LB463, § 277.

38-1016 Cosmetology, defined.

Cosmetology means the practice of performing for compensation any or all (1) of the acts of arranging, dressing, curling, waving, cleansing, cutting, bleaching, coloring, styling, or similar work upon the hair, wig, wiglet, or hairpiece of any person, by any means, with hands or a mechanical or electrical apparatus or appliance; (2) esthetics; (3) nail technology; and (4) other similar practices upon the hair, scalp, face, neck, arms, hands, feet, or nails of any person when performed for the purpose of beautifying or enhancing physical appearance or the teaching of any practice specified in this section for occupational purposes.

Source: Laws 1986, LB 318, § 12; Laws 1987, LB 543, § 1; Laws 1999, LB 68, § 6; Laws 2002, LB 241, § 6; R.S.1943, (2003), § 71-351; Laws 2007, LB463, § 278.

38-1017 Cosmetology establishment, defined.

Cosmetology establishment means a cosmetology salon, esthetics salon, school of cosmetology, school of esthetics, apprentice salon, cosmetic establishment, or any other place in which any or all of the practices of cosmetology are performed on members of the general public for compensation or in which instruction or training in any or all of the practices of cosmetology is given, except when such practices constitute nonvocational training.

Source: Laws 1986, LB 318, § 13; Laws 1999, LB 68, § 7; Laws 2002, LB 241, § 7; R.S.1943, (2003), § 71-352; Laws 2007, LB463, § 279.

38-1018 Cosmetology salon, defined.

Cosmetology salon means a fixed structure or part thereof licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for the performance of any or all of the practices of cosmetology by persons licensed or registered under such act.

Source: Laws 1986, LB 318, § 14; R.S.1943, (2003), § 71-353; Laws 2007, LB463, § 280.

38-1019 Domestic administration, defined.

Domestic administration means the performance of any or all of the practices of cosmetology or nail technology upon members of a person's immediate family.

Source: Laws 1986, LB 318, § 17; Laws 1999, LB 68, § 8; R.S.1943, (2003), § 71-356; Laws 2007, LB463, § 281.

38-1020 Electrologist, defined.

Electrologist means a person who engages in the practice of electrolysis for permanent hair removal.

Source: Laws 1995, LB 83, § 5; R.S.1943, (2003), § 71-356.01; Laws 2007, LB463, § 282.

38-1021 Electrology, defined.

Electrology means the art and practice relating to the removal of hair from normal skin of the human body by electrolysis.

Source: Laws 1995, LB 83, § 6; R.S.1943, (2003), § 71-356.02; Laws 2007, LB463, § 283.

38-1022 Electrology establishment, defined.

Electrology establishment means a fixed structure or part thereof or any other place in which any or all of the practices of electrology are performed on members of the general public for compensation or where instruction or training in electrology is performed except when such training is nonvocational training.

Source: Laws 1995, LB 83, § 9; R.S.1943, (2003), § 71-356.03; Laws 2007, LB463, § 284.

38-1023 Electrology instructor, defined.

Electrology instructor means a person licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to teach any or all of the practices of electrology.

Source: Laws 1995, LB 83, § 7; Laws 2004, LB 1005, § 21; R.S.Supp.,2006, § 71-356.04; Laws 2007, LB463, § 285.

38-1024 Electrolysis, defined.

Electrolysis means the permanent removal of hair by the application of an electrical current to the dermal papilla by a filament to cause decomposition, coagulation, or dehydration within the hair follicle by means of short wave or galvanic current or the blend, as approved by the federal Food and Drug Administration.

Source: Laws 1995, LB 83, § 8; R.S.1943, (2003), § 71-356.05; Laws 2007, LB463, § 286.

38-1025 Esthetician, defined.

Esthetician means a person licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to perform all of the practices of esthetics.

Source: Laws 1986, LB 318, § 18; Laws 2002, LB 241, § 8; R.S.1943, (2003), § 71-357; Laws 2007, LB463, § 287.

38-1026 Esthetics, defined.

Esthetics means the practice for compensation of using an electrical or mechanical apparatus or appliance or applying and using cosmetic preparations, antiseptics, chemicals, tonics, lotions, creams, or other similar products upon the skin for personal beauty care.

Source: Laws 1986, LB 318, § 27; R.S.1943, (1996), § 71-366; Laws 2002, LB 241, § 9; R.S.1943, (2003), § 71-357.01; Laws 2007, LB463, § 288.

38-1027 Esthetics instructor, defined.

Esthetics instructor means a person licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to teach any or all of the practices of esthetics in a school of cosmetology or a school of esthetics.

Source: Laws 2002, LB 241, § 10; R.S.1943, (2003), § 71-357.02; Laws 2007, LB463, § 289.

38-1028 Esthetics salon, defined.

Esthetics salon means a fixed structure or part thereof licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for the performance of any or all of the practices of esthetics by persons licensed or registered under such act.

Source: Laws 1986, LB 318, § 28; R.S.1943, (1996), § 71-367; Laws 2002, LB 241, § 11; R.S.1943, (2003), § 71-357.03; Laws 2007, LB463, § 290.

38-1029 Guest artist, defined.

Guest artist means a person registered under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to demonstrate cosmetology products or procedures for the purpose of imparting professional knowledge and information to persons licensed or registered under the act or to persons owning or operating licensed cosmetology establishments under the sponsorship of a licensed cosmetology establishment or a cosmetologist licensed in Nebraska.

Source: Laws 1986, LB 318, § 19; R.S.1943, (2003), § 71-358; Laws 2007, LB463, § 291.

38-1030 Guest body artist, defined.

Guest body artist means a person registered under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to demonstrate body art products or procedures for the purpose of imparting professional knowledge and information to persons licensed in this state to perform body art or to persons owning or operating a licensed body art facility under the sponsorship of a licensed body art facility or a person licensed in this state to perform body art.

Source: Laws 2004, LB 906, § 11; R.S.Supp.,2006, § 71-358.01; Laws 2007, LB463, § 292.

38-1031 Instructor, defined.

Instructor means a person licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to teach any or all of the practices of cosmetology in a school of cosmetology or an apprentice salon.

Source: Laws 1986, LB 318, § 20; R.S.1943, (2003), § 71-359; Laws 2007, LB463, § 293.

38-1032 Jurisdiction, defined.

Jurisdiction means the District of Columbia and any state, territory, or possession of the United States of America.

Source: Laws 1986, LB 318, § 21; R.S.1943, (2003), § 71-360; Laws 2007, LB463, § 294.

38-1033 Manicuring, defined.

Manicuring means the practice of performing any or all of the acts of cutting, shaping, trimming, polishing, coloring, tinting, cleansing, reshaping, or other similar cosmetic or sanitary acts on the natural fingernails or toenails of a person but does not include the practice of nail technology.

Source: Laws 2001, LB 209, § 14; R.S.1943, (2003), § 71-360.01; Laws 2007, LB463, § 295.

38-1034 Nail technician, defined.

Nail technician means a person licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to perform the practices of nail technology.

Source: Laws 1999, LB 68, § 9; R.S.1943, (2003), § 71-361.01; Laws 2007, LB463, § 296.

38-1035 Nail technology, defined.

Nail technology means (1) attaching, applying, fitting, shaping, or adjusting artificial nails using acrylic, resin, fabric, or gel application systems, (2) sanitizing of the nail bed by brushing on or spraying material in preparation for attaching, fitting, shaping, or adjusting artificial nails using acrylic, resin, fabric, or gel application systems, (3) cutting, filing, buffing, shaping, trimming, polishing, coloring, tinting, cleansing, reshaping, or other cosmetic acts on the nails of a person when done in conjunction with the activities described in subdivisions (1) and (2) of this section, (4) the ability to detect infection, fungus, or nail disorders that contraindicate the application of artificial nails, and (5) cleansing, stimulating, manipulating, exercising, or similar acts on the hands or feet of any person when done in conjunction with the activities described in subdivisions (1) and (2) of this section. Nail technology does not include cutting nail beds, corns, or calluses or medical treatment involving the feet, hands, or nails.

Source: Laws 1999, LB 68, § 10; R.S.1943, (2003), § 71-361.02; Laws 2007, LB463, § 297.

38-1036 Nail technology establishment, defined.

Nail technology establishment means a nail technology salon, nail technology school, or any other place in which the practices of nail technology are performed on members of the general public for compensation or in which instruction or training in the practices of nail technology is given, except when such practices constitute nonvocational training.

Source: Laws 1999, LB 68, § 11; R.S.1943, (2003), § 71-361.03; Laws 2007, LB463, § 298.

38-1037 Nail technology instructor, defined.

Nail technology instructor means a person licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to teach the practices of nail technology in a nail technology school.

Source: Laws 1999, LB 68, § 12; R.S.1943, (2003), § 71-361.04; Laws 2007, LB463, § 299.

38-1038 Nail technology salon, defined.

Nail technology salon means a fixed structure or part thereof licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for the performance of the practices of nail technology by persons licensed or registered under the act.

Source: Laws 1999, LB 68, § 13; R.S.1943, (2003), § 71-361.05; Laws 2007, LB463, § 300.

38-1039 Nail technology school, defined.

Nail technology school means a fixed structure or part thereof licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for teaching the practices of nail technology to nail technology students.

Source: Laws 1999, LB 68, § 14; R.S.1943, (2003), § 71-361.06; Laws 2007, LB463, § 301.

38-1040 Nail technology student, defined.

Nail technology student means a person engaged in the study of the practices of nail technology under the supervision of a nail technology instructor in a nail technology school.

Source: Laws 1999, LB 68, § 15; R.S.1943, (2003), § 71-361.07; Laws 2007, LB463, § 302.

38-1041 Nail technology student instructor, defined.

Nail technology student instructor means a person engaged in nail technology instructor's training in a nail technology school to teach nail technology students in a nail technology school under the supervision of a nail technology instructor.

Source: Laws 1999, LB 68, § 16; R.S.1943, (2003), § 71-361.08; Laws 2007, LB463, § 303.

38-1042 Nail technology temporary practitioner, defined.

Nail technology temporary practitioner means a person licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to perform the practices of nail technology for a limited time under the supervision of a licensed nail technician or nail technology instructor.

Source: Laws 1999, LB 68, § 17; R.S.1943, (2003), § 71-361.09; Laws 2007, LB463, § 304.

38-1043 Nonvocational training, defined.

Nonvocational training means the act of imparting knowledge of or skills in any or all of the practices of cosmetology, nail technology, esthetics, or

electrology to persons not licensed or registered under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act for the purpose of noncommercial use by those receiving such training.

Source: Laws 1986, LB 318, § 23; Laws 1995, LB 83, § 11; Laws 1999, LB 68, § 18; Laws 2002, LB 241, § 12; R.S.1943, (2003), § 71-362; Laws 2007, LB463, § 305.

38-1044 Permanent color technology, defined.

Permanent color technology means the process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live human being so as to form indelible marks for cosmetic purposes.

Source: Laws 2004, LB 906, § 12; R.S.Supp.,2006, § 71-362.01; Laws 2007, LB463, § 306.

38-1045 Practices regulated under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, defined.

Practices regulated under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act means body art, cosmetology, electrology, esthetics, and nail technology.

Source: Laws 2004, LB 906, § 13; R.S.Supp.,2006, § 71-363.01; Laws 2007, LB463, § 307.

38-1046 Practitioner, defined.

Practitioner means a person who performs any or all of the practices of cosmetology, nail technology, esthetics, or electrology for compensation or who performs any or all of the practices of body art.

Source: Laws 1986, LB 318, § 25; Laws 1995, LB 83, § 12; Laws 1999, LB 68, § 19; Laws 2002, LB 241, § 13; Laws 2004, LB 906, § 14; R.S.Supp.,2006, § 71-364; Laws 2007, LB463, § 308.

38-1047 School of cosmetology, defined.

School of cosmetology means a fixed structure or part thereof licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for the teaching of any or all of the practices of cosmetology to students.

Source: Laws 1986, LB 318, § 26; Laws 1987, LB 543, § 2; R.S.1943, (2003), § 71-365; Laws 2007, LB463, § 309.

38-1048 School of electrolysis, defined.

School of electrolysis means a school for the education and training of electrologists.

Source: Laws 1995, LB 83, § 10; Laws 2004, LB 1005, § 22; R.S.Supp.,2006, § 71-365.01; Laws 2007, LB463, § 310.

38-1049 School of esthetics, defined.

School of esthetics means a fixed structure or part thereof licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice

Act to serve as the site for teaching the practices of esthetics to esthetics students.

Source: Laws 2002, LB 241, § 14; R.S.1943, (2003), § 71-365.02; Laws 2007, LB463, § 311.

38-1050 Student, defined.

Student means a person engaged in the study of any or all of the practices of cosmetology or esthetics under the supervision of an instructor or esthetics instructor in a school of cosmetology or school of esthetics.

Source: Laws 1986, LB 318, § 29; Laws 1995, LB 83, § 13; Laws 2002, LB 241, § 15; Laws 2004, LB 1005, § 23; R.S.Supp.,2006, § 71-368; Laws 2007, LB463, § 312.

38-1051 Student instructor, defined.

Student instructor means a person engaged in instructor's or esthetics instructor's training in a school of cosmetology or school of esthetics and in teaching students in a school of cosmetology or school of esthetics under the supervision of an instructor.

Source: Laws 1986, LB 318, § 30; Laws 2002, LB 241, § 16; R.S.1943, (2003), § 71-369; Laws 2007, LB463, § 313.

38-1052 Supervision, defined.

Supervision means direct day-to-day knowledge of and control over the actions of one individual by another.

Source: Laws 1986, LB 318, § 31; R.S.1943, (2003), § 71-370; Laws 2007, LB463, § 314.

38-1053 Tattoo, defined.

Tattoo means the indelible decorative mark, figure, or design introduced by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live human being.

Source: Laws 2004, LB 906, § 15; R.S.Supp.,2006, § 71-370.01; Laws 2007, LB463, § 315.

38-1054 Tattooing, defined.

Tattooing means the process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live human being so as to form indelible marks for decorative or figurative purposes.

Source: Laws 2004, LB 906, § 16; R.S.Supp.,2006, § 71-370.02; Laws 2007, LB463, § 316.

38-1055 Teaching, defined.

Teaching means the act of imparting and demonstrating knowledge of cosmetology, nail technology, esthetics, or electrology theory and practices to students, nail technology students, or apprentices in an apprentice salon, a school of cosmetology, a nail technology school, or a school of esthetics by an instructor, an esthetics instructor, a nail technology instructor, a nail technolo-

gy student instructor, or a student instructor for the purpose of preparing the students, nail technology students, nail technology student instructors, or apprentices to engage in the occupations of cosmetology, nail technology, esthetics, or electrology.

Source: Laws 1986, LB 318, § 32; Laws 1995, LB 83, § 14; Laws 1999, LB 68, § 20; Laws 2002, LB 241, § 17; Laws 2004, LB 1005, § 24; R.S.Supp.,2006, § 71-371; Laws 2007, LB463, § 317.

38-1056 Temporary practitioner, defined.

Temporary practitioner means a person licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to perform any or all of the practices of cosmetology for a limited time under the supervision at all times of a designated supervisor.

Source: Laws 1986, LB 318, § 33; R.S.1943, (2003), § 71-372; Laws 2007, LB463, § 318.

38-1057 Board; members; qualifications.

(1) The board shall consist of ten professional members and two public members appointed pursuant to section 38-158. The members shall meet the requirements of sections 38-164 and 38-165.

(2) The professional members shall include:

(a) One school owner who is also licensed as either a cosmetologist, nail technician, or esthetician;

(b) One salon owner who is licensed as a cosmetologist;

(c) Two cosmetologists who are not school owners;

(d) One nail technician who is not a school owner;

(e) One esthetician who is not a school owner;

(f) One electrologist;

(g) One practitioner of body art;

(h) One nail technology instructor or esthetics instructor who is not a school owner; and

(i) One cosmetology instructor who is not a school owner.

(3) No members of the board who are school owners, salon owners, electrologists, nail technicians, instructors, cosmetologists, or practitioners of body art may be affiliated with the same establishment.

(4) As the terms of the members serving on December 1, 2008, expire, successors shall be appointed in accordance with subsection (2) of this section.

Source: Laws 1986, LB 318, § 35; Laws 1987, LB 543, § 3; Laws 1994, LB 1223, § 25; Laws 1995, LB 83, § 15; Laws 1999, LB 68, § 21; Laws 2002, LB 241, § 18; Laws 2005, LB 382, § 9; R.S.Supp.,2006, § 71-374; Laws 2007, LB463, § 319.

38-1058 Cosmetology; licensure or registration required.

It shall be unlawful for any person, group, company, or other entity to engage in any of the following acts without being duly licensed or registered as required by the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, unless specifically excepted by such act:

(1) To engage in or follow or to advertise or hold oneself out as engaging in or following any of the practices of cosmetology or to act as a practitioner;

(2) To engage in or advertise or hold oneself out as engaging in the teaching of any of the practices of cosmetology; or

(3) To operate or advertise or hold oneself out as operating a cosmetology establishment in which any of the practices of cosmetology or the teaching of any of the practices of cosmetology are carried out.

Source: Laws 1986, LB 318, § 46; R.S.1943, (2003), § 71-385; Laws 2007, LB463, § 320.

38-1059 Electrology; licensure required.

No person, group, company, limited liability company, or other entity shall engage in any of the following acts without being duly licensed as required by the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, unless specifically excepted by such act:

(1) To engage in or follow or to advertise or hold oneself out as engaging in or following any of the practices of electrology; or

(2) To engage in or advertise or hold oneself out as engaging in the teaching of any of the practices of electrology.

Source: Laws 1995, LB 83, § 20; Laws 2004, LB 1005, § 25; R.S.Supp.,2006, § 71-385.01; Laws 2007, LB463, § 321.

38-1060 Body art; license required; conditions.

(1) No person shall perform any of the practices of body art or display a sign to, or in any other way, advertise or purport to be engaged in the business of practicing body art unless such person is licensed by the department.

(2) An applicant for licensure in any of the practices of body art shall show to the satisfaction of the department that the applicant:

(a) Has complied with the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and the applicable rules and regulations adopted and promulgated under the act;

(b) Is at least eighteen years of age;

(c) Has completed formal education equivalent to a United States high school education;

(d) Has submitted evidence of training or experience prescribed or approved by the board to ensure the protection of the public in performing the practices of body art for which the applicant is seeking licensure; and

(e) Has successfully completed an examination prescribed or approved by the board to test the applicant's knowledge of safety, sanitation, and sterilization techniques and infection control practices and requirements.

Source: Laws 2004, LB 906, § 25; R.S.Supp.,2006, § 71-385.02; Laws 2007, LB463, § 322.

38-1061 Licensure or registration; categories; use of titles prohibited; practice in licensed establishment or facility.

(1) All practitioners shall be licensed or registered by the department under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act in a category or categories appropriate to their practice.

(2) Licensure shall be required before any person may engage in the full, unsupervised practice or teaching of cosmetology, electrology, esthetics, nail technology, or body art, and no person may assume the title of cosmetologist, electrologist, esthetician, instructor, nail technician, nail technology instructor, esthetics instructor, permanent color technician, tattoo artist, body piercer, or body brander without first being licensed by the department.

(3) All licensed practitioners shall practice in an appropriate licensed establishment or facility.

Source: Laws 1986, LB 318, § 47; Laws 1995, LB 83, § 21; Laws 1999, LB 68, § 27; Laws 2002, LB 241, § 22; Laws 2004, LB 906, § 19; R.S.Supp.,2006, § 71-386; Laws 2007, LB463, § 323.

38-1062 Licensure by examination; requirements.

In order to be licensed by the department by examination, an individual shall meet, and present to the department evidence of meeting, the following requirements:

(1) Has attained the age of seventeen years on or before the beginning date of the examination for which application is being made;

(2) Has completed formal education equivalent to a United States high school education;

(3) Possesses a minimum competency in the knowledge and skills necessary to perform the practices for which licensure is sought, as evidenced by successful completion of an examination in the appropriate practices approved by the board and administered by the department;

(4) Possesses sufficient ability to read the English language to permit the applicant to practice in a safe manner, as evidenced by successful completion of the written examination; and

(5) Has graduated from a school of cosmetology or an apprentice salon in or outside of Nebraska, a school of esthetics in or outside of Nebraska, or a school of electrolysis upon completion of a program of studies appropriate to the practices for which licensure is being sought, as evidenced by a diploma or certificate from the school or apprentice salon to the effect that the applicant has complied with the following:

(a) For licensure as a cosmetologist, the program of studies shall consist of a minimum of two thousand one hundred hours and two thousand credits;

(b) For licensure as an esthetician, the program of studies shall consist of a minimum of six hundred hours and six hundred credits;

(c) For licensure as a cosmetology instructor, the program of studies shall consist of a minimum of nine hundred twenty-five hours beyond the program of studies required for licensure as a cosmetologist earned in a period of not less than six months;

(d) For licensure as a cosmetology instructor, be currently licensed as a cosmetologist in Nebraska, as evidenced by possession of a valid Nebraska cosmetology license;

(e) For licensure as an electrologist, the program of studies shall consist of a minimum of six hundred hours and six hundred credits;

(f) For licensure as an electrology instructor, be currently licensed as an electrologist in Nebraska and have practiced electrology actively for at least two years immediately before the application; and

(g) For licensure as an esthetics instructor, completion of a program of studies consisting of a minimum of three hundred hours beyond the program of studies required for licensure as an esthetician and current licensure as an esthetician in Nebraska.

Source: Laws 1986, LB 318, § 48; Laws 1987, LB 543, § 6; Laws 1995, LB 83, § 22; Laws 1996, LB 1155, § 26; Laws 1997, LB 752, § 168; Laws 2002, LB 241, § 23; Laws 2004, LB 1005, § 26; R.S.Supp.,2006, § 71-387; Laws 2007, LB463, § 324.

Cross References

Uniform Credentialing Act, see section 38-101.

38-1063 Application for examination; procedure.

A complete application for examination shall be postmarked no later than fifteen days before the beginning of the examination for which application is being made. Applications received after such date shall be considered as applications for the next scheduled examination. No application for any type of licensure or registration shall be considered complete unless all information requested in the application has been supplied, all seals and signatures required have been obtained, and all supporting and documentary evidence has been received by the department.

Source: Laws 1986, LB 318, § 49; Laws 1989, LB 344, § 8; Laws 2003, LB 242, § 82; R.S.1943, (2003) § 71-388; Laws 2007, LB463, § 325.

38-1064 Licensure; examinations; duties; examinees.

(1) The board shall approve and the department shall cause examinations to be administered as required for licensure under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act for the purpose of establishing the possession of minimum competency in the knowledge and skills required on the part of the applicant.

(2) No person shall be permitted to take an examination for licensure unless he or she has met all the requirements of subdivisions (1), (2), and (5) of section 38-1062 except for persons taking the examination under section 38-1067.

Source: Laws 1986, LB 318, § 50; Laws 1987, LB 543, § 7; Laws 1995, LB 83, § 23; Laws 2004, LB 1005, § 27; R.S.Supp.,2006, § 71-389; Laws 2007, LB463, § 326.

38-1065 Examinations; requirements; grades.

(1) Examinations approved by the board may be national standardized examinations, but in all cases the examinations shall be related to the knowledge and skills necessary to perform the practices being examined and shall be related to the curricula required to be taught in schools of cosmetology, schools of esthetics, or schools of electrolysis.

- (2) At least two examinations shall be given annually.
- (3) Practical examinations may be offered as either written or hands-on and shall be conducted in such a manner that the identity of the applicant is not disclosed to the examiners in any way.
- (4) In order to successfully complete the examination, an applicant shall obtain an average grade of seventy-five percent on all examinations.

Source: Laws 1986, LB 318, § 51; Laws 1987, LB 543, § 8; Laws 1995, LB 83, § 24; Laws 1997, LB 307, § 134; R.S.1943, (2003), § 71-390; Laws 2007, LB296, § 366; Laws 2007, LB463, § 327.

38-1066 Reciprocity; requirements.

The department may grant a license based on licensure in another jurisdiction to any person who meets the requirements of subdivisions (1) and (2) of section 38-1062 and who presents proof of the following:

(1) That he or she is currently licensed in the appropriate category in another jurisdiction and that he or she has never been disciplined or had his or her license revoked. An applicant seeking licensure as an instructor in the manner provided in this section shall be licensed as an instructor in another jurisdiction. An applicant seeking licensure as a cosmetologist in the manner provided in this section shall be licensed as a cosmetologist in another jurisdiction. An applicant seeking licensure as an esthetician in the manner provided in this section shall be licensed as a cosmetologist, an esthetician, or an equivalent title in another jurisdiction. An applicant seeking licensure as an esthetics instructor in the manner provided in this section shall be licensed as a cosmetology instructor, esthetics instructor, or the equivalent in another jurisdiction. An applicant seeking licensure as an electrologist or an electrology instructor in the manner provided in this section shall be licensed as an electrologist or an electrology instructor, respectively, in another jurisdiction;

(2) That such license was issued on the basis of an examination and the results of the examination. If an examination was not required for licensure in the other jurisdiction, the applicant shall take the Nebraska examination; and

(3) That the applicant complies with the hour requirements of subdivision (5) of section 38-1062 through any combination of hours earned as a student or apprentice in a cosmetology establishment or an electrology establishment licensed or approved by the jurisdiction in which it was located and hour-equivalents granted for recent work experience, with hour-equivalents recognized as follows:

(a) Each month of full-time practice as an instructor within the five years immediately preceding application shall be valued as one hundred hour-equivalents toward an instructor's license or a cosmetology license and one hundred hour-equivalents toward an esthetician's license;

(b) Each month of full-time practice as a cosmetologist within the five years immediately preceding application shall be valued as one hundred hour-equivalents toward a cosmetology license and one hundred hour-equivalents toward an esthetician's license;

(c) Each month of full-time practice as an esthetician within the five years immediately preceding application shall be valued as one hundred hour-equivalents toward an esthetician's license;

(d) Each month of full-time practice as an esthetics instructor within the five years immediately preceding application shall be valued as one hundred hour-equivalents toward an esthetics instructor's license; and

(e) Each month of full-time practice as an electrologist within the five years immediately preceding application shall be valued as one hundred hour-equivalents toward an electrologist's license.

Source: Laws 1986, LB 318, § 55; Laws 1987, LB 543, § 9; Laws 1995, LB 83, § 26; Laws 2002, LB 241, § 24; R.S.1943, (2003), § 71-394; Laws 2007, LB463, § 328.

38-1067 Foreign-trained applicants; examination requirements.

(1) Applicants for Nebraska licensure who received their training in foreign countries may not be licensed by waiver of examination. In order to be considered eligible to take the examination, they shall meet the requirements of subdivisions (1) and (2) of section 38-1062 and, in order to establish equivalency with subdivision (5) of section 38-1062, shall present proof satisfactory to the department of one of the following:

(a) Current licensure or equivalent official recognition of the right to practice in a foreign country; or

(b) At least five years of practice within the eight years immediately preceding the application.

(2) In all cases such applicants shall take the examination for licensure in the State of Nebraska.

Source: Laws 1986, LB 318, § 56; Laws 1987, LB 543, § 10; Laws 1995, LB 83, § 27; R.S.1943, (2003), § 71-395; Laws 2007, LB463, § 329.

38-1068 License; display.

Every person holding a license issued by the department under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act shall display it in a conspicuous place in his or her principal place of employment, and every cosmetology establishment and body art facility shall so display the then current licenses of all practitioners there employed.

Source: Laws 1986, LB 318, § 57; Laws 1995, LB 83, § 29; Laws 2004, LB 906, § 20; R.S.Supp.,2006, § 71-396; Laws 2007, LB463, § 330.

38-1069 Registration; when required; temporary practitioner; license.

Registration shall be required before any person may act as a guest artist, guest body artist, cosmetician, student, apprentice, or student instructor, and no person shall assume any title indicative of any of such areas of activity without first being registered or licensed by the department under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. A license as a temporary practitioner shall be required before any person may act as a temporary practitioner, and no person shall assume any title indicative of being a temporary practitioner without first being so licensed by the department under the act.

Source: Laws 1986, LB 318, § 59; Laws 2004, LB 906, § 22; R.S.Supp.,2006, § 71-398; Laws 2007, LB463, § 331.

Cross References

Uniform Credentialing Act, see section 38-101.

38-1070 Registration; temporary license; general requirements.

An individual making application for registration or a temporary license shall meet, and present to the department evidence of meeting, the requirements for the specific type of registration or license applied for.

Source: Laws 1986, LB 318, § 60; R.S.1943, (2003), § 71-399; Laws 2007, LB463, § 332.

38-1071 Registration as guest artist; requirements.

Applicants for registration as guest artists shall show evidence of licensure in another jurisdiction or other evidence as directed by the department sufficient to demonstrate that they possess education or experience of benefit to licensed or registered practitioners and are under the sponsorship of a licensed cosmetology establishment or cosmetologist for guest artists or a licensed esthetician for guest artists only performing esthetics.

Source: Laws 1986, LB 318, § 61; Laws 2004, LB 906, § 23; R.S.Supp.,2006, § 71-3,100; Laws 2007, LB463, § 333.

38-1072 Registration as cosmetician; requirements.

An applicant for registration as a cosmetician shall show evidence that he or she is or intends to become employed as a cosmetician and has received instruction in the chemical properties of, and potential reactions to, the cosmetics he or she intends to apply from his or her employers or from the manufacturers or distributors of the cosmetic products and is aware of actions to take in the event of such a reaction.

Source: Laws 1986, LB 318, § 62; R.S.1943, (2003), § 71-3,101; Laws 2007, LB463, § 334.

38-1073 Licensure as temporary practitioner; requirements.

An applicant for licensure as a temporary practitioner shall show evidence that his or her completed application for regular licensure has been accepted by the department, that he or she has not failed any portion of the licensure examination, and that he or she has been accepted for work in a licensed cosmetology establishment under the supervision of a licensed practitioner. An individual registered as a temporary practitioner on December 1, 2008, shall be deemed to be licensed as a temporary practitioner under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act on such date. The temporary practitioner may continue to practice under such registration as a temporary license until it would have expired under its terms.

Source: Laws 1986, LB 318, § 65; R.S.1943, (2003), § 71-3,104; Laws 2007, LB463, § 335.

38-1074 Registration; temporary licensure; not renewable; expiration dates; extension.

(1) Registration and temporary licensure shall be granted for a set period of time and cannot be renewed.

(2) Registration as a guest artist shall expire two years following the initial date of issuance.

(3) Registration as a cosmetician shall expire two years following the initial date of issuance.

(4) Registration as a student, apprentice, or student instructor shall expire upon successful completion of the licensing examination or termination of enrollment in a school of cosmetology, a school of esthetics, or an apprentice salon.

(5) Licensure as a temporary practitioner shall expire eight weeks following the date of issuance or upon receipt of examination results, whichever occurs first, except that the license of a temporary practitioner who fails to take the first scheduled examination shall expire immediately unless the department finds that the temporary practitioner was unable to attend the examination due to an emergency or other valid circumstances, in which case the department may extend the license an additional eight weeks or until receipt of the examination results, whichever occurs first. No license may be extended in such manner more than once.

Source: Laws 1986, LB 318, § 66; Laws 1987, LB 543, § 13; Laws 1995, LB 83, § 32; Laws 2002, LB 241, § 28; Laws 2004, LB 906, § 24; Laws 2004, LB 1005, § 29; R.S.Supp., 2006, § 71-3,105; Laws 2007, LB463, § 336.

38-1075 Act; activities exempt.

The Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act does not apply to or restrict the activities of the following:

(1) Any person holding a current license or certificate issued pursuant to the Uniform Credentialing Act when engaged in the usual and customary practice of his or her profession or occupation;

(2) Any person engaging solely in earlobe piercing;

(3) Any person when engaged in domestic or charitable administration;

(4) Any person performing any of the practices of cosmetology or nail technology solely for theatrical presentations or other entertainment functions;

(5) Any person practicing cosmetology, electrology, esthetics, or nail technology within the confines of a hospital, nursing home, massage therapy establishment, funeral establishment, or other similar establishment or facility licensed or otherwise regulated by the department, except that no unlicensed or unregistered person may accept compensation for such practice;

(6) Any person providing services during a bona fide emergency;

(7) Any retail or wholesale establishment or any person engaged in the sale of cosmetics, nail technology products, or other beauty products when the products are applied by the customer or when the application of the products is in direct connection with the sale or attempted sale of such products at retail;

(8) Any person when engaged in nonvocational training;

(9) A person demonstrating on behalf of a manufacturer or distributor any cosmetology, nail technology, electrolysis, or body art equipment or supplies if such demonstration is performed without charge;

(10) Any person or licensee engaged in the practice or teaching of manicuring; and

(11) Any person or licensee engaged in the practice of airbrush tanning or temporary, nonpermanent airbrush tattooing.

Source: Laws 1986, LB 318, § 67; Laws 1987, LB 543, § 14; Laws 1988, LB 1100, § 97; Laws 1995, LB 83, § 33; Laws 1999, LB 68, § 44; Laws 2001, LB 209, § 16; Laws 2004, LB 906, § 28; Laws 2005, LB 256, § 33; R.S.Supp.,2006, § 71-3,106; Laws 2007, LB463, § 337.

38-1076 Epilators; requirements.

All epilators used by an electrologist shall be approved by the federal Food and Drug Administration.

Source: Laws 1995, LB 83, § 40; Laws 2004, LB 1005, § 30; R.S.Supp.,2006, § 71-3,106.01; Laws 2007, LB463, § 338.

38-1077 Continuing competency requirements; waiver; limited exemptions.

The department, with the recommendation of the board, may waive continuing competency requirements, in part or in total, for any two-year licensing period when a licensee submits documentation that circumstances beyond his or her control prevented completion of such requirements as provided in section 38-146. In addition to circumstances determined by the department to be beyond the licensee's control pursuant to such section, the following exemptions shall apply:

(1) An instructor who meets the continuing competency requirements for the instructor's license shall be exempt from meeting the continuing competency requirements for his or her cosmetologist license for that biennium;

(2) An electrology instructor who meets the continuing competency requirements for the electrology instructor's license shall be exempt from meeting the continuing competency requirements for his or her electrologist license for that biennium; and

(3) An esthetics instructor who meets the continuing education requirements for the esthetics instructor's license shall be exempt from meeting the continuing education requirements for his or her esthetician license for that biennium.

Source: Laws 1986, LB 318, § 78; Laws 1995, LB 83, § 37; Laws 2002, LB 241, § 31; Laws 2002, LB 1021, § 46; R.S.1943, (2003), § 71-3,117; Laws 2007, LB463, § 339.

38-1078 Cosmetology establishment; license required; conditions.

No person shall operate or profess or attempt to operate a cosmetology establishment unless such establishment is licensed by the department under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. The department shall not issue or renew a license for a cosmetology establishment until all requirements of the act have been complied with. No person shall engage in any of the practices of cosmetology in any location or premises other than a licensed cosmetology establishment except as specifically permitted in the act.

Source: Laws 1986, LB 318, § 80; R.S.1943, (2003), § 71-3,119; Laws 2007, LB463, § 340.

38-1079 Licensed cosmetology establishment; nail technology services.

A licensed cosmetology establishment is not required to be licensed as a nail technology salon to provide nail technology services by either a licensed cosmetologist or by a licensed nail technologist.

Source: Laws 2001, LB 209, § 15; R.S.1943, (2003), § 71-3,119.01; Laws 2007, LB463, § 341.

38-1080 Body art facility; license required; renewal.

(1) No person shall establish or operate a body art facility in this state unless such facility is licensed by the department under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. The department shall not issue or renew a license for a body art facility until all applicable requirements of the act have been complied with and the facility has been inspected by the department. No person shall engage in any of the practices of body art in any location or premises other than a licensed body art facility except as specifically permitted in the act. The department shall issue a license to operate a body art facility to each qualified applicant.

(2) The procedure for renewing a body art facility license shall be in accordance with section 38-143, except that in addition to all other requirements, no body art facility license may be renewed unless the facility has attained a rating of satisfactory on its most recent operation inspection. The license of any facility not attaining such rating shall be placed on inactive status and shall not be open to the public until all deficiencies have been corrected.

(3) The license of a body art facility that has been revoked for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such facility can reopen for business.

(4) Each body art facility license shall be in effect solely for the owner or owners and premises named thereon and shall expire automatically upon any change of ownership or location. An original application for licensure shall be submitted and approved before such facility may reopen for business.

Source: Laws 2004, LB 906, § 26; R.S.Supp.,2006, § 71-3,119.02; Laws 2007, LB463, § 342.

38-1081 Body art facility; operating requirements.

(1) In order to maintain a license in good standing, each body art facility or the owner of such facility or his or her agent shall:

(a) At all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(b) Notify the department at least thirty days prior to any change of ownership, name, or address, and within one week after a facility is permanently closed, except in emergency circumstances as determined by the department;

(c) Permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during normal operating hours, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas, personnel, and records requested by the inspector; and

(d) Display in a conspicuous place near the place where body art is performed the following records:

- (i) The then current license to operate the body art facility;
 - (ii) The then current license of each person performing body art; and
 - (iii) The inspection report from the most recent operation inspection.
- (2) The owner of each body art facility shall have full responsibility for ensuring that the facility is operated in compliance with all applicable laws, rules, and regulations and shall be liable for any and all violations occurring in the facility.

Source: Laws 2004, LB 906, § 27; R.S.Supp.,2006, § 71-3,119.03; Laws 2007, LB463, § 343.

38-1082 Salon, defined.

For purposes of sections 38-1083 to 38-1090, salon means cosmetology salon and esthetics salon.

Source: Laws 1986, LB 318, § 81; Laws 2002, LB 241, § 32; R.S.1943, (2003), § 71-3,120; Laws 2007, LB463, § 344.

38-1083 Salon; license; requirements.

In order to be licensed as a salon by the department, an applicant shall meet, and present to the department evidence of meeting, the following requirements:

- (1) The proposed salon shall be a fixed, permanent structure or part of one;
- (2) The proposed salon shall be physically separated from all other business or residential activities except barbering, manicuring, pedicuring, and retail sales;
- (3) The separation required in subdivision (2) of this section shall be by fixed walls or by partitions not less than six feet high;
- (4) Areas of the salon used for barbering, manicuring, or pedicuring shall be clearly identified as such to the public by a sign and shall be visually distinct from other areas of the salon;
- (5) All areas of the salon, including those used for manicures, pedicures, or retail sales, shall comply with the sanitary requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;
- (6) A salon located in a residence shall be entirely distinct and separate from any living quarters, except that there may be one connecting door to the living portion of the dwelling as an access entrance to the salon for the owner or operator, but such entrance shall not be for the use of the general public;
- (7) The entrance into the proposed salon used by the general public shall lead directly from the outside to the salon, except that a salon located in a commercial building may have its entrance open from a public area such as a foyer, hallway, mall, concourse, or retail sales floor. Any salon in existence and licensed on August 30, 1987, shall not be required to comply with this subdivision;
- (8) The proposed salon shall have at least one hundred fifty square feet of floor space. If more than one practitioner is to be employed in the salon at the same time, the salon shall contain an additional space of at least fifty square feet for each additional practitioner, except that a salon employing a licensee exclusively to perform home services need not provide additional space for such employee;

(9) The proposed salon shall include toilet facilities unless the salon is located in a commercial building in which public toilet facilities are available that open directly off of a public area; and

(10) The proposed salon shall meet all state or local building code and fire code requirements.

Source: Laws 1986, LB 318, § 82; Laws 1987, LB 543, § 19; R.S.1943, (2003), § 71-3,121; Laws 2007, LB463, § 345.

38-1084 Salon license; application; procedure; additional information.

Any person seeking a license to operate a salon shall submit a completed application at least thirty days before construction or remodeling of the building proposed for use is scheduled to begin. If no construction or remodeling is planned, the application shall be submitted at least thirty days before the proposed opening of the salon for operation. Along with the application the applicant shall submit:

(1) A detailed floor plan or blueprint of the proposed salon sufficient to demonstrate compliance with the requirements of section 38-1083; and

(2) Evidence of minimal property damage, bodily injury, and liability insurance coverage for the proposed salon.

Source: Laws 1986, LB 318, § 83; R.S.1943, (2003), § 71-3,122; Laws 2007, LB463, § 346.

38-1085 Salon; application; review; denial; issuance; inspection.

Each application for a license to operate a salon shall be reviewed by the department for compliance with the requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. In the event an application is denied, the applicant shall be informed in writing of the grounds for denial, and such denial shall not prejudice future applications by the applicant. In the event an application is approved, the department shall issue the applicant a certificate of consideration to operate a salon pending an operation inspection. The department shall conduct an operation inspection of each salon issued a certificate of consideration within six months of the issuance of such certificate. Salons passing the inspection shall be issued a permanent license. Salons failing the inspection shall submit within fifteen days evidence of corrective action taken to improve those aspects of operation found deficient. If evidence is not submitted within fifteen days or if after a second inspection the salon does not receive a satisfactory rating, it shall immediately relinquish its certificate of consideration and cease operation.

Source: Laws 1986, LB 318, § 84; R.S.1943, (2003), § 71-3,123; Laws 2007, LB463, § 347.

38-1086 Licensed salon; operating requirements.

In order to maintain its license in good standing, each salon shall operate in accordance with the following requirements:

(1) The salon shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(2) The salon owner or his or her agent shall notify the department at least thirty days prior to any change of ownership, name, or address, and within one

week if a salon is permanently closed, except in emergency circumstances as determined by the department;

(3) No salon shall permit any unlicensed or unregistered person to perform any of the practices of cosmetology within its confines or employment;

(4) The salon shall display a name upon, over, or near the entrance door distinguishing it as a salon;

(5) The salon shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the salon, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas of the salon, all personnel, and all records requested by the inspector;

(6) The salon shall display in a conspicuous place the following records:

(a) The current license or certificate of consideration to operate a salon;

(b) The current licenses or registrations of all persons employed by or working in the salon; and

(c) The rating sheet from the most recent operation inspection;

(7) At no time shall a salon employ more employees than permitted by the square footage requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act; and

(8) The salon shall not knowingly permit its employees or clients to use, consume, serve, or in any manner possess or distribute intoxicating beverages or controlled substances upon its premises.

Source: Laws 1986, LB 318, § 85; R.S.1943, (2003), § 71-3,124; Laws 2007, LB463, § 348.

38-1087 Salon license; renewal; insurance.

The procedure for renewing a salon license shall be in accordance with section 38-143, except that in addition to all other requirements, the salon shall submit evidence of minimal property damage, bodily injury, and liability insurance coverage for the salon.

Source: Laws 1986, LB 318, § 86; Laws 2003, LB 242, § 86; R.S.1943, (2003), § 71-3,125; Laws 2007, LB463, § 349.

38-1088 Salon license; revoked or expired; effect.

The license of a salon that has been revoked or expired for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such salon may reopen for business.

Source: Laws 1986, LB 318, § 87; R.S.1943, (2003), § 71-3,126; Laws 2007, LB463, § 350.

38-1089 Salon license; change of ownership or location; effect.

Each salon license issued shall be in effect solely for the owner or owners and premises named thereon and shall expire automatically upon any change of ownership or location. An original application for licensure shall be submitted and approved before such salon may reopen for business.

Source: Laws 1986, LB 318, § 88; R.S.1943, (2003), § 71-3,127; Laws 2007, LB463, § 351.

38-1090 Salon owner; liability.

The owner of each salon shall have full responsibility for ensuring that the salon is operated in compliance with all applicable laws, rules, and regulations and shall be liable for any and all violations occurring in the salon.

Source: Laws 1986, LB 318, § 89; R.S.1943, (2003), § 71-3,128; Laws 2007, LB463, § 352.

38-1091 Cosmetic establishment; license; requirements.

In order to be licensed as a cosmetic establishment by the department, an applicant shall meet, and present to the department evidence of meeting, the following requirements:

(1) The proposed cosmetic establishment shall be a fixed permanent structure or part of one;

(2) The proposed cosmetic establishment need not consist of a separate room or rooms, but may be a counter or other clearly identifiable portion of a room or floor;

(3) The proposed cosmetic establishment shall have, or have convenient access to, handwashing facilities; and

(4) The proposed cosmetic establishment, if located in a private dwelling, shall be located in a room or rooms separate from the living quarters and having a private entrance. Such room or rooms shall not be used for any residential purpose during the hours the cosmetic establishment is being used, and all doors and windows connecting to residential quarters shall be closed at such times.

Source: Laws 1986, LB 318, § 90; R.S.1943, (2003), § 71-3,129; Laws 2007, LB463, § 353.

38-1092 Cosmetic establishment license; application; procedure; additional information; inspection.

(1) Any person seeking a license to operate a cosmetic establishment shall submit a completed application at least thirty days before the proposed opening of the cosmetic establishment for operation. Along with the application the applicant shall submit:

(a) A floor plan or blueprint sufficient to identify the location of the proposed cosmetic establishment within any larger structure and the location of handwashing facilities; and

(b) The names of all persons registered or proposed to be registered as cosmeticians to be employed in the cosmetic establishment.

(2) In the event that more than one counter or area within a larger commercial establishment will be used as a cosmetic establishment, only one license is required for all such counters or areas if all are identified on the floor plan or blueprint accompanying the application.

(3) Each application shall be reviewed by the department for compliance with the requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. In the event an application is denied, the applicant shall be informed in writing of the grounds for denial and such denial shall not prejudice future applications by the applicant. In the event an application is approved, the department shall issue the applicant a certificate of

consideration to operate a cosmetic establishment pending an operation inspection. The department shall conduct an operation inspection of each cosmetic establishment issued a certificate of consideration within six months of the issuance of such certificate. Cosmetic establishments passing the inspection shall be issued a permanent license. Cosmetic establishments failing the inspection shall submit, within fifteen days, evidence of corrective action taken to improve those aspects of operation found deficient. If evidence is not submitted within fifteen days or if after a second inspection the cosmetic establishment does not receive a satisfactory rating, it shall immediately relinquish its certificate of consideration and cease operation.

Source: Laws 1986, LB 318, § 91; R.S.1943, (2003), § 71-3,130; Laws 2007, LB463, § 354.

38-1093 Licensed cosmetic establishment; operating requirements.

In order to maintain its license in good standing, each cosmetic establishment shall operate in accordance with the following requirements:

(1) The cosmetic establishment shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(2) The owner of the cosmetic establishment or his or her agent shall notify the department at least thirty days prior to any change of ownership, name, or address, and within one week after a cosmetic establishment is permanently closed, except in emergency circumstances as determined by the department;

(3) No cosmetic establishment shall permit anyone other than a cosmetician, cosmetologist, or esthetician to apply cosmetics to members of the general public upon its premises;

(4) The cosmetic establishment shall display a sign at each counter or area used for such purposes indicating that it is a licensed cosmetic establishment and that all persons applying cosmetics are registered cosmeticians or licensed cosmetologists or estheticians;

(5) The cosmetic establishment shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during normal operating hours, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas, personnel, and records requested by the inspector; and

(6) The cosmetic establishment shall display in a conspicuous place near the place where cosmetics are applied the following records:

(a) The current license or certificate of consideration to operate a cosmetic establishment;

(b) The current licenses or registrations of all persons applying cosmetics; and

(c) The rating sheet from the most recent operation inspection.

Source: Laws 1986, LB 318, § 92; R.S.1943, (2003), § 71-3,131; Laws 2007, LB463, § 355.

38-1094 Cosmetic establishment license; revoked or expired; effect.

The license of a cosmetic establishment that has been revoked or expired for any reason may not be reinstated. An original application for licensure shall be submitted and approved before such cosmetic establishment may reopen for business.

Source: Laws 1986, LB 318, § 94; R.S.1943, (2003), § 71-3,133; Laws 2007, LB463, § 356.

38-1095 Cosmetic establishment license; change of ownership or location; effect.

Each cosmetic establishment license issued shall be in effect solely for the owner or owners and premises named thereon and shall expire automatically upon any change of ownership or location. An original application for licensure shall be submitted and approved before such cosmetic establishment may reopen for business. Nothing in sections 38-1091 to 38-1095 shall be construed to prevent the creation, alteration, removal, or movement of specific counters or areas within a commercial enterprise holding a license as a cosmetic establishment.

Source: Laws 1986, LB 318, § 95; R.S.1943, (2003), § 71-3,134; Laws 2007, LB463, § 357.

38-1096 Cosmetic establishment owner; liability.

The owner of each cosmetic establishment shall have full responsibility for ensuring that the cosmetic establishment is operated in compliance with all applicable laws, rules, and regulations and shall be liable for any and all violations occurring in the cosmetic establishment.

Source: Laws 1986, LB 318, § 96; R.S.1943, (2003), § 71-3,135; Laws 2007, LB463, § 358.

38-1097 School of cosmetology; license; requirements.

In order to be licensed as a school of cosmetology by the department, an applicant shall meet and present to the department evidence of meeting the following requirements:

- (1) The proposed school shall be a fixed permanent structure or part of one;
- (2) The proposed school shall have a contracted enrollment of at least fifteen full-time students;
- (3) The proposed school shall contain at least three thousand five hundred square feet of floor space and facilities, staff, apparatus, and equipment appropriate to its projected enrollment in accordance with the standards established by rule and regulation; and
- (4) The proposed school shall not have the same entrance as or direct access to a cosmetology salon, esthetics salon, or nail technology salon.

A school of cosmetology is not required to be licensed as a school of esthetics in order to provide an esthetics training program or as a school of nail technology in order to provide a nail technology training program.

Source: Laws 1986, LB 318, § 97; Laws 2002, LB 241, § 33; R.S.1943, (2003), § 71-3,136; Laws 2007, LB463, § 359.

38-1098 School of cosmetology license; school of esthetics license; application.

Any person seeking a license to operate a school of cosmetology or school of esthetics shall submit a completed application at least thirty days before construction or remodeling of the building proposed for use is scheduled to begin. If no construction or remodeling is planned, the application shall be received at least thirty days before the proposed opening of the school.

Source: Laws 1986, LB 318, § 98; Laws 1995, LB 83, § 38; Laws 1997, LB 752, § 169; Laws 2002, LB 241, § 35; Laws 2004, LB 1005, § 31; R.S.Supp.,2006, § 71-3,137; Laws 2007, LB463, § 360.

38-1099 School of cosmetology license; school of esthetics license; application; additional information.

Along with the application the applicant for a license to operate a school of cosmetology or school of esthetics shall submit:

- (1) A detailed floor plan or blueprint of the proposed school building sufficient to show compliance with the relevant rules and regulations;
- (2) Evidence of minimal property damage, personal injury, and liability insurance coverage for the proposed school;
- (3) A copy of the curriculum to be taught for all courses;
- (4) A copy of the school rules and the student contract;
- (5) A list of the names and credentials of all licensees to be employed by the school and the name and qualifications of the school manager;
- (6) Complete student entrance notifications and contracts for all persons proposed as students or student instructors, which shall be submitted fifteen days prior to opening;
- (7) A completed cosmetology education or esthetics education evaluation scale, as applicable; and
- (8) A schedule of proposed hours of operation and class and course scheduling.

Source: Laws 1986, LB 318, § 99; Laws 2002, LB 241, § 36; R.S.1943, (2003), § 71-3,138; Laws 2007, LB463, § 361.

38-10,100 School of esthetics license; application; additional information.

In order to be licensed as a school of esthetics by the department, an applicant shall meet and present to the department evidence of meeting the following requirements:

- (1) The proposed school shall be a fixed permanent structure or part of one;
- (2) The proposed school shall have a contracted enrollment of at least four but not more than six students for each licensed esthetics instructor on the staff of the proposed school;
- (3) The proposed school shall contain at least one thousand square feet of floor space and facilities, staff, apparatus, and equipment appropriate to its projected enrollment in accordance with the standards established by rule and regulation; and

(4) The proposed school shall not have the same entrance as or direct access to a cosmetology salon, an esthetics salon, or a nail technology salon.

Source: Laws 2002, LB 241, § 34; R.S.1943, (2003), § 71-3,138.02; Laws 2007, LB463, § 362.

38-10,101 School of cosmetology license; school of esthetics license; application; review; procedure; inspection.

Each application for a license to operate a school of cosmetology or school of esthetics shall be reviewed by the department for compliance with the requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. If an application is denied, the applicant shall be informed in writing of the grounds for denial and such denial shall not prejudice future applications by the applicant. If an application is accepted, the department shall immediately conduct an accreditation inspection of the proposed school. A school passing the inspection shall be issued a license and may begin operation as soon as the inspection results are received. If the proposed school fails the inspection, the applicant shall submit, within fifteen days, evidence of corrective action taken to improve those aspects of operation found deficient. If, after a second inspection to be conducted within thirty days of receipt of evidence, the school does not receive a satisfactory rating, or if evidence is not received within fifteen days, the application may be denied.

Source: Laws 1986, LB 318, § 100; Laws 1995, LB 83, § 41; Laws 2002, LB 241, § 37; Laws 2004, LB 1005, § 32; R.S.Supp.,2006, § 71-3,139; Laws 2007, LB463, § 363.

38-10,102 Licensed school; operating requirements.

In order to maintain its license in good standing, each school of cosmetology or school of esthetics shall operate in accordance with the following requirements:

(1) The school shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(2) The school owner or owners or the authorized agent thereof shall notify the department at least thirty days prior to any change of ownership, name, or address, and at least sixty days prior to closure, except in emergency circumstances as determined by the department;

(3) No school shall permit anyone other than a student, student instructor, instructor, or guest artist to perform any of the practices of cosmetology or esthetics within its confines or employ, except that such restriction shall not prevent a school from inviting guest teachers who are not licensed or registered to provide lectures to students or student instructors if the guest lecturer does not perform any of the practices of cosmetology or esthetics;

(4) The school shall display a name upon or near the entrance door designating it as a school of cosmetology or a school of esthetics;

(5) The school shall display in a conspicuous place within the clinic area a sign reading: All services in this school are performed by students who are training in cosmetology or esthetics, as applicable. A notice to such effect shall also appear in all advertising conducted by the school for its clinic services;

(6) The school shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the school without prior notice, and the owner or manager shall assist the inspector by providing access to all areas of the school, all personnel, and all records requested by the inspector;

(7) The school shall display in a conspicuous place the following records:

(a) The current license to operate a school of cosmetology or school of esthetics;

(b) The current licenses or registrations of all persons, except students, employed by or working in the school; and

(c) The rating sheet from the most recent accreditation inspection;

(8) At no time shall a school enroll more students than permitted by the act or the rules and regulations adopted and promulgated under the act;

(9) The school shall not knowingly permit its students, employees, or clients to use, consume, serve, or in any other manner possess or distribute intoxicating beverages or controlled substances upon its premises;

(10) No instructor or student instructor shall perform, and no school shall permit such person to perform, any of the practices of cosmetology or esthetics on the public in a school of cosmetology or school of esthetics other than that part of the practical work which pertains directly to the teaching of practical subjects to students or student instructors and in no instance shall complete cosmetology or esthetics services be provided for a client unless done in a demonstration class of theoretical or practical studies;

(11) The school shall maintain space, staff, library, teaching apparatus, and equipment as established by rules and regulations adopted and promulgated under the act;

(12) The school shall keep a daily record of the attendance and clinical performance of each student and student instructor;

(13) The school shall maintain regular class and instructor hours and shall require the minimum curriculum;

(14) The school shall establish and maintain criteria and standards for student grading, evaluation, and performance and shall award a certificate or diploma to a student only upon completing a full course of study in compliance with such standards, except that no student shall receive such certificate or diploma until he or she has satisfied or made an agreement with the school to satisfy all outstanding financial obligations to the school;

(15) The school shall maintain on file the enrollment of each student;

(16) The school shall maintain a report indicating the students and student instructors enrolled, the hours and credits earned, the instructors employed, the hours of operation, and such other pertinent information as required by the department. No hours or credits shall be allowed for any student unless such student is duly registered and the hours and credits are reported by the school; and

(17) The school shall print and provide to each student a copy of the school rules, which shall not be inconsistent with the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, the Uniform Credentialing Act, or the rules and regulations adopted and promulgated under either act and which shall include policies of the school with respect to tuition, reim-

bursement, conduct, attendance, grading, earning of hours and credits, demerits, penalties, dismissal, graduation requirements, dress, and other information sufficient to advise the student of the standards he or she will be required to maintain. The department may review any school's rules to determine their consistency with the intent and content of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and the rules and regulations and may overturn any school rules found not to be in accord.

Source: Laws 1986, LB 318, § 101; Laws 1987, LB 543, § 20; Laws 1995, LB 83, § 42; Laws 2002, LB 241, § 38; Laws 2004, LB 1005, § 33; R.S.Supp.,2006, § 71-3,140; Laws 2007, LB463, § 364.

38-10,103 School or salon; operation; student; apprentice; student instructor; requirements.

In order to maintain a school or salon license in good standing, each school or salon shall operate in accordance with the following:

(1) Every person accepted for enrollment as a standard student or apprentice shall show evidence that he or she attained the age of seventeen years on or before the date of his or her enrollment in a school of cosmetology, a school of esthetics, or an apprentice salon, has completed the equivalent of a high school education, has been accepted for enrollment at a school of cosmetology, a school of esthetics, or an apprentice salon, and has not undertaken any training in cosmetology or esthetics without being enrolled as a student or apprentice;

(2)(a) Every person accepted for enrollment as a special study student or apprentice shall show evidence that he or she:

(i) Has attained the age of seventeen years on or before the date of enrollment in a school of cosmetology, a school of esthetics, or an apprentice salon;

(ii) Has completed the tenth grade;

(iii) Has been accepted for enrollment at a school of cosmetology, a school of esthetics, or an apprentice salon; and

(iv) Is actively continuing his or her formal high school education on a full-time basis as determined by the department.

(b) An applicant for enrollment as a special study student or apprentice shall not have undertaken any training in cosmetology or esthetics without being enrolled as a student or apprentice.

(c) Special study students shall be limited to attending a school of cosmetology, a school of esthetics, or an apprentice salon for no more than eight hours per week during the school year;

(3) Every person accepted for enrollment as a student instructor shall show evidence of current licensure as a cosmetologist or esthetician in Nebraska and completion of formal education equivalent to a United States high school education; and

(4) No school of cosmetology, school of esthetics, or apprentice salon shall accept an individual for enrollment who does not provide evidence of meeting the age and education requirements. Proof of age shall consist of a birth certificate, baptismal certificate, or other equivalent document as determined by the department. Evidence of education shall consist of a high school

diploma, general educational development certificate, transcript from a college or university, or equivalent document as determined by the department.

Source: Laws 1986, LB 318, § 63; Laws 1987, LB 543, § 11; Laws 1995, LB 83, § 31; Laws 2002, LB 241, § 26; Laws 2004, LB 1005, § 28; R.S.Supp.,2006, § 71-3,102; Laws 2007, LB463, § 365.

38-10,104 Licensed school; additional operating requirements.

In order to maintain its license in good standing, each school of cosmetology or school of esthetics shall operate in accordance with the following requirements:

(1) All persons accepted for enrollment as students shall meet the qualifications established in section 38-10,103;

(2) The school shall, at all times the school is in operation, have at least one instructor in the school for each twenty students or fraction thereof enrolled in the school, except (a) that freshman and advanced students shall be taught by different instructors in separate classes and (b) as provided in section 38-10,100;

(3) The school shall not permit any student to render clinical services on members of the public with or without fees until such student has satisfactorily completed the freshman curriculum, except that the board may establish guidelines by which it may approve such practices as part of the freshman curriculum;

(4) No school shall pay direct compensation to any of its students. Student instructors may be paid as determined by the school;

(5) All students and student instructors shall be under the supervision of an instructor at all times, except that students shall be under the direct supervision of an instructor or student instructor at all times when cosmetology or esthetics services are being taught or performed and student instructors may independently supervise students after successfully completing at least one-half of the required instructor program;

(6) Students shall be classified for reporting purposes as follows:

(a) A full-time student shall mean one who regularly trains at least eight hours a day during the normal school week, including normal excused absences as defined in the school rules; and

(b) A part-time student shall mean any student not classified as a full-time student;

(7) Students no longer attending the school shall be classified for reporting purposes as follows:

(a) A graduate shall mean a student who has completed his or her hours and credits, has satisfied all school requirements, and has been granted a certificate or diploma by the school;

(b) A transfer shall mean a student who has transferred to another school in Nebraska or in another state;

(c) A temporary drop shall mean a student who has stopped attending school for a period of less than three months and has given no indication that he or she intends to drop permanently; and

(d) A permanent drop shall mean a student who has stopped attending school for a period of three months or more or one who has stopped attending for a

shorter time but has informed the school in writing of his or her intention to drop permanently;

(8) Once a student has been classified as a permanent drop, the school shall keep a record of his or her hours and credits for a period of two years from the last date upon which the student attended school;

(9) No student shall be permitted by the school to train or work in a school in any manner for more than ten hours a day; and

(10) The school shall not credit a student or student instructor with hours and credits except when such hours and credits were earned in the study or practice of cosmetology or esthetics in accordance with the required curriculum. Hours and credits shall be credited on a daily basis. Once credited, hours or credits cannot be removed or disallowed except by the department upon a finding that the hours or credits have been wrongfully allowed.

Source: Laws 1986, LB 318, § 102; Laws 1987, LB 543, § 21; Laws 1995, LB 83, § 43; Laws 2002, LB 241, § 39; Laws 2004, LB 1005, § 34; R.S.Supp.,2006, § 71-3,141; Laws 2007, LB463, § 366.

38-10,105 Intrastate transfer of cosmetology student; requirements.

A student may transfer from one school of cosmetology in Nebraska to another at any time without penalty if all tuition obligations to the school from which the student is transferring have been honored and if the student secures a letter from the school from which he or she is transferring stating that the student has not left any unfulfilled tuition obligations and stating the number of hours and credits earned by the student at such school, including any hours and credits the student transferred into that school, and the dates of attendance of the student at that school. The student may not begin training at the new school until such conditions have been fulfilled. The school to which the student is transferring shall be entitled to receive from the student's previous school, upon request, credit books and any and all records pertaining to the student.

Source: Laws 1986, LB 318, § 103; R.S.1943, (2003), § 71-3,142; Laws 2007, LB463, § 367.

38-10,106 Interstate transfer of cosmetology student; requirements.

Students may transfer into a school of cosmetology in Nebraska from a school in another state if:

(1) The school in the other state meets all requirements of section 38-10,104; and

(2) The student submits to the department evidence that the school from which he or she is transferring was fully accredited by the appropriate body in that state at the time the student attended.

Source: Laws 1986, LB 318, § 104; Laws 1987, LB 543, § 22; R.S.1943, (2003), § 71-3,143; Laws 2007, LB463, § 368.

38-10,107 Licensed barber; waiver of course requirements; conditions.

Any person holding a current barbering license issued by the appropriate authority in Nebraska shall be entitled to waive one thousand hours upon enrolling in a complete course of cosmetology training in a school of cosmetology. The school shall determine, based upon the knowledge and experience of

the student, which one thousand hours of training shall be waived for the student. The school shall determine, based upon the knowledge and experience of the student, how many credits to waive and which credits are to be waived for the student, except that no fewer than five hundred credits and no more than one thousand credits may be waived for any such student. No hours shall be waived for a licensed barber enrolling in an esthetician training course or program.

Source: Laws 1986, LB 318, § 105; R.S.1943, (2003), § 71-3,144; Laws 2007, LB463, § 369.

Cross References

Barbering license under the Barber Act, see section 71-224.

38-10,108 School of cosmetology; student instructors; limitation.

No school of cosmetology shall at any time enroll more than two student instructors for each full-time instructor actively working in and employed by the school.

Source: Laws 1986, LB 318, § 107; R.S.1943, (2003), § 71-3,146; Laws 2007, LB463, § 370.

38-10,109 School licenses; renewal; requirements; inactive status; revocation; effect.

(1) The procedure for renewing a school license shall be in accordance with section 38-143, except that in addition to all other requirements, the school of cosmetology or school of esthetics shall provide evidence of minimal property damage, bodily injury, and liability insurance coverage and shall receive a satisfactory rating on an accreditation inspection conducted by the department within the six months immediately prior to the date of license renewal.

(2) Any school of cosmetology or school of esthetics which has current accreditation from a national accrediting organization approved by the board shall be considered to satisfy the accreditation requirements outlined in this section, except that successful completion of an operation inspection shall be required. Each school of cosmetology or school of esthetics, whether or not it is nationally accredited, shall satisfy all curriculum and sanitation requirements outlined in the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to maintain its license.

(3) Any school not able to meet the requirements for license renewal shall have its license placed on inactive status until all deficiencies have been corrected, and the school shall not operate in any manner during the time its license is inactive. If the deficiencies are not corrected within six months of the date of license renewal, the license may be revoked unless the department approves an extension of the time limit. The license of a school that has been revoked or expired for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such school may reopen.

Source: Laws 1986, LB 318, § 108; Laws 1995, LB 83, § 45; Laws 2002, LB 241, § 41; Laws 2003, LB 242, § 88; Laws 2004, LB 1005, § 36; R.S.1943, (2003), § 71-3,147; Laws 2007, LB463, § 371.

38-10,110 School license; change of ownership or location; effect.

Each school license issued shall be in effect solely for the owner or owners and premises named thereon and shall expire automatically upon any change of ownership or change in the county of location. An original application for licensure shall be submitted and approved before such school may reopen, except that a school moving to a new location within the same county may do so by filing an application as required by the department, paying the required fee, submitting a new floor plan, and passing an operation inspection. Materials shall be received by the department no less than thirty days prior to the move, and all provisions of this section shall be complied with before the school may begin operation at its new location.

Source: Laws 1986, LB 318, § 109; R.S.1943, (2003), § 71-3,148; Laws 2007, LB463, § 372.

38-10,111 School of cosmetology; satellite classroom; license; requirements; waiver.

Any school of cosmetology may apply to the department for a license to operate a satellite classroom. A satellite classroom shall be subject to all requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and rules and regulations adopted and promulgated under such act, except as follows:

(1) A satellite classroom shall consist of classroom facilities only, and no clinical activities may be performed thereat. A satellite classroom shall contain a minimum of four hundred square feet of floor space;

(2) Students located at a satellite classroom may move to the home school, or vice versa, without being considered transfer students;

(3) Students in a satellite classroom shall be maintained on the same monthly report form as students in the home school; and

(4) No satellite classroom may operate in any manner unless the home school is at the time operating and possesses a full active license, except a satellite classroom may keep different days and hours of operation from those of its home school. The license to operate a satellite classroom shall be revoked or shall expire at the same time as that for its home school.

The department, with the recommendation of the board, may adopt and promulgate rules and regulations to modify or waive any of the operating or student requirements of a school of cosmetology for a satellite classroom if the department determines that such requirements are not applicable or appropriate to a satellite classroom.

Source: Laws 1986, LB 318, § 110; R.S.1943, (2003), § 71-3,149; Laws 2007, LB463, § 373.

38-10,112 School; owner; liability; manager required.

The owner of each school of cosmetology or school of esthetics shall have full responsibility for ensuring that the school is operated in compliance with all applicable laws and rules and regulations and shall be liable for any and all violations occurring in the school. Each school of cosmetology shall be operated by a manager who shall hold an active instructor's license and who shall be present on the premises of the school no less than thirty-five hours each week. Each manager of a school of esthetics shall hold an active esthetics instructor's license and shall be present on the premises of the school no less than thirty-

five hours each week. The manager may have responsibility for the daily operation of the school or satellite classroom and, if so, shall share with the owner liability for any and all violations occurring in the school or satellite classroom.

Source: Laws 1986, LB 318, § 111; Laws 1995, LB 83, § 46; Laws 2002, LB 241, § 42; Laws 2004, LB 1005, § 37; R.S.Supp.,2006, § 71-3,150; Laws 2007, LB463, § 374.

38-10,113 Apprentice salon; license; requirements.

In order to be licensed as an apprentice salon by the department, an applicant shall meet and present to the department evidence of meeting the following requirements:

- (1) The proposed apprentice salon shall hold a current active license as a cosmetology salon or esthetics salon;
- (2) The proposed apprentice salon shall employ or plan to employ one active instructor for each two apprentices or fraction thereof it enrolls; and
- (3) The proposed apprentice salon shall provide an area of not less than one hundred square feet to be used solely for educational purposes.

Source: Laws 1986, LB 318, § 112; Laws 2002, LB 241, § 43; R.S.1943, (2003), § 71-3,151; Laws 2007, LB463, § 375.

38-10,114 Apprentice salon license; application; procedure; additional information.

Any person seeking a license to operate an apprentice salon shall submit a complete application at least thirty days before construction or remodeling of the building proposed for use is scheduled to begin. If no construction or remodeling is planned, the application shall be received at least thirty days before training of apprentices is scheduled to begin. Along with the application the applicant shall submit:

- (1) A detailed floor plan or blueprint of the proposed apprentice salon sufficient to demonstrate compliance with the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;
- (2) Evidence of minimal property damage, bodily injury, and liability insurance coverage;
- (3) A list of the names and qualifications of all instructors employed or proposed to be employed;
- (4) Completed enrollment forms for all apprentices proposed to be enrolled;
- (5) A copy of the rules the salon proposes to use for its apprentices;
- (6) A copy of the apprentice contract;
- (7) A copy of the curriculum proposed to be used;
- (8) A proposed schedule of training for each apprentice; and
- (9) A completed cosmetology education evaluation scale.

Source: Laws 1986, LB 318, § 113; Laws 1997, LB 752, § 171; R.S. 1943, (2003), § 71-3,152; Laws 2007, LB463, § 376.

38-10,115 Apprentice salon license; application; review; procedure; inspection.

Each application for a license to operate an apprentice salon shall be reviewed by the department for compliance with the requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. In the event an application is denied, the applicant shall be informed in writing of the grounds for denial and such denial shall not prejudice further applications by the applicant. In the event an application is approved, the department shall immediately conduct an operation inspection of the proposed apprentice salon. A salon passing the inspection shall be issued a license to operate and may begin training apprentices upon receipt of notification to such effect. A salon failing the operation inspection shall submit, within fifteen days, evidence of corrective action to improve those aspects of operation found deficient. If, after a second inspection to be conducted within thirty days of receipt of evidence, the salon does not receive a satisfactory rating, or if evidence is not submitted within fifteen days, the application may be denied.

Source: Laws 1986, LB 318, § 114; R.S.1943, (2003), § 71-3,153; Laws 2007, LB463, § 377.

38-10,116 Licensed apprentice salon; operating requirements.

In order to maintain and renew its license in good standing, each apprentice salon shall operate in accordance with the following requirements:

(1) The apprentice salon shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(2) The salon shall maintain its salon license in good standing; and

(3) The salon shall operate in accordance with all operating requirements and all student requirements of a school of cosmetology or school of esthetics, except that the department, with the recommendation of the board, may adopt and promulgate rules and regulations to modify or waive any such requirements that are deemed not applicable to an apprentice salon.

Source: Laws 1986, LB 318, § 115; Laws 2002, LB 241, § 44; R.S.1943, (2003), § 71-3,154; Laws 2007, LB463, § 378.

38-10,117 Apprentice salon license; revocation or expiration; effect.

The license of an apprentice salon that has been revoked or expired for any reason may not be reinstated. An original application for licensure shall be submitted and approved before such apprentice salon may accept apprentices for training.

Source: Laws 1986, LB 318, § 117; R.S.1943, (2003), § 71-3,156; Laws 2007, LB463, § 379.

38-10,118 Apprentice salon license; change of ownership or location; effect.

Each apprentice salon license issued shall be in effect solely for the owner or owners and premises named thereon and shall expire automatically upon any change of ownership or location. An original application for licensure shall be submitted and approved before such apprentice salon may accept apprentices for training.

Source: Laws 1986, LB 318, § 118; R.S.1943, (2003), § 71-3,157; Laws 2007, LB463, § 380.

38-10,119 Apprentice salon; owner liability.

The owner of each apprentice salon shall have full responsibility for ensuring that the apprentice salon is operated in compliance with all applicable laws, rules, and regulations and shall be liable for any and all violations occurring in the apprentice salon.

Source: Laws 1986, LB 318, § 119; R.S.1943, (2003), § 71-3,158; Laws 2007, LB463, § 381.

38-10,120 Practice outside licensed establishment; when permitted; home services permit; issuance.

(1) Practice outside a licensed cosmetology establishment shall be permitted in the following circumstances:

(a) A registered cosmetician may apply cosmetics or esthetics products within the scope of such activity permitted a cosmetician in the home of a client or customer; and

(b) A licensed cosmetology salon or esthetics salon may employ licensed cosmetologists and estheticians, according to the licensed activities of the salon, to perform home services by meeting the following requirements:

(i) In order to be issued a home services permit by the department, an applicant shall hold a current active salon license; and

(ii) Any person seeking a home services permit shall submit a complete application at least ten days before the proposed date for beginning home services. Along with the application the applicant shall submit evidence of liability insurance or bonding.

(2) The department shall issue a home services permit to each applicant meeting the requirements set forth in this section.

Source: Laws 1986, LB 318, § 120; Laws 1995, LB 83, § 47; Laws 2002, LB 241, § 46; R.S.1943, (2003), § 71-3,159; Laws 2007, LB463, § 382.

38-10,121 Home services permit; requirements.

In order to maintain in good standing or renew its home services permit, a salon shall at all times operate in accordance with all requirements for operation, maintain its license in good standing, and comply with the following requirements:

(1) Clients receiving home services shall be in emergency circumstances which shall generally be defined as any condition sufficiently immobilizing to prevent the client from leaving his or her residence regularly to conduct routine affairs of daily living such as grocery shopping, visiting friends and relatives, attending social events, attending worship services, and other similar activities. Emergency circumstances may include such conditions or situations as:

(a) Chronic illness or injury leaving the client bedridden or with severely restricted mobility;

(b) Extreme general infirmity such as that associated with the aging process;

(c) Temporary conditions including, but not limited to, immobilizing injury and recuperation from serious illness or surgery;

(d) Having sole responsibility for the care of an invalid dependent requiring constant attention; or

(e) Any other conditions that, in the opinion of the department, meet the general definition of emergency circumstances;

(2) The salon shall determine that each person receiving home services meets the requirements of subdivision (1) of this section and shall:

(a) Complete a client information form supplied by the department before home services may be provided to any client; and

(b) Keep on file the client information forms of all clients it is currently providing with home services or to whom it has provided such services within the past two years;

(3) The salon shall employ or contract with persons licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to provide home services and shall not permit any person to perform any home services under its authority for which he or she is not licensed;

(4) No client shall be left unattended while any chemical service is in progress or while any electrical appliance is in use; and

(5) Each salon providing home services shall post a daily itinerary for each licensee providing home services. The kit for each licensee shall be available for inspection at the salon or at the home of the client receiving services.

Source: Laws 1986, LB 318, § 121; Laws 1995, LB 83, § 48; R.S.1943, (2003), § 71-3,160; Laws 2007, LB463, § 383.

38-10,122 Home services; inspections.

Agents of the department may make operation inspections in the homes of clients if such inspections are limited to the activities, procedures, and materials of the licensee providing home services.

Source: Laws 1986, LB 318, § 122; R.S.1943, (2003), § 71-3,161; Laws 2007, LB463, § 384.

38-10,123 Home services; requirements.

No licensee may perform home services except when employed by or under contract to a salon holding a valid home services permit.

Source: Laws 1986, LB 318, § 123; Laws 1987, LB 543, § 23; Laws 1995, LB 83, § 49; R.S.1943, (2003), § 71-3,162; Laws 2007, LB463, § 385.

38-10,124 Home services permit; renewal; revocation or expiration; effect.

Each home services permit shall be subject to renewal at the same time as the salon license and shall be renewed upon request of the permitholder if the salon is operating its home services in compliance with the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and if the salon license is renewed. No permit that has been revoked or expired may be reinstated or transferred to another owner or location.

Source: Laws 1986, LB 318, § 124; Laws 1995, LB 83, § 50; R.S.1943, (2003), § 71-3,163; Laws 2007, LB463, § 386.

38-10,125 Home services permit; owner; liability.

The owner of each salon holding a home services permit shall have full responsibility for ensuring that the home services are provided in compliance

with all applicable laws and rules and regulations and shall be liable for any violations which occur.

Source: Laws 1986, LB 318, § 125; Laws 1995, LB 83, § 51; R.S.1943, (2003), § 71-3,164; Laws 2007, LB463, § 387.

38-10,126 Nail technology activities; licensure required.

Licensure shall be required before any person may engage in the full, unsupervised practice of nail technology. No person may assume the title of nail technician or nail technology instructor without first being licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. No person, group, company, or other entity shall operate, advertise, or hold himself, herself, or itself out as operating a nail technology establishment in which any of the practices of nail technology are carried out unless such nail technology establishment is licensed under the act. No person shall provide nail technology services unless he or she practices in a currently licensed cosmetology establishment or nail technology establishment.

Source: Laws 1999, LB 68, § 28; R.S.1943, (2003), § 71-3,180; Laws 2007, LB463, § 388.

38-10,127 Nail technology activities; enumerated.

No person, group, company, limited liability company, or other entity shall engage in any of the following acts without being licensed as required by the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, unless specifically excepted by the act:

- (1) Performing or advertising or holding oneself out as performing or qualified to perform any of the practices of nail technology;
- (2) Teaching or advertising or holding oneself out as teaching or qualified to teach any of the practices of nail technology; or
- (3) Operating or advertising or holding oneself out as operating an establishment in which any of the practices of nail technology are performed or taught.

Source: Laws 1999, LB 68, § 29; R.S.1943, (2003), § 71-3,181; Laws 2007, LB463, § 389.

38-10,128 Nail technician or instructor; licensure by examination; requirements.

In order to be licensed as a nail technician or nail technology instructor by examination, an individual shall meet, and present to the department evidence of meeting, the following requirements:

- (1) He or she has attained the age of seventeen years on or before the beginning date of the examination for which application is being made;
- (2) He or she has completed formal education equivalent to a United States high school education;
- (3) He or she possesses sufficient ability to read the English language to permit the applicant to practice in a safe manner, as evidenced by successful completion of the written examination; and
- (4) He or she has graduated from a school of cosmetology or nail technology school providing a nail technology program. Evidence of graduation shall include documentation of the total number of hours of training earned and a

diploma or certificate from the school to the effect that the applicant has complied with the following:

(a) For licensure as a nail technician, the program of studies shall consist of a minimum of not less than one hundred fifty hours and not more than three hundred hours, as set by the board; and

(b) For licensure as a nail technology instructor, the program of studies shall consist of a minimum of not less than one hundred fifty hours and not more than three hundred hours, as set by the board, beyond the program of studies required for licensure as a nail technician and the individual shall be currently licensed as a nail technician in Nebraska as evidenced by possession of a valid Nebraska nail technician license.

The department shall grant a license in the appropriate category to any person meeting the requirements specified in this section.

Source: Laws 1999, LB 68, § 31; R.S.1943, (2003), § 71-3,183; Laws 2007, LB463, § 390.

Cross References

Uniform Credentialing Act, see section 38-101.

38-10,129 Application for nail technology licensure or registration; procedure.

No application for any type of licensure or registration shall be considered complete unless all information requested on the application form has been supplied, all seals and signatures required have been obtained, and all supporting and documentary evidence has been received by the department.

Source: Laws 1999, LB 68, § 32; Laws 2003, LB 242, § 91; R.S.1943, (2003), § 71-3,184; Laws 2007, LB463, § 391.

38-10,130 Licensure; examinations; duties; examinees.

The board shall approve and the department shall cause examinations to be administered as required for licensure in nail technology under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act for the purpose of establishing the possession of minimum competency in the knowledge and skills required on the part of the applicant.

Source: Laws 1999, LB 68, § 34; R.S.1943, (2003), § 71-3,186; Laws 2007, LB463, § 392.

38-10,131 Examinations; requirements; grades.

(1) Examinations approved by the board may be national standardized examinations, but in all cases the examinations shall be related to the knowledge and skills necessary to perform the practices being examined and shall be related to the curricula required to be taught in nail technology programs.

(2) At least two examinations shall be given annually.

(3) In order to successfully complete the examination, an applicant shall obtain an average grade of seventy-five percent on the written examination.

Source: Laws 1999, LB 68, § 35; R.S.1943, (2003), § 71-3,187; Laws 2007, LB463, § 393.

38-10,132 Nail technician or instructor; reciprocity; requirements.

The department may grant a license based on licensure in another jurisdiction to a nail technician or nail technology instructor who presents proof of the following:

- (1) He or she has attained the age of seventeen years;
- (2) He or she has completed formal education equivalent to a United States high school education;
- (3) He or she is currently licensed as a nail technician or its equivalent or as a nail technology instructor or its equivalent in another jurisdiction and he or she has never been disciplined or had his or her license revoked;
- (4) For licensure as a nail technician, evidence of:
 - (a) Completion of a program of nail technician studies consisting of a minimum of not less than one hundred fifty hours and not more than three hundred hours, as set by the board, and successful passage of a written examination. If a written examination was not required for licensure in another jurisdiction, the applicant must take the Nebraska written examination; or
 - (b) At least twelve months of practice as a nail technician following issuance of such license in another jurisdiction; and
- (5) For licensure as a nail technology instructor, evidence of:
 - (a) Completion of a program of studies consisting of a minimum of not less than one hundred fifty hours and not more than three hundred hours, as set by the board, beyond the program of studies required for licensure in another jurisdiction as a nail technician, successful passage of a written examination, and current licensure as a nail technician in Nebraska as evidenced by possessing a valid Nebraska nail technician license. If a written examination was not required for licensure as a nail technology instructor, the applicant must take the Nebraska written examination; or
 - (b) At least twelve months of practice as a nail technology instructor following issuance of such license in another jurisdiction.

Source: Laws 1999, LB 68, § 39; R.S.1943, (2003), § 71-3,191; Laws 2007, LB463, § 394.

38-10,133 Nail technology license or registration; display.

Every person holding a license or registration in nail technology issued by the department under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act shall display it in a conspicuous place in his or her principal place of employment, and every nail technology establishment shall so display the then current licenses and registrations of all practitioners there employed.

Source: Laws 1999, LB 68, § 40; R.S.1943, (2003), § 71-3,192; Laws 2007, LB463, § 395.

38-10,134 Nail technology temporary practitioner; licensure required.

Licensure shall be required before any person may act as a nail technology temporary practitioner, and no person shall assume such title without first being licensed by the department under section 38-10,135.

Source: Laws 1999, LB 68, § 41; R.S.1943, (2003), § 71-3,193; Laws 2007, LB463, § 396.

38-10,135 Nail technology temporary practitioner; application; qualifications.

An applicant for licensure as a nail technology temporary practitioner shall show evidence that his or her completed application for regular licensure has been accepted by the department, that he or she has not failed any portion of the licensure examination, and that he or she has been accepted for work in a licensed nail technology or cosmetology establishment under the supervision of a licensed nail technician or licensed cosmetologist. An individual registered as a temporary practitioner on December 1, 2008, shall be deemed to be licensed as a temporary practitioner under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act on such date. The temporary practitioner may continue to practice under such registration as a license until it would have expired under its terms.

Source: Laws 1999, LB 68, § 42; R.S.1943, (2003), § 71-3,194; Laws 2007, LB463, § 397.

38-10,136 Nail technology temporary practitioner; expiration of license; extension.

A license as a nail technology temporary practitioner shall be granted for a set period of time and cannot be renewed. The license shall expire eight weeks following the date of issuance or upon receipt of examination results, whichever occurs first. The license of a temporary practitioner who fails to take the first scheduled examination shall expire immediately unless the department finds that the temporary practitioner was unable to attend the examination due to an emergency or other valid circumstances. If the department so finds, it may extend the license for an additional eight weeks or until receipt of the examination results, whichever occurs first. No license may be extended in such manner more than once for each temporary practitioner.

Source: Laws 1999, LB 68, § 43; R.S.1943, (2003), § 71-3,195; Laws 2007, LB463, § 398.

38-10,137 Continuing competency; limited exemption.

The department, with the recommendation of the board, may waive continuing competency requirements, in part or in total, for any two-year licensing period when a licensee submits documentation that circumstances beyond his or her control prevented completion of such requirements as provided in section 38-146. In addition to circumstances determined by the department to be beyond the licensee's control pursuant to such section, a nail technology instructor who meets the continuing competency requirements for the nail technology instructor's license shall be exempt from meeting the continuing competency requirements for his or her nail technician license for that biennium.

Source: Laws 1999, LB 68, § 55; Laws 2002, LB 1021, § 53; R.S.1943, (2003), § 71-3,206; Laws 2007, LB463, § 399.

38-10,138 Nail technology establishment; license required.

No person shall operate or profess or attempt to operate a nail technology establishment unless such establishment is licensed by the department under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Prac-

tice Act. The department shall not issue or renew a license for a nail technology establishment until all requirements of the act have been complied with. No person shall engage in any of the practices of nail technology in any location or premises other than a licensed nail technology or cosmetology establishment except as specifically permitted in the act.

Source: Laws 1999, LB 68, § 57; R.S.1943, (2003), § 71-3,208; Laws 2007, LB463, § 400.

38-10,139 Nail technology salon; license; requirements.

In order to be licensed as a nail technology salon by the department, an applicant shall meet, and present to the department evidence of meeting, the following requirements:

(1) The proposed nail technology salon shall be a fixed, permanent structure or part of one;

(2) The proposed nail technology salon shall be physically separated from all other business or residential activities except cosmetology, barbering, manicuring, pedicuring, and retail sales;

(3) The separation required in subdivision (2) of this section shall be by fixed walls or by partitions not less than six feet high;

(4) All areas of the nail technology salon, including those used for manicuring, pedicuring, or retail sales, shall comply with the sanitary requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;

(5) A nail technology salon located in a residence shall be entirely distinct and separate from any living quarters, except that there may be one connecting door to the living portion of the dwelling as an access entrance to the salon for the owner or operator, but such entrance shall not be for the use of the general public;

(6) The entrance into the proposed nail technology salon used by the general public shall lead directly from the outside to the salon, except that a salon located in a commercial building may have its entrance open from a public area such as a foyer, hallway, mall, concourse, or retail sales floor. The requirements of this subdivision do not apply to nail salons located within licensed cosmetology salons;

(7) The proposed nail technology salon shall have at least one hundred fifty square feet of floor space. If more than one practitioner is to be employed in the salon at the same time, the salon shall contain an additional space of at least fifty square feet for each additional practitioner, except that a salon employing a licensee exclusively to perform home services need not provide additional space for such employee;

(8) The proposed nail technology salon shall include toilet facilities unless the salon is located in a commercial building in which public toilet facilities are available that open directly off of a public area;

(9) The proposed nail technology salon shall have handwashing facilities within the salon; and

(10) The proposed nail technology salon shall meet all state or local building code and fire code requirements.

Source: Laws 1999, LB 68, § 59; R.S.1943, (2003), § 71-3,210; Laws 2007, LB463, § 401.

38-10,140 Nail technology salon; license application.

Any person seeking a license to operate a nail technology salon shall submit a completed application at least thirty days before construction or remodeling of the building proposed for use is scheduled to begin. If no construction or remodeling is planned, the application shall be submitted at least thirty days before the proposed opening of the salon for operation. Along with the application the applicant shall submit:

(1) A detailed floor plan or blueprint of the proposed salon sufficient to demonstrate compliance with the requirements of section 38-10,139; and

(2) Evidence of minimal property damage, bodily injury, and liability insurance coverage for the proposed salon.

Source: Laws 1999, LB 68, § 60; R.S.1943, (2003), § 71-3,211; Laws 2007, LB463, § 402.

38-10,141 Nail technology salon; application; review; certificate of consideration; inspection.

Each application for a license to operate a nail technology salon shall be reviewed by the department for compliance with the requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. If an application is denied, the applicant shall be informed in writing of the grounds for denial and such denial shall not prejudice future applications by the applicant. If an application is approved, the department shall issue the applicant a certificate of consideration to operate a salon pending an operation inspection. The department shall conduct an operation inspection of each salon issued a certificate of consideration within six months after the issuance of such certificate. Salons passing the inspection shall be issued a permanent license. Salons failing the inspection shall submit within fifteen days evidence of corrective action taken to improve those aspects of operation found deficient. If evidence is not submitted within fifteen days or if after a second inspection the salon does not receive a satisfactory rating, it shall immediately relinquish its certificate of consideration and cease operation.

Source: Laws 1999, LB 68, § 61; R.S.1943, (2003), § 71-3,212; Laws 2007, LB463, § 403.

38-10,142 Nail technology salon; operating requirements.

In order to maintain its license in good standing, each nail technology salon shall operate in accordance with the following requirements:

(1) The nail technology salon shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(2) The nail technology salon owner or his or her agent shall notify the department at least thirty days prior to any change of ownership, name, or

address, and at least one week prior to closure, except in emergency circumstances as determined by the department;

(3) No nail technology salon shall permit any unlicensed or unregistered person to perform any of the practices of nail technology within its confines or employment;

(4) The nail technology salon shall display a name upon, over, or near the entrance door distinguishing it as a nail technology salon;

(5) The nail technology salon shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the nail technology salon, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas of the nail technology salon, all personnel, and all records requested by the inspector;

(6) The nail technology salon shall display in a conspicuous place the following records:

(a) The current license or certificate of consideration to operate a nail technology salon;

(b) The current licenses or registrations of all persons employed by or working in the nail technology salon; and

(c) The rating sheet from the most recent operation inspection;

(7) At no time shall a nail technology salon employ more employees than permitted by the square footage requirements of the act; and

(8) The nail technology salon shall not knowingly permit its employees or clients to use, consume, serve, or in any manner possess or distribute intoxicating beverages or controlled substances upon its premises.

Source: Laws 1999, LB 68, § 62; R.S.1943, (2003), § 71-3,213; Laws 2007, LB463, § 404.

38-10,143 Nail technology salon license; renewal; insurance.

The procedure for renewing a nail technology salon license shall be in accordance with section 38-143, except that in addition to all other requirements, the salon shall submit evidence of minimal property damage, bodily injury, and liability insurance coverage.

Source: Laws 1999, LB 68, § 63; Laws 2003, LB 242, § 94; R.S.1943, (2003), § 71-3,214; Laws 2007, LB463, § 405.

38-10,144 Nail technology salon license; revoked or expired; effect.

A nail technology salon license that has been revoked or expired for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such salon may reopen for business.

Source: Laws 1999, LB 68, § 64; R.S.1943, (2003), § 71-3,215; Laws 2007, LB463, § 406.

38-10,145 Nail technology salon license; change of ownership or location; effect.

Each nail technology salon license issued shall be in effect solely for the owner or owners and premises named on the license and shall expire automatically upon any change of ownership or location. An original application for

licensure shall be submitted and approved before such salon may reopen for business.

Source: Laws 1999, LB 68, § 65; R.S.1943, (2003), § 71-3,216; Laws 2007, LB463, § 407.

38-10,146 Nail technology salon owner; responsibilities.

The owner of each nail technology salon shall have full responsibility for ensuring that the salon is operated in compliance with all applicable laws, rules, and regulations and shall be liable for any and all violations occurring in the salon.

Source: Laws 1999, LB 68, § 66; R.S.1943, (2003), § 71-3,217; Laws 2007, LB463, § 408.

38-10,147 Nail technology school; license; requirements.

In order to be licensed as a nail technology school by the department, an applicant shall meet, and present to the department evidence of meeting, the following requirements:

- (1) The proposed school shall be a fixed, permanent structure or part of one;
- (2) The proposed school shall have a contracted enrollment of students;
- (3) The proposed school shall contain at least five hundred square feet of floor space and facilities, staff, apparatus, and equipment appropriate to its projected enrollment in accordance with the standards established by rule and regulation; and
- (4) The proposed school shall not have the same entrance as or direct access to a cosmetology salon or nail technology salon.

Source: Laws 1999, LB 68, § 67; R.S.1943, (2003), § 71-3,218; Laws 2007, LB463, § 409.

38-10,148 School of cosmetology; exempt.

A licensed school of cosmetology is not required to be licensed as a nail technology school in order to provide a nail technology program.

Source: Laws 1999, LB 68, § 68; R.S.1943, (2003), § 71-3,219; Laws 2007, LB463, § 410.

38-10,149 Nail technology school; license; application.

Any person seeking a license to operate a nail technology school shall submit a completed application at least thirty days before construction or remodeling of the building proposed for use is scheduled to begin. If no construction or remodeling is planned, the application shall be received at least thirty days before the proposed opening of the school.

Source: Laws 1999, LB 68, § 69; R.S.1943, (2003), § 71-3,220; Laws 2007, LB463, § 411.

38-10,150 Nail technology school; license; application; requirements.

Along with the application, an applicant for a license to operate a nail technology school shall submit:

- (1) A detailed floor plan or blueprint of the proposed school building sufficient to show compliance with the relevant rules and regulations;
- (2) Evidence of minimal property damage, personal injury, and liability insurance coverage for the proposed school;
- (3) A copy of the curriculum to be taught for all courses;
- (4) A copy of the school rules and the student contract;
- (5) A list of the names and credentials of all persons licensed or registered under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to be employed by the school and the name and qualifications of the school manager;
- (6) A completed nail technology education evaluation scale;
- (7) A schedule of proposed hours of operation and class and course scheduling; and
- (8) Any additional information the department may require.

A nail technology school's license shall be valid only for the location named in the application. When a school desires to change locations, it shall comply with section 38-10,158.

Source: Laws 1999, LB 68, § 70; Laws 2003, LB 242, § 95; R.S.1943, (2003), § 71-3,221; Laws 2007, LB463, § 412.

38-10,151 Nail technology school; application; review; inspection.

Each application for a license to operate a nail technology school shall be reviewed by the department for compliance with the requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. If an application is denied, the applicant shall be informed in writing of the grounds for denial and such denial shall not prejudice future applications by the applicant. If an application is accepted, the department shall immediately conduct an accreditation inspection of the proposed school. A school passing the inspection shall be issued a license and may begin operation as soon as the inspection results are received. If the proposed school fails the inspection, the applicant shall submit, within fifteen days, evidence of corrective action taken to improve those aspects of operation found deficient. If, after a second inspection to be conducted within thirty days after receipt of evidence, the school does not receive a satisfactory rating, or if evidence is not received within fifteen days, the application may be denied.

Source: Laws 1999, LB 68, § 71; R.S.1943, (2003), § 71-3,222; Laws 2007, LB463, § 413.

38-10,152 Nail technology school; operating requirements.

In order to maintain its license in good standing, each nail technology school shall operate in accordance with the following requirements:

- (1) The school shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;
- (2) The school owner or owners or their authorized agent shall notify the department at least thirty days prior to any change of ownership, name, or address, and at least sixty days prior to closure, except in emergency circumstances as determined by the department;

(3) No school shall permit anyone other than a nail technology student, nail technology student instructor, or nail technology instructor to perform any of the practices of nail technology within its confines or employ, except that such restriction shall not prevent a school from inviting guest teachers who are not licensed or registered to provide lectures to students or student instructors if the guest lecturer does not perform any of the practices of nail technology;

(4) The school shall display a name upon or near the entrance door designating it as a nail technology school;

(5) The school shall display in a conspicuous place within the clinic area a sign reading: All services in this school are performed by students who are training in nail technology. A notice to such effect shall also appear in all advertising conducted by the school for its clinic services;

(6) The school shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the school without prior notice, and the owner or manager shall assist the inspector by providing access to all areas of the school, all personnel, and all records requested by the inspector;

(7) The school shall display in a conspicuous place the following records:

(a) The current license to operate a nail technology school;

(b) The current licenses or registrations of all persons licensed or registered under the act, except students, employed by or working in the school; and

(c) The rating sheet from the most recent accreditation inspection;

(8) At no time shall a school enroll more students than permitted by the act or the rules and regulations adopted and promulgated under the act;

(9) The school shall not knowingly permit its students, employees, or clients to use, consume, serve, or in any other manner possess or distribute intoxicating beverages or controlled substances upon its premises;

(10) No nail technology instructor or nail technology student instructor shall perform, and no school shall permit such person to perform, any of the practices of nail technology on the public in a nail technology school other than that part of the practical work which pertains directly to the teaching of practical subjects to nail technology students or nail technology student instructors, and complete nail technology services shall not be provided for a client unless done in a demonstration class of theoretical or practical studies;

(11) The school shall maintain space, staff, library, teaching apparatus, and equipment as established by rules and regulations adopted and promulgated under the act;

(12) The school shall keep a daily record of the attendance and clinical performance of each student and student instructor;

(13) The school shall maintain regular class and instructor hours and shall require the minimum curriculum;

(14) The school shall establish and maintain criteria and standards for student grading, evaluation, and performance and shall award a certificate or diploma to a student only upon completing a full course of study in compliance with such standards, except that no student shall receive such certificate or diploma until he or she has satisfied or made an agreement with the school to satisfy all outstanding financial obligations to the school;

(15) The school shall maintain on file the enrollment of each student; and

(16) The school shall print and provide to each student a copy of the school rules, which shall not be inconsistent with the act or with the rules and regulations adopted and promulgated under such act and which shall include policies of the school with respect to tuition, reimbursement, conduct, attendance, grading, earning of hours and credits, demerits, penalties, dismissal, graduation requirements, dress, and other information sufficient to advise the student of the standards he or she will be required to maintain. The department may review any school's rules to determine their consistency with the intent and content of the act and the rules and regulations and may overturn any school rules found not to be in accord.

Source: Laws 1999, LB 68, § 72; R.S.1943, (2003), § 71-3,223; Laws 2007, LB463, § 414.

38-10,153 Nail technology school; students; requirements.

In order to maintain its license in good standing, each nail technology school shall operate in accordance with the following requirements:

(1) Every person accepted for enrollment as a standard student shall meet the following qualifications:

(a) He or she has attained the age of seventeen years on or before the date of his or her enrollment in a nail technology school;

(b) He or she has completed the equivalent of a high school education; and

(c) He or she has not undertaken any training in nail technology in this state after January 1, 2000, without being enrolled as a nail technology student;

(2)(a) Every person accepted for enrollment as a special study nail technology student shall meet the following requirements:

(i) He or she has attained the age of seventeen years on or before the date of enrollment in a nail technology school;

(ii) He or she has completed the tenth grade; and

(iii) He or she is actively continuing his or her formal high school education on a full-time basis as determined by the department.

(b) Special study nail technology students shall be limited to attending a nail technology school for no more than eight hours per week during the school year;

(3) Proof of age shall consist of a birth certificate, baptismal certificate, or other equivalent document as determined by the department. Evidence of education shall consist of a high school diploma, general educational development certificate, transcript from a college or university, or equivalent document as determined by the department. No nail technology school shall accept an individual for enrollment who does not provide evidence of meeting the age and education requirements for registration;

(4) Every person accepted for enrollment as a nail technology student instructor shall show evidence of current licensure as a nail technician in Nebraska and completion of formal education equivalent to a United States high school education;

(5) The school shall, at all times the school is in operation, have at least one nail technology instructor in the school for each twenty students or fraction thereof enrolled in the school;

(6) The school shall not permit any nail technology student to render clinical services on members of the public with or without fees until such student has satisfactorily completed the beginning curriculum, except that the department may establish guidelines by which it may approve such practices as part of the beginning curriculum;

(7) No school shall pay direct compensation to any of its nail technology students. Nail technology student instructors may be paid as determined by the school;

(8) All nail technology students and nail technology student instructors shall be under the supervision of a cosmetology instructor, nail technology instructor, or nail technology student instructor at all times when nail technology services are being taught or performed;

(9) No student shall be permitted by the school to train or work in a school in any manner for more than ten hours a day; and

(10) The school shall not credit a nail technology student or nail technology student instructor with hours except when such hours were earned in the study or practice of nail technology in accordance with the required curriculum. Hours shall be credited on a daily basis. Once credited, hours cannot be removed or disallowed except by the department upon a finding that the hours have been wrongfully allowed.

Source: Laws 1999, LB 68, § 73; Laws 2001, LB 209, § 17; R.S.1943, (2003), § 71-3,224; Laws 2007, LB463, § 415.

38-10,154 Nail technology school; instate transfer of students.

Nail technology students or nail technology student instructors may transfer from one nail technology school in Nebraska to another at any time.

The school to which the student is transferring shall be entitled to receive from the student's previous school, upon request, any and all records pertaining to the student.

Source: Laws 1999, LB 68, § 74; R.S.1943, (2003), § 71-3,225; Laws 2007, LB463, § 416.

38-10,155 Nail technology school; out-of-state transfer of students.

Nail technology students or nail technology student instructors may transfer into a nail technology school in Nebraska from a school in another state if:

(1) The school in the other state meets all requirements of section 38-10,153; and

(2) The student submits to the department evidence that the school from which he or she is transferring was fully accredited by the appropriate body in that state at the time the student attended.

Source: Laws 1999, LB 68, § 75; R.S.1943, (2003), § 71-3,226; Laws 2007, LB463, § 417.

38-10,156 Nail technology school; student instructor limit.

No nail technology school shall at any time enroll more than one nail technology student instructor for each full-time nail technology instructor or cosmetology instructor actively working in and employed by the school.

Source: Laws 1999, LB 68, § 76; R.S.1943, (2003), § 71-3,227; Laws 2007, LB463, § 418.

38-10,157 Nail technology school license; renewal; inactive status.

The procedure for renewing a school license shall be in accordance with section 38-143, except that in addition to all other requirements, the nail technology school shall receive a satisfactory rating on an accreditation inspection conducted by the department within the six months immediately prior to the date of license renewal.

Any nail technology school not able to meet the requirements for license renewal shall have its license placed on inactive status until all deficiencies have been corrected, and the school shall not operate in any manner during the time its license is inactive. If the deficiencies are not corrected within six months after the date of license renewal, the license may be revoked unless the department approves an extension of the time limit. The license of a school that has been revoked or expired for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such school may reopen.

Source: Laws 1999, LB 68, § 77; Laws 2003, LB 242, § 96; R.S.1943, (2003), § 71-3,228; Laws 2007, LB463, § 419.

38-10,158 Nail technology school; change of ownership or location; effect.

Each nail technology school license issued shall be in effect solely for the owner or owners and premises named thereon and shall expire automatically upon any change of ownership or change in the county of location. An original application for licensure shall be submitted and approved before such school may reopen, except that a school moving to a new location within the same county may do so by filing an application as required by the department, paying the required fee, submitting a new floor plan, and passing an operation inspection. Materials shall be received by the department no less than thirty days prior to the move, and all provisions of this section shall be complied with before the school may begin operation at its new location.

Source: Laws 1999, LB 68, § 78; R.S.1943, (2003), § 71-3,229; Laws 2007, LB463, § 420.

38-10,159 Nail technology home services permit.

A licensed nail technology salon may employ licensed nail technicians to perform nail technology home services by meeting the following requirements:

(1) In order to be issued a nail technology home services permit by the department, an applicant shall hold a current active cosmetology salon license or nail technology salon license; and

(2) Any person seeking a nail technology home services permit shall submit a complete application at least ten days before the proposed date for beginning home services. Along with the application the applicant shall submit evidence of application for liability insurance or bonding.

The department shall issue a nail technology home services permit to each applicant meeting the requirements set forth in this section.

Source: Laws 1999, LB 68, § 79; R.S.1943, (2003), § 71-3,230; Laws 2007, LB463, § 421.

38-10,160 Nail technology home services permit; salon operating requirements.

In order to maintain in good standing or renew its nail technology home services permit, a nail technology salon shall at all times operate in accordance with all requirements for operation, maintain its license in good standing, and comply with the following requirements:

(1) Clients receiving nail technology home services shall be in emergency circumstances which shall generally be defined as any condition sufficiently immobilizing to prevent the client from leaving his or her residence regularly to conduct routine affairs of daily living such as grocery shopping, visiting friends and relatives, attending social events, attending worship services, and other similar activities. Emergency circumstances may include such conditions or situations as:

(a) Chronic illness or injury leaving the client bedridden or with severely restricted mobility;

(b) Extreme general infirmity such as that associated with the aging process;

(c) Temporary conditions including, but not limited to, immobilizing injury and recuperation from serious illness or surgery;

(d) Having sole responsibility for the care of an invalid dependent requiring constant attention; or

(e) Any other conditions that, in the opinion of the department, meet the general definition of emergency circumstances;

(2) The nail technology salon shall determine that each person receiving nail technology home services meets the requirements of subdivision (1) of this section and shall:

(a) Complete a client information form supplied by the department before nail technology home services may be provided to any client; and

(b) Keep on file the client information forms of all clients it is currently providing with nail technology home services or to whom it has provided such services within the past two years;

(3) The nail technology salon shall employ or contract with persons licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to provide nail technology home services and shall not permit any person to perform any home services under its authority for which he or she is not licensed;

(4) No client shall be left unattended while any chemical service is in progress or while any electrical appliance is in use; and

(5) Each nail technology salon providing nail technology home services shall post a daily itinerary for each licensee providing home services. The kit for each licensee shall be available for inspection at the salon or at the home of the client receiving services.

Source: Laws 1999, LB 68, § 80; R.S.1943, (2003), § 71-3,231; Laws 2007, LB463, § 422.

38-10,161 Nail technology home services; inspections.

Agents of the department may make operation inspections in the homes of clients if such inspections are limited to the activities, procedures, and materials of the licensee providing nail technology home services.

Source: Laws 1999, LB 68, § 81; R.S.1943, (2003), § 71-3,232; Laws 2007, LB463, § 423.

38-10,162 Nail technology home services; performed by licensee.

No licensee may perform nail technology home services except when employed by or under contract to a nail technology salon holding a valid nail technology home services permit.

Source: Laws 1999, LB 68, § 82; R.S.1943, (2003), § 71-3,233; Laws 2007, LB463, § 424.

38-10,163 Nail technology home services permit; renewal.

Each nail technology home services permit shall be subject to renewal at the same time as the nail technology salon license and shall be renewed upon request of the permitholder if the salon is operating its nail technology home services in compliance with the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and if the salon license is renewed. No permit that has been revoked or expired may be reinstated or transferred to another owner or location.

Source: Laws 1999, LB 68, § 83; R.S.1943, (2003), § 71-3,234; Laws 2007, LB463, § 425.

38-10,164 Nail technology home services permit; owner; responsibility.

The owner of each salon holding a nail technology home services permit shall have full responsibility for ensuring that the nail technology home services are provided in compliance with all applicable laws and rules and regulations and shall be liable for any violations which occur.

Source: Laws 1999, LB 68, § 84; R.S.1943, (2003), § 71-3,235; Laws 2007, LB463, § 426.

38-10,165 Body art; consent required; when; violation; penalty.

No person shall perform body art on or to any person under eighteen years of age without the prior written consent of the parent or court-appointed guardian of such person. The person giving such consent must be present during the procedure. A copy of such consent shall be retained for a period of five years by the person performing such body art. Nothing in this section shall be construed to require the performance of body art on a person under eighteen years of age. Violation of this section is a Class III misdemeanor.

Source: Laws 2004, LB 906, § 34; R.S.Supp.,2006, § 71-3,236; Laws 2007, LB463, § 427.

38-10,166 Body art; act, how construed.

Nothing in the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act shall be construed to authorize a person performing body art to engage in the practice of medicine and surgery.

Source: Laws 2004, LB 906, § 35; R.S.Supp.,2006, § 71-3,237; Laws 2007, LB463, § 428.

38-10,167 Ordinances governing body art; authorized.

The licensure of persons performing body art or operating a body art facility under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act shall not be construed to restrict or prohibit a governing body of a county, city, or village from providing further requirements for performing body art or operating a body art facility within its jurisdiction under ordinances at least as stringent as, or more stringent than, the regulations of the act.

Source: Laws 2004, LB 906, § 36; R.S.Supp.,2006, § 71-3,238; Laws 2007, LB463, § 429.

38-10,168 Fees.

The department shall establish and collect fees for credentialing under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 430.

38-10,169 Department; conduct inspections; types; rules and regulations; manner conducted.

(1) The department shall conduct inspections as required by the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. Two types of inspections shall be conducted which shall be known as operation inspections and accreditation inspections. An operation inspection shall be conducted to ascertain that an establishment or a facility is operating in full compliance with all laws, rules, and regulations. An accreditation inspection shall be conducted to accomplish the purposes of an operation inspection and to ascertain that a school of cosmetology, a nail technology school, a school of esthetics, or an apprentice salon is maintaining academic standards and requirements of a quality consistent with the purpose of the act. All accreditation inspections shall be announced at least two weeks prior to the actual inspection.

(2) The department, with the recommendation of the board, shall adopt and promulgate rules and regulations governing the standards and criteria to be used in the conduct of inspections, the rating system to be used, and the level of achievement necessary to receive a passing grade.

(3) Operation inspections shall be unannounced and shall be conducted during the normal working hours of the establishment or facility.

(4) At the conclusion of the inspection, the owner or manager of the establishment or facility shall receive a copy of the rating form, which form shall be promptly displayed, and a statement of any deficiencies noted.

Source: Laws 1986, LB 318, § 130; Laws 1995, LB 83, § 52; Laws 1999, LB 68, § 85; Laws 2002, LB 241, § 47; Laws 2004, LB 906, § 29; Laws 2004, LB 1005, § 38; R.S.Supp.,2006, § 71-3,169; Laws 2007, LB463, § 431.

38-10,170 Inspection; unsatisfactory rating; effect.

If a cosmetology establishment, a nail technology establishment, or a body art facility receives a rating of unsatisfactory, it shall submit evidence to the department within fifteen days providing proof of corrective action taken. A repeat inspection shall be conducted within sixty days after the original inspection to determine if corrective action has occurred. The department may assess a fee for each repeat inspection required. If the establishment or facility receives an unsatisfactory rating on the repeat inspection, the establishment shall be fined as determined by the department by rule and regulation. If the establishment or facility receives an unsatisfactory rating after the second unsatisfactory inspection or fails to pay the fine assessed within thirty days after notice, the license shall immediately be placed on inactive status pending action by the department, and the establishment or facility may not operate in any manner while its license is inactive.

The owner or manager of an establishment or a facility whose license has been placed on inactive status may appear before the board and the department to show cause why the department should not ask the Attorney General to initiate steps to revoke the license. The department may, as a result of such appearance, grant additional time for corrective action to occur, but the establishment or facility may not operate during such time. The establishment or facility may not return to operation until it has achieved a satisfactory rating on an inspection.

Source: Laws 1986, LB 318, § 131; Laws 1999, LB 68, § 86; Laws 2004, LB 906, § 30; R.S.Supp.,2006, § 71-3,170; Laws 2007, LB463, § 432.

38-10,171 Unprofessional conduct; acts enumerated.

Each of the following may be considered an act of unprofessional conduct when committed by a person licensed or registered under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act:

- (1) Performing any of the practices regulated under the act for which an individual is not licensed or registered or operating an establishment or facility without the appropriate license;
- (2) Obstructing, interfering, or failing to cooperate with an inspection or investigation conducted by an authorized representative of the department when acting in accordance with the act;
- (3) Failing to report to the department a suspected violation of the act;
- (4) Aiding and abetting an individual to practice any of the practices regulated under the act for which he or she is not licensed or registered;
- (5) Engaging in any of the practices regulated under the act for compensation in an unauthorized location;
- (6) Engaging in the practice of any healing art or profession for which a license is required without holding such a license;
- (7) Enrolling a student or an apprentice without obtaining the appropriate documents prior to enrollment;
- (8) Knowingly falsifying any student or apprentice record or report;
- (9) Initiating or continuing home services to a client who does not meet the criteria established in the act;

(10) Knowingly issuing a certificate of completion or diploma to a student or an apprentice who has not completed all requirements for the issuance of such document;

(11) Failing, by a school of cosmetology, a nail technology school, a school of esthetics, or an apprentice salon, to follow its published rules;

(12) Violating, by a school of cosmetology, nail technology school, or school of esthetics, any federal or state law involving the operation of a vocational school or violating any federal or state law involving participation in any federal or state loan or grant program;

(13) Knowingly permitting any person under supervision to violate any law, rule, or regulation or knowingly permitting any establishment or facility under supervision to operate in violation of any law, rule, or regulation;

(14) Receiving two unsatisfactory inspection reports within any sixty-day period;

(15) Engaging in any of the practices regulated under the act while afflicted with any active case of a serious contagious disease, infection, or infestation, as determined by the department, or in any other circumstances when such practice might be harmful to the health or safety of clients;

(16) Violating any rule or regulation relating to the practice of body art; and

(17) Performing body art on or to any person under eighteen years of age (a) without the prior written consent of the parent or court-appointed guardian of such person, (b) without the presence of such parent or guardian during the procedure, or (c) without retaining a copy of such consent for a period of five years.

Source: Laws 1986, LB 318, § 138; Laws 1995, LB 83, § 54; Laws 1999, LB 68, § 88; Laws 2002, LB 241, § 49; Laws 2004, LB 906, § 32; Laws 2004, LB 1005, § 39; R.S.Supp.,2006, § 71-3,177; Laws 2007, LB463, § 433.

ARTICLE 11

DENTISTRY PRACTICE ACT

Cross References

Access to medical records, see section 71-8401 et seq.
Alcoholic liquor, possession and use in practice, see section 53-168.06.
Child abuse, duty to report, see section 28-711.
Clinical privileges, standards and procedures, see section 71-2048.01.
Dental education loan program, Rural Health Systems and Professional Incentive Act, see section 71-5650.
Dental education program in comprehensive dentistry, see section 71-5208.
Division of Public Health of the Department of Health and Human Services, see section 81-3113.
Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.
Good Samaritan provisions, see section 25-21,186.
Health and Human Services Act, see section 81-3110.
Health Care Facility Licensure Act, see section 71-401.
Health Care Professional Credentialing Verification Act, see section 44-7001.
Hospital medical staff committee or hospital utilization committee, members, limitation of liability, see section 25-12,121.
License Suspension Act, see section 43-3301.
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Nebraska Professional Corporation Act, see section 21-2201.
Nebraska Regulation of Health Professions Act, see section 71-6201.
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38-1101 Act, how cited.

Sections 38-1101 to 38-1151 shall be known and may be cited as the Dentistry Practice Act.

Source: Laws 2007, LB463, § 434.

38-1102 Definitions, where found.

For purposes of the Dentistry Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1103 to 38-1113 apply.

Source: Laws 2007, LB463, § 435.

38-1103 Accredited dental hygiene program, defined.

Accredited dental hygiene program means a program that is accredited by the American Dental Association Commission on Dental Accreditation, which is an agency recognized by the United States Department of Education as an accrediting body, that is within a school or college approved by the board, and that requires a dental hygiene curriculum of not less than two academic years.

Source: Laws 2007, LB463, § 436.

38-1104 Accredited school or college of dentistry, defined.

Accredited school or college of dentistry means a school or college approved by the board and accredited by the American Dental Association Commission on Dental Accreditation, which is an agency recognized by the United States Department of Education as an accrediting body.

Source: Laws 2007, LB463, § 437.

38-1105 Analgesia, defined.

Analgesia means the diminution or elimination of pain in the conscious patient.

Source: Laws 2007, LB463, § 438.

38-1106 Board, defined.

Board means the Board of Dentistry.

Source: Laws 2007, LB463, § 439.

38-1107 Dental assistant, defined.

Dental assistant means a person, other than a dental hygienist, employed by a licensed dentist for the purpose of assisting such dentist in the performance of his or her clinical and clinical-related duties.

Source: Laws 1986, LB 267, § 1; Laws 1999, LB 800, § 2; Laws 2001, LB 209, § 4; Laws 2002, LB 1062, § 14; R.S.1943, (2003), § 71-183.02; Laws 2007, LB463, § 440.

38-1108 General anesthesia, defined.

General anesthesia means a controlled state of unconsciousness accompanied by a partial or complete loss of protective reflexes, including the inability to

independently maintain an airway and respond purposefully to physical stimulation or verbal command, and produced by a pharmacologic or nonpharmacologic method or a combination thereof.

Source: Laws 2007, LB463, § 441.

38-1109 General supervision, defined.

General supervision means the directing of the authorized activities of a dental hygienist or dental assistant by a licensed dentist and shall not be construed to require the physical presence of the supervisor when directing such activities.

Source: Laws 2007, LB463, § 442.

38-1110 Indirect supervision, defined.

Indirect supervision means supervision when the licensed dentist authorizes the procedure to be performed by a dental hygienist or dental assistant and the licensed dentist is physically present on the premises when such procedure is being performed by the dental hygienist pursuant to section 38-1132 or the dental assistant.

Source: Laws 2007, LB463, § 443.

38-1111 Inhalation analgesia, defined.

Inhalation analgesia means the administration of nitrous oxide and oxygen to diminish or eliminate pain in a conscious patient.

Source: Laws 2007, LB463, § 444.

38-1112 Parenteral, defined.

Parenteral means administration other than through the digestive tract, including, but not limited to, intravenous administration.

Source: Laws 2007, LB463, § 445.

38-1113 Sedation, defined.

Sedation means a depressed level of consciousness in which the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command is retained and which is produced by a pharmacologic or nonpharmacologic method or a combination thereof.

Source: Laws 2007, LB463, § 446.

38-1114 Board; membership.

The board shall have ten members. The members shall consist of two public members; six licensed dentists, including one official or member of the instructional staff from each accredited school or college of dentistry in this state; and two licensed dental hygienists.

Source: Laws 2007, LB463, § 447.

38-1115 Dentistry practice, defined.

Any person shall be deemed to be practicing dentistry who:

- (1) Performs, or attempts or professes to perform, any dental operation or oral surgery or dental service of any kind, gratuitously or for a salary, fee, money, or other remuneration paid, or to be paid directly or indirectly, to such person or to any other person or agency who is a proprietor of a place where dental operations, oral surgery, or dental services are performed;
- (2) Directly or indirectly, by any means or method, takes impression of the human tooth, teeth, jaws, or performs any phase of any operation incident to the replacement of a part of a tooth;
- (3) Supplies artificial substitutes for the natural teeth or furnishes, supplies, constructs, reproduces, or repairs any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth, except on the written work authorization of a duly licensed and registered dentist;
- (4) Places such appliance or structure in the human mouth, adjusts or attempts or professes to adjust the same, or delivers the same to any person other than the dentist upon whose work authorization the work was performed;
- (5) Professes to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;
- (6) Diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws, or adjacent structure;
- (7) Extracts or attempts to extract human teeth or corrects or attempts to correct malformations of teeth or of the jaws;
- (8) Repairs or fills cavities in the human teeth;
- (9) Diagnoses, makes, and adjusts appliances to artificial casts or malposed teeth for treatment of the malposed teeth in the human mouth, with or without instruction;
- (10) Uses a roentgen or X-ray machine for the purpose of taking dental X-rays or roentgenograms;
- (11) Gives or professes to give interpretations or readings of dental X-rays or roentgenograms;
- (12) Administers an anesthetic of any nature in connection with a dental operation;
- (13) Uses the words dentist, dental surgeon, or oral surgeon, the letters D.D.S. or D.M.D., or any other words, letters, title, or descriptive matter which in any way represents such person as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of the teeth or jaws or adjacent structures; or
- (14) States, professes, or permits to be stated or professed by any means or method whatsoever that he or she can perform or will attempt to perform dental operations or render a diagnosis connected therewith.

Source: Laws 1927, c. 167, § 82, p. 475; C.S.1929, § 71-1201; R.S.1943, § 71-183; Laws 1951, c. 226, § 1, p. 821; Laws 1951, c. 227, § 1, p. 825; Laws 1971, LB 587, § 10; R.S.1943, (2003), § 71-183; Laws 2007, LB463, § 448.

Cross References

Alcoholic liquor, possession and use in practice, see section 53-168.06.

Dental education loan program, Rural Health Systems and Professional Incentive Act, see section 71-5650.

38-1116 Dentistry practice; exceptions.

The Dentistry Practice Act shall not apply to:

- (1) The practice of his or her profession by a physician or surgeon licensed as such under the laws of this state unless he or she practices dentistry as a specialty;
- (2) The giving by a qualified anesthetist or registered nurse of an anesthetic for a dental operation under the direct supervision of a licensed dentist or physician;
- (3) The practice of dentistry by graduate dentists or dental surgeons who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;
- (4) The practice of dentistry by a licensed dentist of other states or countries at meetings of the Nebraska Dental Association or components thereof, or other like dental organizations approved by the Board of Dentistry, while appearing as clinicians;
- (5) The filling of work authorizations of a licensed and registered dentist as provided in this subdivision by any person or persons, association, corporation, or other entity for the construction, reproduction, or repair of prosthetic dentures, bridges, plates, or appliances to be used or worn as substitutes for natural teeth if such person or persons, association, corporation, or other entity does not solicit or advertise, directly or indirectly by mail, card, newspaper, pamphlet, radio, or otherwise, to the general public to construct, reproduce, or repair prosthetic dentures, bridges, plates, or other appliances to be used or worn as substitutes for natural teeth;
- (6) The use of roentgen or X-ray machines or other rays for making radiograms or similar records of dental or oral tissues under the supervision of a licensed dentist or physician if such service is not advertised by any name whatever as an aid or inducement to secure dental patronage, and no person shall advertise that he or she has, leases, owns, or operates a roentgen or X-ray machine for the purpose of making dental radiograms of the human teeth or tissues or the oral cavity or administering treatment thereto for any disease thereof;
- (7) The performance by a licensed dental hygienist, under the supervision of a licensed dentist, of the oral prophylaxis procedure which shall include the scaling and polishing of teeth and such additional procedures as are prescribed in accordance with rules and regulations adopted by the department;
- (8) The performance by a dental assistant, under the supervision of a licensed dentist, of duties prescribed in accordance with rules and regulations adopted by the department;
- (9) The performance by a licensed dental hygienist, by virtue of training and professional ability, under the supervision of a licensed dentist, of taking dental roentgenograms. Any other person is hereby authorized, under the supervision of a licensed dentist, to take dental roentgenograms but shall not be authorized to do so until he or she has satisfactorily completed a course in dental radiology recommended by the board and approved by the department;
- (10) Students of dentistry who practice dentistry upon patients in clinics in the regular course of instruction at an accredited school or college of dentistry;

(11) Licensed physicians and surgeons who extract teeth or treat diseases of the oral cavity, gums, teeth, or maxillary bones as an incident to the general practice of their profession; or

(12) Dental hygiene students who practice dental hygiene upon patients in clinics in the regular course of instruction at an accredited dental hygiene program. Such dental hygiene students are also not engaged in the unauthorized practice of dental hygiene.

Source: Laws 1951, c. 226, § 2, p. 823; Laws 1951, c. 227, § 2, p. 827; Laws 1971, LB 587, § 11; Laws 1984, LB 470, § 5; Laws 1991, LB 2, § 10; Laws 1996, LB 1044, § 407; Laws 1999, LB 800, § 1; Laws 1999, LB 828, § 68; Laws 2005, LB 89, § 1; R.S.Supp.,2006, § 71-183.01; Laws 2007, LB463, § 449.

38-1117 Dentistry; license; requirements.

(1) Every applicant for a license to practice dentistry shall (a) present proof of graduation with a Doctor of Dental Surgery degree or a Doctor of Dental Medicine degree from an accredited school or college of dentistry, (b) pass an examination approved by the Board of Dentistry which shall consist of the National Board Dental Examinations, both Part I and Part II, as constructed and administered by the American Dental Association Joint Commission on National Dental Examinations, (c) demonstrate the applicant's skill in clinical dentistry by passing the practical examination administered by the Central Regional Dental Testing Service or any other regional or state practical examination that the Board of Dentistry determines to be comparable to such practical examination, (d) pass a jurisprudence examination approved by the board that is based on the Nebraska statutes, rules, and regulations governing the practice of dentistry and dental hygiene, and (e) demonstrate continuing clinical competency as a condition of licensure if required by the board.

(2) Upon completion of these requirements, the department, with the recommendation of the board, shall issue the applicant a license to practice dentistry.

Source: Laws 1927, c. 167, § 84, p. 476; Laws 1929, c. 160, § 1, p. 555; C.S.1929, § 71-1203; R.S.1943, § 71-185; Laws 1953, c. 238, § 4, p. 826; Laws 1957, c. 292, § 2, p. 1049; Laws 1984, LB 470, § 6; Laws 1985, LB 250, § 12; Laws 1988, LB 1100, § 30; Laws 1999, LB 828, § 69; Laws 2002, LB 1021, § 17; Laws 2003, LB 242, § 34; R.S.1943, (2003), § 71-185; Laws 2007, LB463, § 450.

Cross References

Uniform Credentialing Act, see section 38-101.

38-1118 Dental hygienists; application for license; examination; qualifications; license.

(1) Every applicant for a license to practice dental hygiene shall (a) present proof of graduation from an accredited dental hygiene program, (b) pass an examination approved by the Board of Dentistry which shall consist of the National Board Dental Hygiene Examination as constructed and administered by the American Dental Association Joint Commission on National Dental Examinations, (c) demonstrate the applicant's skill in clinical dental hygiene by passing the practical examination administered by the Central Regional Dental

Testing Service or any other regional or state practical examination that the Board of Dentistry determines to be comparable to such practical examination, (d) pass a jurisprudence examination approved by the board that is based on the Nebraska statutes, rules, and regulations governing the practice of dentistry and dental hygiene, and (e) demonstrate continuing clinical competency as a condition of licensure if required by the board.

(2) Upon completion of these requirements, the department, with the recommendation of the board, shall issue the applicant a license to practice dental hygiene.

Source: Laws 1949, c. 200, § 1, p. 582; Laws 1953, c. 238, § 5, p. 827; Laws 1973, LB 589, § 1; Laws 1986, LB 926, § 42; Laws 1988, LB 1100, § 32; Laws 1999, LB 828, § 73; Laws 2001, LB 209, § 5; R.S.1943, (2003), § 71-193.04; Laws 2007, LB463, § 451.

Cross References

Uniform Credentialing Act, see section 38-101.

38-1119 Reexamination; requirements.

Any person who applies for a license to practice dentistry or dental hygiene and who has failed on two occasions to pass any part of the practical examination shall be required to complete a course in clinical dentistry or dental hygiene approved by the board before the department may consider the results of a third examination as a valid qualification for a license to practice dentistry or dental hygiene in the State of Nebraska.

Source: Laws 2007, LB463, § 452.

38-1120 Dentist; reciprocity; requirements.

Every applicant for a license to practice dentistry based on a license in another state or territory of the United States or the District of Columbia shall meet the standards set by the board pursuant to section 38-126 and shall have been actively engaged in the practice of dentistry for at least three years, one of which must be within the three years immediately preceding the application, under a license in another state or territory of the United States or the District of Columbia. Practice in an accredited school or college of dentistry for the purpose of completing a postgraduate or residency program in dentistry also serves as active practice toward meeting this requirement.

Source: Laws 2007, LB463, § 453.

38-1121 Dental hygienist; reciprocity; requirements.

Every applicant for a license to practice dental hygiene based on a license in another state or territory of the United States or the District of Columbia shall meet the standards set by the board pursuant to section 38-126 and shall have been actively engaged in the practice of dental hygiene for at least three years, one of which must be within the three years immediately preceding the application, under a license in another state or territory of the United States or the District of Columbia. Practice in an accredited dental hygiene program for the purpose of completing a postgraduate or residency program in dental hygiene also serves as active practice toward meeting this requirement.

Source: Laws 2007, LB463, § 454.

38-1122 Dental locum tenens; issuance; requirements; term.

When circumstances indicate a need for the issuance of a dental locum tenens in the State of Nebraska, the department, with the recommendation of the board, may issue a dental locum tenens to an individual who holds an active license to practice dentistry in another state if the requirements regarding education and examination for licensure in that state are equal to or exceed the requirements regarding education and examination for licensure in Nebraska. A dental locum tenens may be issued for a period not to exceed ninety days in any twelve-month period.

Source: Laws 2007, LB463, § 455.

38-1123 Dentist; temporary license; requirements; term; renewal.

(1) The department, with the recommendation of the board, shall issue a temporary license to any person who (a) has met the requirements for a license to practice dentistry as set forth in section 38-1117, (b) is enrolled in an accredited school or college of dentistry for the purpose of completing a postgraduate or residency program in dentistry, and (c) is licensed in another jurisdiction under conditions which the board finds equivalent to the requirements of the State of Nebraska for obtaining a license to practice dentistry.

(2) Any person who desires a temporary license shall make application to the department. Such application shall be accompanied by the required fee.

(3) The temporary license shall be issued for a period of one year and, upon application to the department, renewed annually without the licensee having to pay a renewal fee.

(4) The temporary licensee shall be entitled to practice dentistry, including prescribing legend drugs and controlled substances, only under the auspices of the postgraduate or residency program in which he or she is enrolled.

Source: Laws 1988, LB 1100, § 31; Laws 1999, LB 828, § 71; Laws 2003, LB 242, § 35; R.S.1943, (2003), § 71-185.02; Laws 2007, LB463, § 456.

38-1124 Faculty license; requirements; renewal; continuing competency.

(1) The department, with the recommendation of the board, shall issue a faculty license to any person who meets the requirements of subsection (3) or (4) of this section. A faculty licensee may practice dentistry only as a faculty member at an accredited school or college of dentistry in the State of Nebraska and may teach dentistry, conduct research, and participate in an institutionally administered faculty practice only at such accredited school or college of dentistry. A faculty licensee eligible for licensure under subsection (4) of this section shall limit his or her practice to the clinical discipline in which he or she has received postgraduate education at an accredited school or college of dentistry.

(2) Any person who desires a faculty license shall make a written application to the department. The application shall include information regarding the applicant's professional qualifications, experience, and licensure. The application shall be accompanied by a copy of the applicant's dental degree, any other degrees or certificates for postgraduate education of the applicant, the required fee, and certification from the dean of an accredited school or college of

dentistry in the State of Nebraska at which the applicant has a contract to be employed as a full-time faculty member.

(3) An individual who graduated from an accredited school or college of dentistry shall be eligible for a faculty license if he or she:

(a) Has or had a license to practice dentistry within the past five years in some other state in the United States or a Canadian province;

(b) Has a contract to be employed as a full-time faculty member at an accredited school or college of dentistry in the State of Nebraska;

(c) Passes a jurisprudence examination administered by the board; and

(d) Agrees to demonstrate continuing clinical competency as a condition of licensure if required by the board.

(4) An individual who graduated from a nonaccredited school or college of dentistry shall be eligible for a faculty license if he or she:

(a) Has completed at least two years of postgraduate education at an accredited school or college of dentistry and received a certificate or degree from such school or college of dentistry;

(b) Has a contract to be employed as a full-time faculty member at an accredited school or college of dentistry in the State of Nebraska;

(c) Passes a jurisprudence examination administered by the board;

(d) Agrees to demonstrate continuing clinical competency as a condition of licensure if required by the board; and

(e) Has passed Part I and Part II of the National Board Dental Examinations or its equivalent as determined by the Board of Dentistry.

(5) A faculty license shall expire at the same time and be subject to the same renewal requirements as a regular dental license, except that such license shall remain valid and may only be renewed if:

(a) The faculty licensee remains employed as a full-time faculty member of an accredited school or college of dentistry in the State of Nebraska; and

(b) The faculty licensee demonstrates continuing clinical competency if required by the board.

Source: Laws 2002, LB 1062, § 16; Laws 2003, LB 242, § 36; Laws 2004, LB 1005, § 11; R.S.Supp.,2006, § 71-185.03; Laws 2007, LB463, § 457.

38-1125 Practitioner's facility; requirements; inspections; rules and regulations.

(1) For purposes of this section, practitioner's facility means a facility in which a licensed dentist practices his or her profession, other than a facility licensed pursuant to the Health Care Facility Licensure Act.

(2) The department shall adopt and promulgate rules and regulations which are approved by the State Board of Health for practitioners' facilities in order to insure that such facilities are safe and sanitary and use precautions necessary to prevent the creation and spread of infectious and contagious diseases. Based upon a formal complaint, the department or its employees may inspect any practitioner's facility in this state to insure compliance with such regulations.

(3) Within thirty days after an inspection of a practitioner's facility which the department or its employees find to be in violation of its rules and regulations, the department shall notify the Board of Dentistry of its findings in writing. The Attorney General shall file a petition for disciplinary action pursuant to section 38-186 if the violation of the rules and regulations is not corrected within thirty days after the licensee has received notice of such violation. The department shall send a written progress report of its inspection and actions taken to the board.

(4) It shall be considered unprofessional conduct for a licensee to practice in a facility that does not comply with the rules and regulations regarding sanitary practitioners' facilities.

Source: Laws 1984, LB 470, § 1; Laws 1996, LB 1044, § 408; Laws 1999, LB 828, § 70; Laws 2000, LB 819, § 85; R.S.1943, (2003), § 71-185.01; Laws 2007, LB463, § 458.

Cross References

Alcoholic liquor, possession and use in practice, see section 53-168.06.
Health Care Facility Licensure Act, see section 71-401.

38-1126 Fees.

The department shall establish and collect fees for credentialing under the Dentistry Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 459.

38-1127 Dentists; name of associate; duty to display.

Every person who owns, operates, or controls a dental office in which anyone other than himself or herself is practicing dentistry, shall display the name of such person or persons in a conspicuous place at the public entrance to such office.

Source: Laws 1927, c. 167, § 88, p. 478; C.S.1929, § 71-1207; R.S.1943, (2003), § 71-189; Laws 2007, LB463, § 460.

38-1128 Dentist; unlicensed associate prohibited; coercion prohibited.

(1) No person owning, operating, or conducting any place where dental work of any kind is done or contracted for shall employ or permit any unlicensed dentist to practice dentistry in such place.

(2) No person shall coerce or attempt to coerce a licensed dentist to practice dentistry in any manner contrary to the standards of acceptable and prevailing practice of the dental profession. Any dentist subjected to such coercion or attempted coercion has a cause of action against the person and may recover his or her damages and reasonable attorney's fees.

(3) Violation of this section by a health care professional regulated pursuant to the Uniform Credentialing Act may be considered evidence of an act of unprofessional conduct.

Source: Laws 1927, c. 167, § 89, p. 478; C.S.1929, § 71-1208; R.S.1943, § 71-190; Laws 2004, LB 1005, § 12; R.S.Supp.,2006, § 71-190; Laws 2007, LB463, § 461.

38-1129 Dentist; use of own name required; exception.

No person shall operate any place in which dentistry is practiced under any other name than his or her own or display in connection with his or her practice or on any advertising matter any other than his or her own name. Two or more licensed dentists who are associated in the practice may use all of their names. A widow, widower, or heir of a deceased dentist may operate such office under the name of the deceased dentist for a period of not longer than one year from the date of death.

Source: Laws 1927, c. 167, § 90, p. 479; C.S.1929, § 71-1209; R.S.1943, § 71-191; Laws 1957, c. 292, § 3, p. 1050; R.S.1943, (2003), § 71-191; Laws 2007, LB463, § 462.

38-1130 Licensed dental hygienist; functions authorized; when.

(1) Except as otherwise provided in this section, a licensed dental hygienist shall perform the dental hygiene functions listed in section 38-1131 only when authorized to do so by a licensed dentist who shall be responsible for the total oral health care of the patient.

(2) The department may authorize a licensed dental hygienist to perform the following functions in the conduct of public health-related services in a public health setting or in a health care or related facility: Preliminary charting and screening examinations; oral health education, including workshops and in-service training sessions on dental health; and all of the duties that any dental assistant is authorized to perform.

(3)(a) The department may authorize a licensed dental hygienist with three thousand hours of clinical experience in at least four of the preceding five calendar years to perform the following functions in the conduct of public health-related services in a public health setting or in a health care or related facility: Oral prophylaxis to healthy children who do not require antibiotic premedication; pulp vitality testing; and preventive measures, including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease.

(b) Authorization shall be granted by the department under this subsection upon (i) filing an application with the department, (ii) providing evidence of current licensure and professional liability insurance coverage, and (iii) providing evidence of clinical experience as required under subdivision (a) of this subsection. Authorization may be limited by the department as necessary to protect the public health and safety upon good cause shown and may be renewed in connection with renewal of the dental hygienist's license.

(c) A licensed dental hygienist performing dental hygiene functions as authorized under this subsection shall (i) report authorized functions performed by him or her to the department and (ii) advise the patient or recipient of services or his or her authorized representative that such services are preventive in nature and do not constitute a comprehensive dental diagnosis and care.

(4) For purposes of this section:

(a) Health care or related facility means a hospital, a nursing facility, an assisted-living facility, a correctional facility, a tribal clinic, or a school-based preventive health program; and

(b) Public health setting means a federal, state, or local public health department or clinic, community health center, rural health clinic, or other

similar program or agency that serves primarily public health care program recipients.

Source: Laws 1986, LB 572, § 2; Laws 1996, LB 1044, § 415; Laws 1999, LB 800, § 5; R.S.1943, (2003), § 71-193.15; Laws 2007, LB247, § 24; Laws 2007, LB296, § 328; Laws 2007, LB463, § 463.

38-1131 Licensed dental hygienist; procedures and functions authorized; enumerated.

When authorized by and under the general supervision of a licensed dentist, a licensed dental hygienist may perform the following intra and extra oral procedures and functions:

- (1) Oral prophylaxis, periodontal scaling, and root planing which includes supragingival and subgingival debridement;
- (2) Polish all exposed tooth surfaces, including restorations;
- (3) Conduct and assess preliminary charting, probing, screening examinations, and indexing of dental and periodontal disease, with referral, when appropriate, for a dental diagnosis by a licensed dentist;
- (4) Brush biopsies;
- (5) Pulp vitality testing;
- (6) Gingival curettage;
- (7) Removal of sutures;
- (8) Preventive measures, including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease;
- (9) Impressions for study casts;
- (10) Application of topical and subgingival agents;
- (11) Radiographic exposures;
- (12) Oral health education, including conducting workshops and inservice training sessions on dental health;
- (13) Application or administration of antimicrobial rinses, fluorides, and other anticariogenic agents; and
- (14) All of the duties that any dental assistant is authorized to perform.

Source: Laws 1986, LB 572, § 3; Laws 1999, LB 800, § 7; R.S.1943, (2003), § 71-193.17; Laws 2007, LB247, § 25; Laws 2007, LB463, § 464.

38-1132 Licensed dental hygienist; monitor analgesia; administer local anesthesia; when.

(1) A licensed dental hygienist may monitor nitrous oxide analgesia under the indirect supervision of a licensed dentist.

(2) A licensed dental hygienist may be approved by the department, with the recommendation of the board, to administer local anesthesia under the indirect supervision of a licensed dentist. The board may prescribe by rule and regulation: The necessary education and preparation, which shall include, but not be limited to, instruction in the areas of head and neck anatomy, osteology, physiology, pharmacology, medical emergencies, and clinical techniques; the necessary clinical experience; and the necessary examination for purposes of

determining the competence of licensed dental hygienists to administer local anesthesia. The board may approve successful completion after July 1, 1994, of a course of instruction to determine competence to administer local anesthesia. The course of instruction must be at an accredited school or college of dentistry or an accredited dental hygiene program. The course of instruction must be taught by a faculty member or members of the school or college of dentistry or dental hygiene program presenting the course. The board may approve for purposes of this subsection a course of instruction if such course includes:

(a) At least twelve clock hours of classroom lecture, including instruction in (i) medical history evaluation procedures, (ii) anatomy of the head, neck, and oral cavity as it relates to administering local anesthetic agents, (iii) pharmacology of local anesthetic agents, vasoconstrictor, and preservatives, including physiologic actions, types of anesthetics, and maximum dose per weight, (iv) systemic conditions which influence selection and administration of anesthetic agents, (v) signs and symptoms of reactions to local anesthetic agents, including monitoring of vital signs, (vi) management of reactions to or complications associated with the administration of local anesthetic agents, (vii) selection and preparation of the armamentaria for administering various local anesthetic agents, and (viii) methods of administering local anesthetic agents;

(b) At least twelve clock hours of clinical instruction during which time at least three injections of each of the anterior, middle and posterior superior alveolar, naso and greater palatine, inferior alveolar, lingual, mental, long buccal, and infiltration injections are administered; and

(c) Procedures, which shall include an examination, for purposes of determining whether the hygienist has acquired the necessary knowledge and proficiency to administer local anesthetic agents.

Source: Laws 1986, LB 572, § 4; Laws 1995, LB 449, § 1; Laws 1996, LB 1044, § 416; Laws 1999, LB 800, § 8; Laws 1999, LB 828, § 75; Laws 2003, LB 242, § 37; R.S.1943, (2003), § 71-193.18; Laws 2007, LB296, § 329; Laws 2007, LB463, § 465.

38-1133 Department; additional procedures; rules and regulations.

The department, with the recommendation of the board, may, by rule and regulation, prescribe functions, procedures, and services in addition to those in section 38-1131 which may be performed by a licensed dental hygienist under the supervision of a licensed dentist when such additional procedures are educational or related to the oral prophylaxis and intended to attain or maintain optimal oral health.

Source: Laws 1986, LB 572, § 6; Laws 1996, LB 1044, § 417; R.S.1943, (2003), § 71-193.19; Laws 2007, LB296, § 330; Laws 2007, LB463, § 466.

38-1134 Department; employment facilities; rules and regulations.

The department, with the recommendation of the board, may adopt and promulgate rules and regulations providing for employment or work-setting facilities required for the provision of dental services by a licensed dental hygienist.

Source: Laws 1986, LB 572, § 7; Laws 1996, LB 1044, § 418; Laws 1999, LB 828, § 76; R.S.1943, (2003), § 71-193.20; Laws 2007, LB463, § 467.

38-1135 Dental assistants; employment; duties performed.

Any licensed dentist, public institution, or school may employ dental assistants in addition to licensed dental hygienists. Such dental assistants, under the supervision of a licensed dentist, may perform such duties as are prescribed in accordance with rules and regulations adopted and promulgated by the department, with the recommendation of the board.

Source: Laws 1971, LB 587, § 13; Laws 1986, LB 572, § 1; Laws 1996, LB 1044, § 413; Laws 1999, LB 800, § 3; R.S.1943, (2003), § 71-193.13; Laws 2007, LB296, § 327; Laws 2007, LB463, § 468.

38-1136 Dental hygienists; dental assistants; performance of duties; rules and regulations.

The department, with the recommendation of the board, shall adopt and promulgate rules and regulations governing the performance of duties by licensed dental hygienists and dental assistants.

Source: Laws 1971, LB 587, § 14; Laws 1996, LB 1044, § 414; Laws 1999, LB 800, § 4; Laws 1999, LB 828, § 74; R.S.1943, (2003), § 71-193.14; Laws 2007, LB463, § 469.

38-1137 Administration of anesthesia, sedation, or analgesia; permit required; exception.

A dentist licensed in this state shall not administer general anesthesia, parenteral sedation, or inhalation analgesia in the practice of dentistry unless he or she has been issued a permit to administer general anesthesia, parenteral sedation, or inhalation analgesia pursuant to the Dentistry Practice Act.

Source: Laws 1986, LB 438, § 3; R.S.1943, (2003), § 71-193.23; Laws 2007, LB463, § 470.

38-1138 Violations; effect.

A violation of provisions of the Dentistry Practice Act relating to the administration of general anesthesia, parenteral sedation, or inhalation analgesia may result in action against the dentist's permit, license, or both pursuant to section 38-196.

Source: Laws 1986, LB 438, § 5; Laws 1988, LB 1100, § 33; R.S.1943, (2003), § 71-193.25; Laws 2007, LB463, § 471.

38-1139 Permit to administer general anesthesia; issuance; conditions.

The department, with the recommendation of the board, shall issue a permit to a Nebraska-licensed dentist to administer general anesthesia on an outpatient basis to dental patients if the dentist:

- (1) Maintains a properly equipped facility for the administration of general anesthesia as determined by the board;
- (2) Is currently certified in basic life-support skills or the equivalent thereof;
- (3) Has successfully completed an onsite evaluation covering the areas of physical evaluation, monitoring, sedation, and emergency medicine; and
- (4) Meets at least one of the following criteria:

(a) Has completed one year of advanced training in anesthesiology and related academic subjects beyond the dental school level in an approved training program;

(b) Is a diplomate of the American Board of Oral and Maxillofacial Surgery;

(c) Has completed the educational requirements for eligibility for examination by the American Board of Oral and Maxillofacial Surgery; or

(d) Is a fellow of the American Dental Society of Anesthesiology.

A dentist who has been issued a permit pursuant to this section may administer parenteral sedation or inhalation analgesia.

Source: Laws 1986, LB 438, § 6; R.S.1943, (2003), § 71-193.26; Laws 2007, LB463, § 472.

38-1140 Permit to administer parenteral sedation; issuance; conditions.

The department, with the recommendation of the board, shall issue a permit to a Nebraska-licensed dentist to administer parenteral sedation on an outpatient basis to dental patients if the dentist:

(1) Maintains a properly equipped facility for the administration of parenteral sedation as determined by the board;

(2) Is currently certified in basic life-support skills or the equivalent thereof;

(3) Has successfully completed an onsite evaluation covering the areas of physical evaluation, monitoring, sedation, and emergency medicine; and

(4) Is certified as competent in the administration of parenteral sedation and in handling all related emergencies by a university, teaching hospital, or other facility approved by the board or by completing the curriculum of an accredited school or college of dentistry. Such certification shall specify the type, the number of hours, and the length of formal training completed at such school or college of dentistry. The formal training shall include, but not be limited to, forty didactic hours and twenty patient contact hours, including documentation of a minimum of fifteen supervised parenteral sedation cases.

A dentist who has been issued a permit pursuant to this section may administer inhalation analgesia.

Source: Laws 1986, LB 438, § 7; R.S.1943, (2003), § 71-193.27; Laws 2007, LB463, § 473.

38-1141 Permit to administer inhalation analgesia; issuance; conditions.

The department, with the recommendation of the board, shall issue a permit to a Nebraska-licensed dentist to administer inhalation analgesia on an outpatient basis to dental patients if the dentist:

(1) Maintains a properly equipped facility for the administration of inhalation analgesia as determined by the board;

(2) Is currently certified in basic life-support skills or the equivalent thereof; and

(3) Has completed an approved two-day training course or equivalent training which may be acquired while studying at an accredited school or college of dentistry.

Source: Laws 1986, LB 438, § 9; R.S.1943, (2003), § 71-193.29; Laws 2007, LB463, § 474.

38-1142 Presence of licensed dental hygienist or dental assistant required.

General anesthesia and parenteral sedation shall not be administered by a dentist without the presence and assistance of a licensed dental hygienist or a dental assistant.

Source: Laws 1986, LB 438, § 8; Laws 1999, LB 800, § 9; R.S.1943, (2003), § 71-193.28; Laws 2007, LB463, § 475.

38-1143 Assistant; certification required.

Any person who assists a dentist in the administration of general anesthesia, parenteral sedation, or inhalation analgesia shall be currently certified in basic life-support skills or the equivalent thereof.

Source: Laws 1986, LB 438, § 13; R.S.1943, (2003), § 71-193.33; Laws 2007, LB463, § 476.

38-1144 Administration of anesthesia, sedation, or analgesia; limitation.

Nothing in the Dentistry Practice Act shall be construed to allow a dentist to administer to himself or herself, or to any person other than in the course of the practice of dentistry, any drug or agent used for general anesthesia, parenteral sedation, or inhalation analgesia.

Source: Laws 1986, LB 438, § 10; R.S.1943, (2003), § 71-193.30; Laws 2007, LB463, § 477.

38-1145 Permits; term; department; adopt rules and regulations.

(1) Permits issued for the administration of general anesthesia, parenteral sedation, or inhalation analgesia pursuant to the Dentistry Practice Act shall be valid until March 1 of the next odd-numbered year after issuance, except that permits issued or renewed prior to March 1, 2007, shall expire March 1, 2009.

(2) The department, with the recommendation of the board, shall adopt and promulgate rules and regulations to define criteria for the reevaluation of credentials, facilities, equipment, dental hygienists, and dental assistants and procedures of a previously qualified dentist to renew his or her permit for each subsequent renewal.

Source: Laws 1986, LB 438, § 11; Laws 1988, LB 1100, § 34; Laws 1999, LB 800, § 10; Laws 2003, LB 242, § 38; R.S.1943, (2003), § 71-193.31; Laws 2007, LB463, § 478.

38-1146 Inspection of practice location.

All practice locations of a dentist applying for a permit to administer general anesthesia, parenteral sedation, or inhalation analgesia may be inspected at the discretion of the board. The board may contract to have such inspections performed. The board shall not delegate authority to review and to make recommendations on permit applications or to determine the persons or facilities to be inspected.

Source: Laws 1986, LB 438, § 12; R.S.1943, (2003), § 71-193.32; Laws 2007, LB463, § 479.

38-1147 Incident report; contents; failure to submit; penalty.

(1) All licensed dentists practicing in this state shall submit a report to the board within thirty days of any incident which results in death or physical or mental injury requiring hospitalization of a patient which occurs in the outpatient facilities of such dentist during, or as a direct result of, inhalation analgesia, parenteral sedation, or general anesthesia.

(2) The incident report shall include, but not be limited to:

- (a) A description of the dental procedure;
- (b) A description of the preoperative physical condition of the patient;
- (c) A list of the drugs and the dosage administered;
- (d) A detailed description of the techniques used in administering the drugs;
- (e) A description of the incident, including, but not limited to, a detailed description of the symptoms of any complications, the symptoms of onset, and the type of symptoms in the patient;
- (f) A description of the treatment instituted;
- (g) A description of the patient's response to the treatment; and
- (h) A description of the patient's condition on termination of any procedures undertaken.

(3) Failure to submit an incident report as required by this section shall result in the loss of the permit.

Source: Laws 1986, LB 438, § 14; R.S.1943, (2003), § 71-193.34; Laws 2007, LB463, § 480.

38-1148 Department; permits to administer anesthesia, sedation, or analgesia; adopt rules and regulations.

The department, with the recommendation of the board, may adopt and promulgate rules and regulations necessary to carry out the provisions of the Dentistry Practice Act relating to permits to administer general anesthesia, parenteral sedation, or inhalation analgesia.

Source: Laws 1986, LB 438, § 15; R.S.1943, (2003), § 71-193.35; Laws 2007, LB463, § 481.

38-1149 Office of Oral Health and Dentistry; Dental Health Director; appointment.

There is hereby established the Office of Oral Health and Dentistry in the department. The head of such office shall be known as the Dental Health Director and shall be appointed by the department. The Dental Health Director shall give full time to his or her duties.

Source: Laws 1949, c. 201, § 1, p. 584; Laws 1953, c. 239, § 1, p. 828; Laws 1996, LB 1044, § 411; Laws 2006, LB 994, § 82; R.S.Supp.,2006, § 71-193.01; Laws 2007, LB296, § 326; Laws 2007, LB463, § 482.

38-1150 Dental Health Director; qualifications.

The Dental Health Director shall be a graduate of an accredited school or college of dentistry and shall be licensed by the State of Nebraska to practice

dentistry in Nebraska or duly licensed to practice dentistry in some other state of the United States of America.

Source: Laws 1949, c. 201, § 2, p. 584; Laws 1953, c. 240, § 1, p. 829; Laws 2006, LB 994, § 83; R.S.Supp.,2006, § 71-193.02; Laws 2007, LB463, § 483.

38-1151 Office of Oral Health and Dentistry; duties; rules and regulations.

The duties of the Office of Oral Health and Dentistry shall be the promotion and development of activities which will result in the practice and improvement of the dental health of the people of the state under rules and regulations adopted and promulgated by the department.

Source: Laws 1949, c. 201, § 3, p. 585; Laws 1996, LB 1044, § 412; Laws 2006, LB 994, § 84; R.S.Supp.,2006, § 71-193.03; Laws 2007, LB463, § 484.

ARTICLE 12

EMERGENCY MEDICAL SERVICES PRACTICE ACT

Cross References

Automated external defibrillator, use, conditions, liability, see section 71-51,102.
Child abuse, duty to report, see section 28-711.
Clinical privileges, standards and procedures, see section 71-2048.01.
Counties, cities, and villages, establish emergency medical service, see section 13-303.
Critical Incident Stress Management Act, see section 71-7101.
Division of Public Health of the Department of Health and Human Services, see section 81-3113.
Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.
Exposure to infectious condition, procedures, see section 71-507 to 71-513.
Fire protection district, establish emergency medical service, see section 35-514.02.
Good Samaritan provisions, see section 25-21,186.
Health and Human Services Act, see section 81-3110.
Health Care Facility Licensure Act, see section 71-401.
Hospital authority, establish emergency medical service, see section 23-3594.
Hospital district, establish emergency medical service, see section 23-3547.
License Suspension Act, see section 43-3301.
Nebraska Emergency Medical System Operations Fund, see section 71-51,103.
Nebraska Regulation of Health Professions Act, see section 71-6201.
Patient Safety Improvement Act, see section 71-8701.
Seat belt, exemption from wearing, see section 60-6,270.
State Board of Health, duties, see section 71-2610 et seq.
Statewide Trauma System Act, see section 71-8201.
Uniform Controlled Substances Act, see section 28-401.01.
Wholesale Drug Distributor Licensure Act, see section 71-7427.
Workers' compensation coverage, see sections 48-115 and 48-126.01.

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38-1201 Act, how cited.

Sections 38-1201 to 38-1237 shall be known and may be cited as the Emergency Medical Services Practice Act.

Source: Laws 1997, LB 138, § 1; Laws 2003, LB 242, § 128; R.S.1943, (2003), § 71-5172; Laws 2007, LB463, § 485.

38-1202 Legislative intent; act; how construed.

It is the intent of the Legislature in enacting the Emergency Medical Services Practice Act to (1) effectuate the delivery of quality out-of-hospital emergency medical care in the state, (2) eliminate duplication of statutory requirements, (3) merge the former boards responsible for regulating ambulance services and emergency medical care, (4) replace the former law regulating providers of and services delivering emergency medical care, (5) provide for the appropriate licensure of persons providing out-of-hospital medical care and licensure of organizations providing emergency medical services, (6) provide for the establishment of educational requirements and permitted practices for persons providing out-of-hospital emergency medical care, (7) provide a system for regulation of out-of-hospital emergency medical care which encourages out-of-hospital emergency care providers and emergency medical services to provide the highest degree of care which they are capable of providing, and (8) provide a flexible system for the regulation of out-of-hospital emergency care providers and emergency medical services that protects public health and safety.

The act shall be liberally construed to effect the purposes of, carry out the intent of, and discharge the responsibilities prescribed in the act.

Source: Laws 1997, LB 138, § 2; R.S.1943, (2003), § 71-5173; Laws 2007, LB463, § 486.

38-1203 Legislative findings.

The Legislature finds:

(1) That out-of-hospital emergency medical care is a primary and essential health care service and that the presence of an adequately equipped ambulance

and trained out-of-hospital emergency care providers may be the difference between life and death or permanent disability to those persons in Nebraska making use of such services in an emergency;

(2) That effective delivery of out-of-hospital emergency medical care may be assisted by a program of training and licensure of out-of-hospital emergency care providers and licensure of emergency medical services in accordance with rules and regulations adopted by the board;

(3) That the Emergency Medical Services Practice Act is essential to aid in advancing the quality of care being provided by out-of-hospital emergency care providers and by emergency medical services and the provision of effective, practical, and economical delivery of out-of-hospital emergency medical care in the State of Nebraska;

(4) That the services to be delivered by out-of-hospital emergency care providers are complex and demanding and that training and other requirements appropriate for delivery of the services must be constantly reviewed and updated; and

(5) That the enactment of a regulatory system that can respond to changing needs of patients and out-of-hospital emergency care providers and emergency medical services is in the best interests of the citizens of Nebraska.

Source: Laws 1997, LB 138, § 3; R.S.1943, (2003), § 71-5174; Laws 2007, LB463, § 487.

38-1204 Definitions, where found.

For purposes of the Emergency Medical Services Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1205 to 38-1214 apply.

Source: Laws 1997, LB 138, § 4; R.S.1943, (2003), § 71-5175; Laws 2007, LB296, § 602; Laws 2007, LB463, § 488.

38-1205 Ambulance, defined.

Ambulance means any privately or publicly owned motor vehicle or aircraft that is especially designed, constructed or modified, and equipped and is intended to be used and is maintained or operated for the overland or air transportation of patients upon the streets, roads, highways, airspace, or public ways in this state, including funeral coaches or hearses, or any other motor vehicles or aircraft used for such purposes.

Source: Laws 2007, LB463, § 489.

38-1206 Board, defined.

Board means the Board of Emergency Medical Services.

Source: Laws 2007, LB463, § 490.

38-1207 Emergency medical service, defined.

Emergency medical service means the organization responding to a perceived individual need for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

Source: Laws 2007, LB463, § 491.

38-1208 Out-of-hospital emergency care provider.

Out-of-hospital emergency care provider includes all licensure classifications of emergency care providers established pursuant to the Emergency Medical Services Practice Act.

Source: Laws 2007, LB463, § 492.

38-1209 Patient, defined.

Patient means an individual who either identifies himself or herself as being in need of medical attention or upon assessment by an out-of-hospital emergency care provider has an injury or illness requiring treatment.

Source: Laws 2007, LB463, § 493.

38-1210 Physician medical director, defined.

Physician medical director means a qualified physician who is responsible for the medical supervision of out-of-hospital emergency care providers and verification of skill proficiency of out-of-hospital emergency care providers pursuant to section 38-1217.

Source: Laws 2007, LB463, § 494.

38-1211 Protocol, defined.

Protocol means a set of written policies, procedures, and directions from a physician medical director to an out-of-hospital emergency care provider concerning the medical procedures to be performed in specific situations.

Source: Laws 2007, LB463, § 495.

38-1212 Qualified physician, defined.

Qualified physician means an individual who is licensed to practice medicine and surgery or osteopathic medicine and surgery pursuant to the Uniform Credentialing Act and meets any other requirements established by rule and regulation.

Source: Laws 2007, LB463, § 496.

38-1213 Qualified physician surrogate, defined.

Qualified physician surrogate means a qualified, trained medical person designated by a qualified physician in writing to act as an agent for the physician in directing the actions or renewal of licensure of out-of-hospital emergency care providers.

Source: Laws 2007, LB463, § 497.

38-1214 Standing order, defined.

Standing order means a direct order from the physician medical director to perform certain tasks for a patient under a specific set of circumstances.

Source: Laws 2007, LB463, § 498.

38-1215 Board; members; terms; meetings; removal.

(1) The board shall have seventeen members appointed by the Governor with the approval of a majority of the Legislature. The appointees may begin to serve immediately following appointment and prior to approval by the Legislature.

(2)(a) Seven members of the Board of Emergency Medical Services shall be active out-of-hospital emergency care providers at the time of and for the duration of their appointment, and each shall have at least five years of experience in his or her level of licensure at the time of his or her appointment or reappointment. Two of the seven members who are out-of-hospital emergency care providers shall be first responders, two shall be emergency medical technicians, one shall be an emergency medical technician-intermediate, and two shall be emergency medical technicians-paramedic.

(b) Three of the members shall be qualified physicians actively involved in emergency medical care. At least one of the physician members shall be a board-certified emergency physician.

(c) Five members shall be appointed to include one member who is a representative of an approved training agency, one member who is a physician assistant with at least five years of experience and active in out-of-hospital emergency medical care education, one member who is a registered nurse with at least five years of experience and active in out-of-hospital emergency medical care education, and two public members who meet the requirements of section 38-165 and who have an expressed interest in the provision of out-of-hospital emergency medical care.

(d) The remaining two members shall have any of the qualifications listed in subdivision (a), (b), or (c) of this subsection.

(e) In addition to any other criteria for appointment, among the members of the board there shall be at least one member who is a volunteer emergency medical care provider, at least one member who is a paid emergency medical care provider, at least one member who is a firefighter, at least one member who is a law enforcement officer, and at least one member who is active in the Critical Incident Stress Management Program. If a person appointed to the board is qualified to serve as a member in more than one capacity, all qualifications of such person shall be taken into consideration to determine whether or not the diversity in qualifications required in this subsection has been met.

(f) At least five members of the board shall be appointed from each congressional district, and at least one of such members shall be a physician member described in subdivision (b) of this subsection.

(3) Members shall serve five-year terms beginning on December 1 and may serve for any number of such terms. The terms of the members of the board appointed prior to December 1, 2008, shall be extended by two years and until December 1 of such year. Each member shall hold office until the expiration of his or her term. Any vacancy in membership, other than by expiration of a term, shall be filled within ninety days by the Governor by appointment as provided in subsection (2) of this section.

(4) Special meetings of the board may be called by the department or upon the written request of any six members of the board explaining the reason for such meeting. The place of the meetings shall be set by the department.

(5) The Governor upon recommendation of the department shall have power to remove from office at any time any member of the board for physical or

mental incapacity to carry out the duties of a board member, for continued neglect of duty, for incompetency, for acting beyond the individual member's scope of authority, for malfeasance in office, for any cause for which a professional credential may be suspended or revoked pursuant to the Uniform Credentialing Act, or for a lack of license required by the Emergency Medical Services Practice Act.

(6) Except as provided in subsection (5) of this section and notwithstanding subsection (2) of this section, a member of the board who changes his or her licensure classification after appointment when such licensure classification was a qualification for appointment shall be permitted to continue to serve as a member of the board until the expiration of his or her term.

Source: Laws 1997, LB 138, § 5; Laws 1998, LB 1073, § 146; Laws 2004, LB 821, § 18; R.S.Supp.,2006, § 71-5176; Laws 2007, LB463, § 499.

Cross References

Critical Incident Stress Management Program, see section 71-7104.

38-1216 Board; duties.

In addition to any other responsibilities prescribed by the Emergency Medical Services Practice Act, the board shall:

(1) Promote the dissemination of public information and education programs to inform the public about out-of-hospital emergency medical care and other out-of-hospital medical information, including appropriate methods of medical self-help, first aid, and the availability of out-of-hospital emergency medical services training programs in the state;

(2) Provide for the collection of information for evaluation of the availability and quality of out-of-hospital emergency medical care, evaluate the availability and quality of out-of-hospital emergency medical care, and serve as a focal point for discussion of the provision of out-of-hospital emergency medical care;

(3) Review and comment on all state agency proposals and applications that seek funding for out-of-hospital emergency medical care;

(4) Establish model procedures for patient management in out-of-hospital medical emergencies that do not limit the authority of law enforcement and fire protection personnel to manage the scene during an out-of-hospital medical emergency;

(5) Not less than once each five years, undertake a review and evaluation of the act and its implementation together with a review of the out-of-hospital emergency medical care needs of the citizens of the State of Nebraska and report to the Legislature any recommendations which it may have; and

(6) Identify communication needs of emergency medical services and make recommendations for development of a communications plan for a communications network for out-of-hospital emergency care providers and emergency medical services.

Source: Laws 1997, LB 138, § 6; R.S.1943, (2003), § 71-5177; Laws 2007, LB463, § 500.

38-1217 Rules and regulations.

The board shall adopt rules and regulations necessary to:

(1) Create the following licensure classifications of out-of-hospital emergency care providers: (a) First responder; (b) emergency medical technician; (c) emergency medical technician-intermediate; and (d) emergency medical technician-paramedic. The rules and regulations creating the classifications shall include the practices and procedures authorized for each classification, training and testing requirements, renewal and reinstatement requirements, and other criteria and qualifications for each classification determined to be necessary for protection of public health and safety;

(2) Set standards for the licensure of basic life support services and advanced life support services. The rules and regulations providing for licensure shall include standards and requirements for: Vehicles, equipment, maintenance, sanitation, inspections, personnel, training, medical direction, records maintenance, practices and procedures to be provided by employees or members of each classification of service, and other criteria for licensure established by the board;

(3) Authorize emergency medical services to provide differing practices and procedures depending upon the qualifications of out-of-hospital emergency care providers available at the time of service delivery. No emergency medical service shall be licensed to provide practices or procedures without the use of personnel licensed to provide the practices or procedures;

(4) Authorize out-of-hospital emergency care providers to perform any practice or procedure which they are authorized to perform with an emergency medical service other than the service with which they are affiliated when requested by the other service and when the patient for whom they are to render services is in danger of loss of life;

(5) Provide for the approval of training agencies and establish minimum standards for services provided by training agencies;

(6) Provide for the minimum qualifications of a physician medical director in addition to the licensure required by section 38-1212;

(7) Provide for the use of physician medical directors, qualified physician surrogates, model protocols, standing orders, operating procedures, and guidelines which may be necessary or appropriate to carry out the purposes of the Emergency Medical Services Practice Act. The model protocols, standing orders, operating procedures, and guidelines may be modified by the physician medical director for use by any out-of-hospital emergency care provider or emergency medical service before or after adoption;

(8) Establish criteria for approval of organizations issuing cardiopulmonary resuscitation certification which shall include criteria for instructors, establishment of certification periods and minimum curricula, and other aspects of training and certification;

(9) Establish renewal and reinstatement requirements for out-of-hospital emergency care providers and emergency medical services and establish continuing competency requirements. Continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, one or more of the continuing competency activities listed in section 38-145 which a licensed person may select as an alternative to continuing education. The reinstatement requirements for out-of-hospital emergency care providers shall allow reinstatement at the same or any lower level of licensure for which the out-of-hospital emergency care provider is determined to be qualified;

(10) Establish criteria for deployment and use of automated external defibrillators as necessary for the protection of the public health and safety;

(11) Create licensure, renewal, and reinstatement requirements for emergency medical service instructors. The rules and regulations shall include the practices and procedures for licensure, renewal, and reinstatement; and

(12) Establish criteria for emergency medical technicians-intermediate and emergency medical technicians-paramedic performing activities within their scope of practice at a hospital or health clinic under subsection (3) of section 38-1224. Such criteria shall include, but not be limited to: (a) Requirements for the orientation of registered nurses, physician assistants, and physicians involved in the supervision of such personnel; (b) supervisory and training requirements for the physician medical director or other person in charge of the medical staff at such hospital or health clinic; and (c) a requirement that such activities shall only be performed at the discretion of, and with the approval of, the governing authority of such hospital or health clinic. For purposes of this subdivision, health clinic has the definition found in section 71-416 and hospital has the definition found in section 71-419.

Source: Laws 1997, LB 138, § 7; Laws 1999, LB 498, § 2; Laws 2001, LB 238, § 1; Laws 2002, LB 1021, § 87; Laws 2002, LB 1033, § 1; R.S.1943, (2003), § 71-5178; Laws 2007, LB463, § 501.

38-1218 Licensure classification.

(1) The Legislature adopts all parts of the United States Department of Transportation curricula, including appendices, and skills as the training requirements and permitted practices and procedures for the licensure classifications listed in subdivision (1) of section 38-1217 until modified by rule and regulation.

(2) The department and the board shall consider the following factors, in addition to other factors required or permitted by the Emergency Medical Services Practice Act, when adopting rules and regulations for a licensure classification:

(a) Whether the initial training required for licensure in the classification is sufficient to enable the out-of-hospital emergency care provider to perform the practices and procedures authorized for the classification in a manner which is beneficial to the patient and protects public health and safety;

(b) Whether the practices and procedures to be authorized are necessary to the efficient and effective delivery of out-of-hospital emergency medical care;

(c) Whether morbidity can be reduced or recovery enhanced by the use of the practices and procedures to be authorized for the classification; and

(d) Whether continuing competency requirements are sufficient to maintain the skills authorized for the classification.

Source: Laws 1997, LB 138, § 8; Laws 2002, LB 1021, § 88; R.S.1943, (2003), § 71-5179; Laws 2007, LB463, § 502.

38-1219 Department; additional rules and regulations.

The department, with the recommendation of the board, shall adopt and promulgate rules and regulations necessary to:

(1) Administer the Emergency Medical Services Practice Act;

(2) Provide for curricula which will allow out-of-hospital emergency care providers and users of automated external defibrillators as defined in section 71-51,102 to be trained for the delivery of practices and procedures in units of limited subject matter which will encourage continued development of abilities and use of such abilities through additional authorized practices and procedures;

(3) Establish procedures and requirements for applications for licensure, renewal, and reinstatement in any of the licensure classifications created pursuant to the Emergency Medical Services Practice Act; and

(4) Provide for the inspection, review, and termination of approval of training agencies. All training for licensure shall be provided through an approved training agency.

Source: Laws 2007, LB463, § 503.

38-1220 Act; exemptions.

The following are exempt from the licensing requirements of the Emergency Medical Services Practice Act:

(1) The occasional use of a vehicle or aircraft not designated as an ambulance and not ordinarily used in transporting patients or operating emergency care, rescue, or resuscitation services;

(2) Vehicles or aircraft rendering services as an ambulance in case of a major catastrophe or emergency when licensed ambulances based in the localities of the catastrophe or emergency are incapable of rendering the services required;

(3) Ambulances from another state which are operated from a location or headquarters outside of this state in order to transport patients across state lines, but no such ambulance shall be used to pick up patients within this state for transportation to locations within this state except in case of an emergency;

(4) Ambulances or emergency vehicles owned and operated by an agency of the United States Government and the personnel of such agency;

(5) Except for the provisions of section 38-1232, physicians, physician assistants, registered nurses, licensed practical nurses, or advanced practice registered nurses, who hold current Nebraska licenses and are exclusively engaged in the practice of their respective professions;

(6) Persons authorized to perform out-of-hospital emergency care in other states when incidentally working in Nebraska in response to an emergency situation; and

(7) Students under the supervision of a licensed out-of-hospital emergency care provider performing emergency medical services that are an integral part of the training provided by an approved training agency.

Source: Laws 1997, LB 138, § 20; Laws 2000, LB 1115, § 76; Laws 2005, LB 256, § 94; R.S.Supp.,2006, § 71-5191; Laws 2007, LB463, § 504.

38-1221 License; requirements; term.

(1) To be eligible for a license under the Emergency Medical Services Practice Act, an individual shall have attained the age of eighteen years and met the requirements established in accordance with subdivision (1) of section 38-1217.

(2) All licenses issued under the act shall expire the second year after issuance.

(3) An individual holding a certificate under the Emergency Medical Services Act on December 1, 2008, shall be deemed to be holding a license under the Uniform Credentialing Act and the Emergency Medical Services Practice Act on such date. The certificate holder may continue to practice under such certificate as a license in accordance with the Uniform Credentialing Act until the certificate would have expired under its terms.

Source: Laws 2007, LB463, § 505.

Cross References

Uniform Credentialing Act, see section 38-101.

38-1222 Fees.

The department shall establish and collect fees for credentialing activities under the Emergency Medical Services Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2003, LB 242, § 129; R.S.1943, (2003), § 71-5181.01; Laws 2007, LB463, § 506.

38-1223 Physician medical director; required.

Each licensed emergency medical service shall have a physician medical director.

Source: Laws 1997, LB 138, § 12; R.S.1943, (2003), § 71-5183; Laws 2007, LB463, § 507.

38-1224 Duties and activities authorized; limitations.

(1) An out-of-hospital emergency care provider other than a first responder as classified under section 38-1217 may not assume the duties incident to the title or practice the skills of an out-of-hospital emergency care provider unless he or she is employed by or serving as a volunteer member of an emergency medical service licensed by the department.

(2) An out-of-hospital emergency care provider may only practice the skills he or she is authorized to employ and which are covered by the license issued to such provider pursuant to the Emergency Medical Services Practice Act.

(3) An emergency medical technician-intermediate or an emergency medical technician-paramedic may volunteer or be employed at a hospital as defined in section 71-419 or a health clinic as defined in section 71-416 to perform activities within his or her scope of practice within such hospital or health clinic under the supervision of a registered nurse, a physician assistant, or a physician. Such activities shall be performed in a manner established in rules and regulations adopted and promulgated by the department, with the recommendation of the board.

Source: Laws 1997, LB 138, § 13; Laws 1998, LB 1073, § 147; Laws 2002, LB 1033, § 2; R.S.1943, (2003), § 71-5184; Laws 2007, LB463, § 508.

38-1225 Patient data; confidentiality; immunity.

(1) No patient data received or recorded by an emergency medical service or an out-of-hospital emergency care provider shall be divulged, made public, or released by an emergency medical service or an out-of-hospital emergency care provider, except that patient data may be released for purposes of treatment, payment, and other health care operations as defined and permitted under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2007, or as otherwise permitted by law. Such data shall be provided to the department for public health purposes pursuant to rules and regulations of the department. For purposes of this section, patient data means any data received or recorded as part of the records maintenance requirements of the Emergency Medical Services Practice Act.

(2) Patient data received by the department shall be confidential with release only (a) in aggregate data reports created by the department on a periodic basis or at the request of an individual, (b) as case-specific data to approved researchers for specific research projects, (c) as protected health information to a public health authority, as such terms are defined under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2007, and (d) as protected health information, as defined under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2007, to an emergency medical service, to an out-of-hospital emergency care provider, or to a licensed health care facility for purposes of treatment. A record may be shared with the emergency medical service or out-of-hospital emergency care provider that reported that specific record. Approved researchers shall maintain the confidentiality of the data, and researchers shall be approved in the same manner as described in section 81-666. Aggregate reports shall be public documents.

(3) No civil or criminal liability of any kind or character for damages or other relief or penalty shall arise or be enforced against any person or organization by reason of having provided patient data pursuant to this section.

Source: Laws 1997, LB 138, § 14; Laws 2003, LB 667, § 11; R.S.1943, (2003), § 71-5185; Laws 2007, LB185, § 42; Laws 2007, LB463, § 509.

38-1226 Ambulance; transportation requirements.

No ambulance shall transport any patient upon any street, road, highway, airspace, or public way in the State of Nebraska unless such ambulance, when so transporting patients, is occupied by at least one licensed out-of-hospital emergency care provider. Such requirement shall be met if any of the individuals providing the service is a licensed physician, registered nurse, licensed physician assistant, or licensed practical nurse functioning within the scope of practice of his or her license.

Source: Laws 1997, LB 138, § 15; R.S.1943, (2003), § 71-5186; Laws 2007, LB463, § 510.

38-1227 Motor vehicle ambulance; driver privileges.

The driver of a licensed motor vehicle ambulance who holds a valid driver's license issued by the state of his or her residence may exercise the privileges set

forth in Nebraska statutes relating to emergency vehicles when responding to an emergency call or while transporting a patient.

Source: Laws 1997, LB 138, § 16; R.S.1943, (2003), § 71-5187; Laws 2007, LB463, § 511.

38-1228 Department; waive rule, regulation, or standard; when.

The department, with the approval of the board, may, whenever it deems appropriate, waive any rule, regulation, or standard relating to the licensure of emergency medical services or out-of-hospital emergency care providers when the lack of a licensed emergency medical service in a municipality or other area will create an undue hardship in the municipality or other area in meeting the emergency medical service needs of the people thereof.

Source: Laws 1997, LB 138, § 17; R.S.1943, (2003), § 71-5188; Laws 2007, LB463, § 512.

38-1229 License; person on national registry.

The department, with the recommendation of the board, may issue a license to any individual who has a current certificate from the National Registry of Emergency Medical Technicians. The level of such licensure shall be determined by the board.

Source: Laws 1997, LB 138, § 18; R.S.1943, (2003), § 71-5189; Laws 2007, LB463, § 513.

38-1230 License; sale, transfer, or assignment; prohibited.

A license issued under the Emergency Medical Services Practice Act shall not be sold, transferred, or assigned by the holder. Any change of ownership of an emergency medical service requires a new application and a new license.

Source: Laws 1997, LB 138, § 19; R.S.1943, (2003), § 71-5190; Laws 2007, LB463, § 514.

38-1231 Person objecting to treatment; effect.

The Emergency Medical Services Practice Act or the rules or regulations shall not be construed to authorize or require giving any medical treatment to a person who objects to such treatment on religious or other grounds or to authorize the transportation of such person to a medical facility.

Source: Laws 1997, LB 138, § 22; R.S.1943, (2003), § 71-5193; Laws 2007, LB463, § 515.

38-1232 Individual liability.

(1) No out-of-hospital emergency care provider, physician assistant, registered nurse, or licensed practical nurse who provides public emergency care shall be liable in any civil action to respond in damages as a result of his or her acts of commission or omission arising out of and in the course of his or her rendering in good faith any such care. Nothing in this subsection shall be deemed to grant any such immunity for liability arising out of the operation of any motor vehicle, aircraft, or boat or while such person was impaired by alcoholic liquor or any controlled substance enumerated in section 28-405 in connection with such care, nor shall immunity apply to any person causing

damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission.

(2) No qualified physician or qualified physician surrogate who gives orders, either orally or by communication equipment, to any out-of-hospital emergency care provider at the scene of an emergency, no out-of-hospital emergency care provider following such orders within the limits of his or her licensure, and no out-of-hospital emergency care provider trainee in an approved training program following such orders, shall be liable civilly or criminally by reason of having issued or followed such orders but shall be subject to the rules of law applicable to negligence.

(3) No physician medical director shall incur any liability by reason of his or her use of any unmodified protocol, standing order, operating procedure, or guideline provided by the board pursuant to subdivision (7) of section 38-1217.

Source: Laws 1997, LB 138, § 23; R.S.1943, (2003), § 71-5194; Laws 2007, LB463, § 516.

38-1233 Out-of-hospital emergency care provider; liability relating to consent.

No out-of-hospital emergency care provider shall be subject to civil liability based solely upon failure to obtain consent in rendering emergency medical, surgical, hospital, or health services to any individual regardless of age when the patient is unable to give his or her consent for any reason and there is no other person reasonably available who is legally authorized to consent to the providing of such care.

Source: Laws 1997, LB 138, § 24; R.S.1943, (2003), § 71-5195; Laws 2007, LB463, § 517.

38-1234 Out-of-hospital emergency care provider; liability within scope of practice.

No act of commission or omission of any out-of-hospital emergency care provider while rendering emergency medical care within the limits of his or her licensure or status as a trainee to a person who is deemed by the provider to be in immediate danger of injury or loss of life shall impose any liability on any other person, and this section shall not relieve the out-of-hospital emergency care provider from personal liability, if any.

Source: Laws 1997, LB 138, § 25; R.S.1943, (2003), § 71-5196; Laws 2007, LB463, § 518.

38-1235 Department; accept gifts.

The department may accept from any person, in the name of and for the state, services, equipment, supplies, materials, or funds by way of bequest, gift, or grant for the purposes of promoting emergency medical care. Any such funds received shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund.

Source: Laws 1997, LB 138, § 26; R.S.1943, (2003), § 71-5197; Laws 2007, LB296, § 604; Laws 2007, LB463, § 519.

38-1236 Act; construction with other laws.

The provisions of the Emergency Medical Services Practice Act shall not be construed to supersede, limit, or otherwise affect the state emergency management laws or any interstate civil defense compact participated in by the State of Nebraska dealing with the licenses for professional, mechanical, or other skills of persons performing emergency management functions.

Source: Laws 1997, LB 138, § 27; R.S.1943, (2003), § 71-5198; Laws 2007, LB463, § 520.

38-1237 Prohibited acts.

It shall be unlawful for any person who has not been licensed pursuant to the Emergency Medical Services Practice Act to hold himself or herself out as an out-of-hospital emergency care provider, to use any other term to indicate or imply that he or she is an out-of-hospital emergency care provider, or to act as such a provider without a license therefor. It shall be unlawful for any person to operate a training agency for the initial training or renewal or reinstatement of licensure of out-of-hospital emergency care providers unless the training agency is approved pursuant to rules and regulations of the board. It shall be unlawful for any person to operate an emergency medical service unless such service is licensed.

Source: Laws 1997, LB 138, § 28; R.S.1943, (2003), § 71-5199; Laws 2007, LB463, § 521.

ARTICLE 13

ENVIRONMENTAL HEALTH SPECIALISTS PRACTICE ACT

Cross References

Child abuse, duty to report, see section 28-711.
Child care programs, investigations, see section 71-1913.
Division of Public Health of the Department of Health and Human Services, see section 81-3113.
Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.
Foster care, investigations, see section 71-1903.
Good Samaritan provisions, see section 25-21,186.
Health and Human Services Act, see section 81-3110.
Health Care Facility Licensure Act, see section 71-401.
Health Care Professional Credentialing Verification Act, see section 44-7001.
License Suspension Act, see section 43-3301.
Local public health departments, see sections 71-1626 to 71-1636.
Nebraska Regulation of Health Professions Act, see section 71-6201.
Patient Safety Improvement Act, see section 71-8701.
Private onsite wastewater treatment system, professional required, see section 81-15,248.
Pure Food Act, Nebraska, perform inspections, see section 81-2,281.
Radiation Control Act, see section 71-3519.
State Board of Health, duties, see section 71-2610 et seq.
Statewide Trauma System Act, see section 71-8201.
Uniform Controlled Substances Act, see section 28-401.01.

Section

- 38-1301. Act, how cited.
- 38-1302. Definitions, where found.
- 38-1303. Board, defined.
- 38-1304. Environmental health specialist, defined.
- 38-1305. Provisional environmental health specialist, defined.
- 38-1306. Registered environmental health specialist, defined.
- 38-1307. Board; members; qualifications; terms.
- 38-1308. Certification; qualifications; exception; term.
- 38-1309. Provisional environmental health specialist.
- 38-1310. Registered environmental health specialist; provisional environmental health specialist; certification; term; renewal; continuing competency requirements.

Section

- 38-1311. Registered environmental health specialist; application for certification; continuing competency requirements.
- 38-1312. Registered environmental health specialist; reciprocity; continuing competency requirements.
- 38-1313. Fees.
- 38-1314. Title or abbreviation; use; when.
- 38-1315. Certified environmental health specialist; misrepresentation; unlawful.

38-1301 Act, how cited.

Sections 38-1301 to 38-1315 shall be known and may be cited as the Environmental Health Specialists Practice Act.

Source: Laws 2007, LB463, § 522.

38-1302 Definitions, where found.

For purposes of the Environmental Health Specialists Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1303 to 38-1306 apply.

Source: Laws 1963, c. 400, § 2, p. 1279; Laws 1989, LB 344, § 27; Laws 1991, LB 703, § 38; Laws 1996, LB 1044, § 666; Laws 2003, LB 242, § 116; R.S.1943, (2003), § 71-3702; Laws 2007, LB296, § 578; Laws 2007, LB463, § 523.

38-1303 Board, defined.

Board means the Board of Registered Environmental Health Specialists.

Source: Laws 2007, LB463, § 524.

38-1304 Environmental health specialist, defined.

Environmental health specialist means a person who by education and experience in the physical, biological, and sanitary sciences is qualified to carry out educational, investigational, and technical duties in the field of environmental sanitation.

Source: Laws 2007, LB463, § 525.

38-1305 Provisional environmental health specialist, defined.

Provisional environmental health specialist means a person who is qualified by education but does not have at least two full years of experience in the field of environmental sanitation and is certified in accordance with the Environmental Health Specialists Practice Act.

Source: Laws 2007, LB463, § 526.

38-1306 Registered environmental health specialist, defined.

Registered environmental health specialist means a person who has the educational requirements and has had experience in the field of environmental sanitation required by section 38-1308 and is certified in accordance with the Environmental Health Specialists Practice Act.

Source: Laws 2007, LB463, § 527.

38-1307 Board; members; qualifications; terms.

The board shall consist of six members. One member shall be a public member who meets the requirements of section 38-165. Each of the other members shall have been engaged in environmental health for at least ten years, shall have had responsible charge of work for at least five years at the time of his or her appointment, and shall be a registered environmental health specialist. At the expiration of the three-year terms of the members serving on December 1, 2008, successors shall be appointed for five-year terms.

Source: Laws 1963, c. 400, § 6, p. 1281; Laws 1969, c. 578, § 1, p. 2326; Laws 1981, LB 204, § 127; Laws 1987, LB 473, § 49; Laws 1991, LB 703, § 43; Laws 1993, LB 375, § 4; Laws 1994, LB 1223, § 46; Laws 1996, LB 1044, § 667; R.S.1943, (2003), § 71-3706; Laws 2007, LB296, § 579; Laws 2007, LB463, § 528.

38-1308 Certification; qualifications; exception; term.

A person shall be eligible for certification as an environmental health specialist if he or she has graduated with a baccalaureate or higher degree from an accredited college or university, has satisfactorily completed at least forty-five quarter hours or thirty semester hours of academic work in the basic natural sciences, has been employed full time as an environmental health specialist for a period not less than two years, and has passed an examination approved by the board, except that a person holding a degree higher than a baccalaureate degree who has satisfactorily completed at least forty-five quarter hours or thirty semester hours of academic work in the basic natural sciences may qualify when employed as an environmental health specialist for a period of not less than one year.

Source: Laws 1963, c. 400, § 3, p. 1279; Laws 1989, LB 344, § 28; Laws 1991, LB 703, § 39; Laws 1997, LB 752, § 182; Laws 2003, LB 242, § 117; R.S.1943, (2003), § 71-3703; Laws 2007, LB463, § 529.

Cross References

Uniform Credentialing Act, see section 38-101.

38-1309 Provisional environmental health specialist.

Any person meeting the educational qualifications of section 38-1308 but who does not meet the experience requirements of such section may make application for certification as a provisional environmental health specialist.

Source: Laws 1963, c. 400, § 4, p. 1280; Laws 1989, LB 344, § 29; Laws 1991, LB 703, § 40; Laws 2003, LB 242, § 118; R.S.1943, (2003), § 71-3704; Laws 2007, LB463, § 530.

38-1310 Registered environmental health specialist; provisional environmental health specialist; certification; term; renewal; continuing competency requirements.

(1) Certification as a registered environmental health specialist shall expire biennially. Certification as a provisional environmental health specialist shall be valid for one year and may be renewed for two additional one-year periods. In no case shall certification for a provisional environmental health specialist exceed a three-year period.

(2) Each registered environmental health specialist in active practice in the state shall complete continuing competency activities as approved by the board and adopted and promulgated by the department in rules and regulations as a prerequisite for the registrant's next subsequent biennial renewal. Continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, one or more of the continuing competency activities listed in section 38-145 which a registered environmental health specialist may select as an alternative to continuing education.

Source: Laws 1963, c. 400, § 10, p. 1283; Laws 1969, c. 578, § 4, p. 2328; Laws 1983, LB 542, § 3; Laws 1986, LB 926, § 61; Laws 1988, LB 1100, § 145; Laws 1991, LB 703, § 47; Laws 1994, LB 1210, § 122; Laws 1994, LB 1223, § 49; Laws 1997, LB 307, § 189; Laws 2002, LB 1021, § 80; Laws 2003, LB 242, § 121; R.S.1943, (2003), § 71-3710; Laws 2007, LB463, § 531.

38-1311 Registered environmental health specialist; application for certification; continuing competency requirements.

An applicant for certification as a registered environmental health specialist who has met the education and examination requirements in section 38-1308, who passed the examination more than three years prior to the time of application for certification, and who is not practicing at the time of application for certification shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for certification completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 532.

38-1312 Registered environmental health specialist; reciprocity; continuing competency requirements.

An applicant for certification as a registered environmental health specialist who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for certification shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for certification completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 533.

38-1313 Fees.

The department shall establish and collect fees for credentialing under the Environmental Health Specialists Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 534.

38-1314 Title or abbreviation; use; when.

Only a person who holds a valid current certificate for use in this state shall have the right and privilege of using the title Registered Environmental Health Specialist and to use the abbreviation R.E.H.S. after his or her name.

Source: Laws 1963, c. 400, § 13, p. 1285; Laws 1991, LB 703, § 48; R.S.1943, (2003), § 71-3713; Laws 2007, LB463, § 535.

38-1315 Certified environmental health specialist; misrepresentation; unlawful.

It shall be unlawful for any person to represent himself or herself as a registered environmental health specialist without being duly certified and the holder of a currently valid certificate issued by the department. An individual holding a certificate of registration as a registered environmental health specialist on December 1, 2008, shall be deemed to be certified as a registered environmental health specialist on such date. An individual holding a certificate of registration as a trainee on December 1, 2008, shall be deemed to be certified as a provisional environmental health specialist on such date.

Source: Laws 1963, c. 400, § 14, p. 1285; Laws 1991, LB 703, § 49; R.S.1943, (2003), § 71-3714; Laws 2007, LB463, § 536.

ARTICLE 14

FUNERAL DIRECTING AND EMBALMING PRACTICE ACT

Cross References

- Burial at public expense, see section 71-1002.
- Burial Pre-Need Sale Act, see section 12-1101 et seq.
- Cremation of Human Remains Act, see section 71-1355.
- Division of Public Health of the Department of Health and Human Services, see section 81-3113.
- Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.
- Eye tissue or pituitary gland removal, see section 71-4813.
- Good Samaritan provisions, see section 25-21,186.
- Health and Human Services Act, see section 81-3110.
- Health Care Facility Licensure Act, see section 71-401.
- License Suspension Act, see section 43-3301.
- Organ and tissue donation, hospital protocols, see section 71-4814 et seq.
- State Board of Health, duties, see section 71-2610 et seq.
- Statewide Trauma System Act, see section 71-8201.
- Uniform Anatomical Gift Act, see section 71-4812.
- Uniform Controlled Substances Act, see section 28-401.01.
- Unmarked Human Burial Sites and Skeletal Remains Protection Act, see section 12-1201.

Section

- 38-1401. Act, how cited.
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- 38-1411. Funeral establishment, defined.
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- 38-1413. Supervision, defined.
- 38-1414. Funeral directing and embalming; license; requirements.
- 38-1415. Examinations; requirements.
- 38-1416. Apprenticeship; apprentice license; examination.
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§ 38-1401

HEALTH OCCUPATIONS AND PROFESSIONS

Section

- 38-1419. Funeral establishment; qualifications; relocation; change of manager; change of name.
- 38-1420. Branch establishment; application for license; qualifications; relocation; change of manager; change of name.
- 38-1421. Reciprocity.
- 38-1422. Fees.
- 38-1423. Prohibited acts.
- 38-1424. Funeral directors and embalmers and funeral establishments; prohibited acts; section, how construed.
- 38-1425. Deceased persons; control of remains; interment; liability.
- 38-1426. Final disposition; instructions; remains of deceased person; disposition; liability.
- 38-1427. Autopsy; written authorization; removal of organs; when performed.
- 38-1428. Funeral director and embalmer; principal services; statement of costs.

38-1401 Act, how cited.

Sections 38-1401 to 38-1428 shall be known and may be cited as the Funeral Directing and Embalming Practice Act.

Source: Laws 2007, LB463, § 537.

38-1402 Definitions, where found.

For purposes of the Funeral Directing and Embalming Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1403 to 38-1413 apply.

Source: Laws 1927, c. 167, § 92, p. 479; C.S.1929, § 71-1301; Laws 1931, c. 123, § 1, p. 355; C.S.Supp.,1941, § 71-1301; R.S.1943, § 71-194; Laws 1957, c. 293, § 1, p. 1052; R.S.1943, (1990), § 71-194; Laws 1993, LB 187, § 13; Laws 1996, LB 1044, § 557; Laws 1999, LB 828, § 152; Laws 2003, LB 95, § 35; R.S.1943, (2003), § 71-1301; Laws 2007, LB296, § 465; Laws 2007, LB463, § 538.

38-1403 Accredited school of mortuary science, defined.

Accredited school of mortuary science means a school of the same type as those rated Class A by the Conference of Funeral Service Examining Boards of the United States, Inc., approved by the board.

Source: Laws 2007, LB463, § 539.

38-1404 Apprentice, defined.

Apprentice means a person registered with the department as an apprentice who is completing a twelve-month apprenticeship under the supervision of a licensed funeral director and embalmer practicing in the State of Nebraska. The licensed funeral director and embalmer is responsible for all funeral assists and embalmings completed by the apprentice.

Source: Laws 2007, LB463, § 540.

38-1405 Board, defined.

Board means the Board of Funeral Directing and Embalming.

Source: Laws 2007, LB463, § 541.

38-1406 Branch establishment, defined.

Branch establishment means a place of business situated at a specific street address or location which is a subsidiary of a licensed funeral establishment, which contains a casket display room, a viewing area, or an area for conducting funeral services, or all of them, and where any portion of the funeral service or arrangements for the disposition of a dead human body is conducted.

Source: Laws 2007, LB463, § 542.

38-1407 Casket, defined.

Casket means a receptacle for a dead human body and does not include vaults, lawn crypts, mausoleums, or other outside receptacles for caskets.

Source: Laws 2007, LB463, § 543.

38-1408 Crematory authority, defined.

Crematory authority means the legal entity subject to licensure by the department to maintain and operate a crematory and perform cremation.

Source: Laws 2007, LB463, § 544.

38-1409 Embalming, defined.

(1) Embalming means the practice of preparing a dead human body for burial or other final disposal by a licensed funeral director and embalmer or an apprentice, requesting and obtaining burial or removal permits, or assuming any of the other duties incident to the practice of embalming.

(2) Any person who publicly professes to be a funeral director and embalmer or an apprentice is deemed to be practicing embalming.

(3) The performance of the following acts is also deemed to be the practice of embalming: (a) The disinfection and preservation of dead human beings, entire or in part; and (b) the attempted disinfection and preservation thereof by the use or application of chemical substances, fluids, or gases ordinarily used, prepared, or intended for such purposes, either by outward application of such chemical substances, fluids, or gases on the body or by introducing them into the body, by vascular or hypodermic injection, or by direct introduction into the organs or cavities.

Source: Laws 2007, LB463, § 545.

38-1410 Funeral directing, defined.

Funeral directing means (1) counseling families or next of kin in regard to the conduct of a funeral service for a dead human body for burial, disposition, or cremation or directing or supervising burial, disposition, or cremation of dead human bodies, (2) providing for or maintaining a funeral establishment, or (3) the act of representing oneself as or using in connection with one's name the title of funeral director, mortician, or any other title implying that he or she is engaged in the business of funeral directing.

Source: Laws 2007, LB463, § 546.

38-1411 Funeral establishment, defined.

Funeral establishment means a place of business situated at a specific street address or location devoted to the care and preparation of dead human bodies

for burial, disposition, or cremation or to conducting or arranging funeral services for dead human bodies.

Source: Laws 2007, LB463, § 547.

38-1412 Licensure examination, defined.

Licensure examination means a national standardized examination, the state jurisprudence examination, and the vital statistic forms examination.

Source: Laws 2007, LB463, § 548.

38-1413 Supervision, defined.

Supervision means the direct oversight or the easy availability of the supervising funeral director and embalmer. The first twenty-five funeral assists and embalmings shall be completed under direct onsite supervision of the supervising funeral director and embalmer.

Source: Laws 2007, LB463, § 549.

38-1414 Funeral directing and embalming; license; requirements.

(1) The department shall issue a single license to practice funeral directing and embalming to applicants who meet the requirements of this section. An applicant for a license as a funeral director and embalmer shall:

(a) Present satisfactory proof that the applicant has earned the equivalent of sixty semester hours of college credit in addition to a full course of instruction in an accredited school of mortuary science. Such hours shall include the equivalent of (i) six semester hours of English, (ii) six semester hours of accounting, (iii) eight semester hours of chemistry, (iv) twelve semester hours of a biological science relating to the human body, and (v) six semester hours of psychology or counseling; and

(b) Present proof to the department that he or she has completed the following training:

(i) A full course of instruction in an accredited school of mortuary science;

(ii) A twelve-month apprenticeship under the supervision of a licensed funeral director and embalmer practicing in the State of Nebraska, which apprenticeship shall consist of arterially embalming twenty-five bodies and assisting with twenty-five funerals; and

(iii) Successful completion of the licensure examination approved by the board.

(2) Any person holding a valid license as an embalmer on January 1, 1994, may continue to provide services as an embalmer after such date. Upon expiration of such valid license, the person may apply for renewal thereof, and the department shall renew such license to practice embalming.

(3) Any person holding a valid license as a funeral director on January 1, 1994, may continue to provide services as a funeral director after such date. Upon expiration of such valid license, the person may apply for renewal thereof, and the department shall renew such license to practice funeral directing.

Source: Laws 1927, c. 167, § 93, p. 480; C.S.1929, § 71-1302; Laws 1931, c. 123, § 1, p. 355; Laws 1937, c. 155, § 1, p. 612; C.S.Supp.,1941, § 71-1302; R.S.1943, § 71-195; Laws 1955, c.

271, § 1, p. 852; Laws 1986, LB 926, § 43; Laws 1987, LB 473, § 19; Laws 1988, LB 1100, § 35; R.S.1943, (1990), § 71-195; Laws 1993, LB 187, § 14; R.S.1943, (2003), § 71-1302; Laws 2007, LB463, § 550.

Cross References

Uniform Credentialing Act, see section 38-101.

38-1415 Examinations; requirements.

When the applicant has satisfied the department that he or she either has completed a full course of instruction in an accredited school of mortuary science or has completed all but the final semester of such course, the applicant shall be eligible to take the national standardized examination. The applicant shall pass such examination before beginning his or her twelve-month apprenticeship or the final six months thereof. When the applicant has satisfied the department that he or she has the qualifications specified in section 38-1416, he or she shall be eligible to take the state jurisprudence and vital statistic forms examination. A grade of seventy-five or above on each part of the licensure examination shall be a passing grade.

Source: Laws 1927, c. 167, § 94, p. 480; C.S.1929, § 71-1303; Laws 1931, c. 123, § 1, p. 356; Laws 1937, c. 155, § 2, p. 613; C.S.Supp.,1941, § 71-1303; R.S.1943, § 71-196; Laws 1955, c. 271, § 2, p. 853; R.S.1943, (1990), § 71-196; Laws 1993, LB 187, § 15; R.S.1943, (2003), § 71-1303; Laws 2007, LB463, § 551.

38-1416 Apprenticeship; apprentice license; examination.

(1) Before beginning an apprenticeship, an applicant shall apply for an apprentice license. The applicant shall show that he or she has completed thirty-nine of the sixty hours required in subdivision (1)(a) of section 38-1414. The applicant may complete the twelve-month apprenticeship in either a split apprenticeship or a full apprenticeship as provided in this section.

(2) A split apprenticeship shall be completed in the following manner:

(a) Application for an apprentice license to complete a six-month apprenticeship prior to attending an accredited school of mortuary science, which license shall be valid for six months from the date of issuance and shall not be extended by the board. The apprenticeship shall be completed over a continuous six-month period;

(b) Successful completion of a full course of study in an accredited school of mortuary science;

(c) Successful passage of the national standardized examination; and

(d) Application for an apprentice license to complete the final six-month apprenticeship, which license shall be valid for six months from the date of issuance and shall not be extended by the board. The apprenticeship shall be completed over a continuous six-month period.

(3) A full apprenticeship shall be completed in the following manner:

(a) Successful completion of a full course of study in an accredited school of mortuary science;

(b) Successful passage of the national standardized examination; and

(c) Application for an apprentice license to complete a twelve-month apprenticeship. This license shall be valid for twelve months from the date of issuance and shall not be extended by the board. The apprenticeship shall be completed over a continuous twelve-month period.

(4) An individual registered as an apprentice on December 1, 2008, shall be deemed to be licensed as an apprentice for the term of the apprenticeship on such date.

Source: Laws 1927, c. 167, § 96, p. 481; C.S.1929, § 71-1305; Laws 1931, c. 123, § 1, p. 357; Laws 1937, c. 155, § 3, p. 613; C.S.Supp.,1941, § 71-1305; R.S.1943, § 71-198; Laws 1986, LB 926, § 44; Laws 1987, LB 473, § 20; Laws 1988, LB 1100, § 36; R.S.1943, (1990), § 71-198; Laws 1993, LB 187, § 16; Laws 2003, LB 242, § 97; R.S.1943, (2003), § 71-1304; Laws 2007, LB463, § 552.

Cross References

Uniform Credentialing Act, see section 38-101.

38-1417 Teaching and demonstration; use of dead human bodies.

The board shall have the privileges extended to them for the use of bodies for dissection, demonstrating, and teaching under the requirements of the State Anatomical Board for the distribution and delivery of dead human bodies.

Source: Laws 1927, c. 167, § 97, p. 481; C.S.1929, § 71-1306; Laws 1931, c. 123, § 1, p. 357; C.S.Supp.,1941, § 71-1306; R.S.1943, § 71-199; R.S.1943, (1990), § 71-199; Laws 1993, LB 187, § 17; Laws 1999, LB 828, § 153; R.S.1943, (2003), § 71-1305; Laws 2007, LB463, § 553.

Cross References

State Anatomical Board requirements, see sections 71-1001 to 71-1007.

38-1418 Violations; evidence.

The finding of chemical substances, fluids, or gases ordinarily used in embalming or any trace thereof in a dead human body, the use of which is prohibited except by a licensed funeral director and embalmer, or the placing thereof upon a dead human body by other than a licensed funeral director and embalmer shall constitute prima facie evidence of the violation of the Funeral Directing and Embalming Practice Act.

Source: Laws 1927, c. 167, § 98, p. 481; C.S.1929, § 71-1307; Laws 1931, c. 123, § 1, p. 357; C.S.Supp.,1941, § 71-1307; R.S.1943, § 71-1,100; R.S.1943, (1990), § 71-1,100; Laws 1993, LB 187, § 18; R.S.1943, (2003), § 71-1306; Laws 2007, LB463, § 554.

38-1419 Funeral establishment; qualifications; relocation; change of manager; change of name.

(1) In order for a funeral establishment to be licensed, it shall employ as its manager a licensed funeral director and embalmer who shall be responsible for all transactions conducted in the funeral establishment, except that any person holding a valid license as a funeral director may serve as a manager of a funeral establishment. The manager shall maintain and operate the funeral

establishment in accordance with all laws, rules, and regulations relating thereto.

(2) If the applicant for a funeral establishment license proposes to operate more than one establishment, a separate application and fee shall be required for each location.

(3) A funeral establishment desiring to relocate shall make application to the department at least thirty days prior to the designated date of such change in location.

(4) A funeral establishment desiring to change its manager shall make application to the department at least fifteen days prior to the designated date of such change, except that in the case of death of a manager, the application shall be made immediately following such death. No license shall be issued under this subsection by the department until the original license has been surrendered.

(5) A funeral establishment desiring to change its name shall request such change to the department at least thirty days prior to the designated change in name.

Source: Laws 1957, c. 295, § 3, p. 1060; Laws 1973, LB 515, § 15; Laws 1980, LB 94, § 6; Laws 1986, LB 926, § 49; Laws 1987, LB 473, § 37; Laws 1992, LB 1019, § 61; Laws 1993, LB 187, § 20; Laws 2003, LB 242, § 98; R.S.1943, (2003), § 71-1327; Laws 2007, LB463, § 555.

38-1420 Branch establishment; application for license; qualifications; relocation; change of manager; change of name.

(1) If the applicant for a branch establishment license proposes to operate more than one branch establishment, a separate application and fee shall be required for each location.

(2) A branch establishment desiring to relocate shall make application to the department at least thirty days prior to the designated date of such change in location.

(3) A branch establishment desiring to change its manager shall make application to the department at least fifteen days prior to the designated date of such change, except that in the case of death of the manager, the establishment shall make application immediately after such death. No license shall be issued by the department under this subsection until the original license has been surrendered.

(4) A branch establishment desiring to change its name shall apply to the department at least thirty days prior to the designated change in name.

Source: Laws 1993, LB 187, § 21; Laws 2003, LB 242, § 99; R.S.1943, (2003), § 71-1327.01; Laws 2007, LB463, § 556.

38-1421 Reciprocity.

The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who meets the requirements of the Funeral Directing and Embalming Practice Act or substan-

tially equivalent requirements as determined by the department, with the recommendation of the board.

Source: Laws 2007, LB463, § 557.

38-1422 Fees.

The department shall establish and collect fees for credentialing under the Funeral Directing and Embalming Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 558.

38-1423 Prohibited acts.

Any person, partnership, limited liability company, firm, corporation, association, or other organization which (1) without having complied with the Funeral Directing and Embalming Practice Act and without having first obtained a license (a) engages directly or indirectly in the business of funeral directing and embalming, (b) holds himself, herself, or itself out to the public as a funeral director and embalmer, or (c) performs or attempts to perform any of the services of a funeral establishment or branch establishment or of a funeral director and embalmer relating to the disposition of dead human bodies or (2) continues to perform such services after the license has expired or has been revoked or suspended shall be dealt with in the same manner as outlined in section 38-1,118. Each day so engaged in such business shall constitute and be deemed a separate offense.

Source: Laws 1957, c. 295, § 7, p. 1062; Laws 1973, LB 515, § 16; Laws 1977, LB 39, § 158; Laws 1980, LB 94, § 9; Laws 1986, LB 926, § 50; Laws 1988, LB 1100, § 101; Laws 1991, LB 10, § 5; Laws 1992, LB 1019, § 62; Laws 1993, LB 121, § 423; Laws 1993, LB 187, § 23; Laws 1994, LB 1223, § 33; Laws 2003, LB 242, § 100; R.S.1943, (2003), § 71-1331; Laws 2007, LB463, § 559.

38-1424 Funeral directors and embalmers and funeral establishments; prohibited acts; section, how construed.

(1) In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a credential issued under the Funeral Directing and Embalming Practice Act may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant or credential holder is found guilty of any of the following acts or offenses:

(a) Solicitation of dead human bodies by the credential holder or his or her agents, assistants, or employees, either prior to or following death;

(b) The purchasing of funeral or embalming engagements or the payment of a commission either directly or indirectly or offer of payment of such commission to any agent, assistant, or employee for the purpose of securing business;

(c) Using indecent, profane, or obscene language in the presence of a dead human body or within the immediate presence or hearing of the family, relatives, or friends of the deceased prior to the burial of the deceased;

(d) Soliciting or accepting any remuneration, commission, bonus, or rebate in consideration of the recommending or causing a dead human body to be placed in any crematory, mausoleum, or cemetery;

(e) Using any casket or part thereof which has previously been used as a receptacle for, or in connection with, the shipment, burial, or other disposition of a dead human body without first identifying such item as used;

(f) Violations of any state law, municipal ordinance, or rule or regulation of the department or other body having regulatory powers, relating to the handling, custody, care, or transportation of dead human bodies;

(g) Refusal to surrender promptly the custody of a dead human body upon request of a person or persons lawfully entitled to the custody thereof; or

(h) Taking undue advantage of a patron or patrons, or being found guilty of fraud, or misrepresentation in the selling of merchandise or service to patrons.

(2) An applicant or a credential holder shall be subject to the penalty provisions of this section if found guilty of any of the following:

(a) Paying, directly or indirectly, any money or other thing of value as a commission or gratuity for the securing of business;

(b) The buying of a business of any person, firm, or corporation, or the paying of a commission to any person, firm, or corporation or to any hospital or any institution where death occurs or to any hospital superintendent, nurse, intern, or other employee, whether directly or indirectly; or

(c) Willful malpractice.

(3) Any funeral director and embalmer who commits any of the acts or things prohibited by this section or otherwise violates any of the provisions thereof shall be guilty of a Class II misdemeanor.

(4) Nothing in this section shall be construed to prohibit a licensed funeral director and embalmer from engaging in sales of funeral goods or services under the Burial Pre-Need Sale Act.

Source: Laws 1957, c. 295, § 9, p. 1063; Laws 1963, c. 411, § 1, p. 1331; Laws 1980, LB 94, § 11; Laws 1987, LB 473, § 40; Laws 1988, LB 1100, § 103; Laws 1993, LB 187, § 25; R.S.1943, (2003), § 71-1333; Laws 2007, LB463, § 560.

Cross References

Burial Pre-Need Sale Act, see section 12-1101.

38-1425 Deceased persons; control of remains; interment; liability.

(1) Except as otherwise provided in section 71-20,121, the right to control the disposition of the remains of a deceased person, except in the case of a minor subject to section 23-1824 and unless other directions have been given by the decedent in the form of a testamentary disposition or a pre-need contract, vests in the following persons in the order named:

(a) Any person authorized to direct the disposition of the decedent's body pursuant to a notarized affidavit authorizing such disposition and signed and sworn to by the decedent. Such an affidavit shall be sufficient legal authority for authorizing disposition without additional authorization from the decedent, the decedent's family, or the decedent's estate. Such person shall not be considered an attorney in fact pursuant to sections 30-3401 to 30-3432;

(b) The surviving spouse of the decedent;

(c) If the surviving spouse is incompetent or not available or if there is no surviving spouse, the decedent's surviving adult children. If there is more than one adult child, any adult child, after confirmation in writing of the notification

of all other adult children, may direct the manner of disposition unless the funeral establishment or crematory authority receives written objection to the manner of disposition from another adult child;

(d) The decedent's surviving parents;

(e) The persons in the next degree of kinship under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may direct the manner of disposition;

(f) A guardian of the person of the decedent at the time of such person's death;

(g) The personal representative of the decedent;

(h) The State Anatomical Board or county board in the case of an indigent person or any other person the disposition of whose remains is the responsibility of the state or county; or

(i) A representative of an entity described in section 38-1426 that has arranged with the funeral establishment or crematory authority to cremate a body part in the case of body parts received from such entity described in section 38-1426.

(2) A funeral director, funeral establishment, crematory authority, or crematory operator shall not be subject to criminal prosecution or civil liability for carrying out the otherwise lawful instructions of the person or persons described in this section if the funeral director or crematory authority or operator reasonably believes such person is entitled to control the final disposition of the remains of the deceased person.

(3) The liability for the reasonable cost of the final disposition of the remains of the deceased person devolves jointly and severally upon all kin of the decedent in the same degree of kindred and upon the estate of the decedent and, in cases when the county board has the right to control disposition of the remains under subdivision (1)(h) of this section, upon the county in which death occurred from funds available for such purpose.

Source: Laws 1959, c. 325, § 1, p. 1186; Laws 1959, c. 326, § 1, p. 1189; Laws 1998, LB 1354, § 7; Laws 1999, LB 46, § 5; Laws 2003, LB 95, § 36; R.S.1943, (2003), § 71-1339; Laws 2007, LB463, § 561.

When a plaintiff alleges only that he is the son of the decedent and that the decedent was survived by his wife, he has no right to control the disposition of the decedent's remains. *Heitzman v. Thompson*, 270 Neb. 600, 705 N.W.2d 426 (2005).

38-1426 Final disposition; instructions; remains of deceased person; disposition; liability.

(1) A decedent, prior to his or her death, may direct the preparation for the final disposition of his or her remains by written instructions. If such instructions are in a will or other written instrument, the decedent may direct that the whole or any part of such remains be given to a teaching institution, university, college, or legally licensed hospital, to the director, or to or for the use of any nonprofit blood bank, artery bank, eye bank, or other therapeutic service operated by any agency approved by the director under rules and regulations established by the director. The person or persons otherwise entitled to control the disposition of the remains under this section shall faithfully carry out the directions of the decedent.

(2) If such instructions are contained in a will or other written instrument, they shall be immediately carried out, regardless of the validity of the will in other respects or of the fact that the will may not be offered for or admitted to probate until a later date.

(3) This section shall be administered and construed to the end that such expressed instructions of any person shall be faithfully and promptly performed.

(4) A funeral director and embalmer, physician, or cemetery authority shall not be liable to any person or persons for carrying out such instructions of the decedent, and any teaching institution, university, college, or legally licensed hospital or the director shall not be liable to any person or persons for accepting the remains of any deceased person under a will or other written instrument as set forth in this section.

Source: Laws 1959, c. 325, § 2, p. 1187; Laws 1993, LB 187, § 30; Laws 1996, LB 1044, § 559; Laws 2003, LB 95, § 37; R.S.1943, (2003), § 71-1340; Laws 2007, LB296, § 467; Laws 2007, LB463, § 562.

38-1427 Autopsy; written authorization; removal of organs; when performed.

A written authorization for an autopsy given by the survivor or survivors, as enumerated in section 38-1425, having the right to control the disposition of remains may, subject to section 23-1824 and when not inconsistent with any directions given by the decedent pursuant to section 38-1426, include authorization for the removal of any specifically named organ or organs for therapeutic or scientific purposes. Pursuant to any such written authorization, any structure or organ may be given to the director or to any other therapeutic service operated by any nonprofit agency approved by the director, including, but not limited to, a teaching institution, university, college, legally licensed hospital, nonprofit blood bank, nonprofit artery bank, nonprofit eye bank, or nationally recognized nonprofit hormone and pituitary program. The person or persons performing any autopsy shall do so within a reasonable time and without delay and shall not exceed the removal permission contained in such written authorization, and the remains shall not be significantly altered in external appearance nor shall any portion thereof be removed for purposes other than those expressly permitted in this section.

Source: Laws 1959, c. 325, § 3, p. 1188; Laws 1959, c. 326, § 2, p. 1189; Laws 1985, LB 130, § 1; Laws 1996, LB 1044, § 560; Laws 1999, LB 46, § 6; R.S.1943, (2003), § 71-1341; Laws 2007, LB296, § 468; Laws 2007, LB463, § 563.

38-1428 Funeral director and embalmer; principal services; statement of costs.

A written statement, signed by the funeral director and embalmer or legal representative, of all principal services and furnishings to be supplied by the funeral director and embalmer for the preparation and burial or cremation of the deceased, together with the actual cost of the services including the total actual costs, shall be given to the next of kin or other person responsible for the making of the funeral arrangements prior to the burial or disposition of the deceased. For purposes of this section principal services shall include, but not

be limited to, the casket, outer receptacle, facilities and equipment, professional services, nonlocal transportation, clothing, an itemization of all cash advances, and sales tax. A copy of such statement, signed by the person to whom it was tendered, shall be retained in the records of the funeral director and embalmer for a period of at least two years.

Source: Laws 1980, LB 94, § 17; Laws 1993, LB 187, § 32; R.S.1943, (2003), § 71-1346; Laws 2007, LB463, § 564.

ARTICLE 15

HEARING AID INSTRUMENT DISPENSERS AND FITTERS PRACTICE ACT

Cross References

Assistive Technology Regulation Act, see section 69-2601.

Audiology and Speech-Language Pathology Practice Act, see section 38-501.

Division of Public Health of the Department of Health and Human Services, see section 81-3113.

Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.

Health and Human Services Act, see section 81-3110.

Health Care Facility Licensure Act, see section 71-401.

Hearing aid dogs:

Access, see section 20-131.04.

Pet license tax, exemption, see section 54-603.

Vehicle driver, duties, see section 20-128.

Violence against, criminal penalty, see section 28-1009.01.

Interpreters for hearing-impaired persons, when required, see sections 20-150 to 20-159.

License Suspension Act, see section 43-3301.

Sales and use tax exemption, see section 77-2704.09.

State Board of Health, duties, see section 71-2610 et seq.

Telecommunications Relay System Act, see section 86-301.

Section

38-1501. Act, how cited.

38-1502. Definitions, where found.

38-1503. Board, defined.

38-1504. Hearing aid, defined.

38-1505. Practice of fitting hearing aids, defined.

38-1506. Sell, sale, or dispense, defined.

38-1507. Temporary license, defined.

38-1508. Board membership; qualifications.

38-1509. Sale or fitting of hearing aids; license required.

38-1510. Applicability of act.

38-1511. Sale; conditions.

38-1512. License; examination; conditions.

38-1513. Temporary license; issuance; supervision; renewal.

38-1514. Qualifying examination; contents; purpose.

38-1515. Applicant for licensure; continuing competency requirements.

38-1516. Applicant for licensure; reciprocity; continuing competency requirements.

38-1517. Licensee; disciplinary action; additional grounds.

38-1518. Fees.

38-1501 Act, how cited.

Sections 38-1501 to 38-1518 shall be known and may be cited as the Hearing Aid Instrument Dispensers and Fitters Practice Act.

Source: Laws 2007, LB463, § 565.

38-1502 Definitions, where found.

For purposes of the Hearing Aid Instrument Dispensers and Fitters Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1503 to 38-1507 apply.

Source: Laws 1969, c. 767, § 1, p. 2903; Laws 1986, LB 701, § 1; Laws 1987, LB 473, § 50; Laws 1988, LB 1100, § 148; Laws 1996, LB 1044, § 681; R.S.1943, (2003), § 71-4701; Laws 2007, LB296, § 589; Laws 2007, LB463, § 566.

38-1503 Board, defined.

Board means the Board of Hearing Aid Instrument Dispensers and Fitters.

Source: Laws 2007, LB463, § 567.

38-1504 Hearing aid, defined.

Hearing aid means any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories, including earmold, but excluding batteries and cords. A hearing aid shall also be known as a hearing instrument.

Source: Laws 2007, LB463, § 568.

38-1505 Practice of fitting hearing aids, defined.

Practice of fitting hearing aids means the measurement of human hearing by means of an audiometer or by other means approved by the board solely for the purpose of making selections, adaptations, or sale of hearing aids. The term also includes the making of impressions for earmolds. A dispenser, at the request of a physician or a member of related professions, may make audiograms for the professional's use in consultation with the hard-of-hearing.

Source: Laws 2007, LB463, § 569.

38-1506 Sell, sale, or dispense, defined.

Sell, sale, or dispense means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding (1) wholesale transactions with distributors or dispensers and (2) distribution of hearing aids by nonprofit service organizations at no cost to the recipient for the hearing aid.

Source: Laws 2007, LB463, § 570.

38-1507 Temporary license, defined.

Temporary license means a license issued while the applicant is in training to become a licensed hearing aid instrument dispenser and fitter.

Source: Laws 2007, LB463, § 571.

38-1508 Board membership; qualifications.

The board shall consist of five professional members and one public member appointed pursuant to section 38-158. The members shall meet the requirements of sections 38-164 and 38-165. The professional members shall consist of three hearing aid instrument dispensers and fitters, one otolaryngologist, and

one audiologist. At the expiration of the four-year terms of the members serving on December 1, 2008, successors shall be appointed for five-year terms.

Source: Laws 1969, c. 767, § 15, p. 2914; Laws 1981, LB 204, § 130; Laws 1986, LB 701, § 12; Laws 1988, LB 1100, § 160; Laws 1992, LB 1019, § 81; Laws 1993, LB 375, § 6; Laws 1994, LB 1223, § 52; Laws 1999, LB 828, § 173; R.S.1943, (2003), § 71-4715; Laws 2007, LB463, § 572.

38-1509 Sale or fitting of hearing aids; license required.

(1) No person shall engage in the sale of or practice of fitting hearing aids or display a sign or in any other way advertise or represent himself or herself as a person who practices the fitting and sale or dispensing of hearing aids unless he or she holds an unsuspended, unrevoked license issued by the department as provided in the Hearing Aid Instrument Dispensers and Fitters Practice Act. A license shall confer upon the holder the right to select, fit, and sell hearing aids.

(2) A licensed audiologist who maintains a practice pursuant to licensure as an audiologist in which hearing aids are regularly dispensed or who intends to maintain such a practice shall also be licensed pursuant to subsection (4) of section 38-1512.

(3) Nothing in the act shall prohibit a corporation, partnership, limited liability company, trust, association, or other like organization maintaining an established business address from engaging in the business of selling or offering for sale hearing aids at retail without a license if it employs only properly licensed natural persons in the direct sale and fitting of such products.

(4) Nothing in the act shall prohibit the holder of a license from the fitting and sale of wearable instruments or devices designed for or offered for the purpose of conservation or protection of hearing.

Source: Laws 1969, c. 767, § 2, p. 2904; Laws 1986, LB 701, § 2; Laws 1988, LB 1100, § 149; Laws 1992, LB 1019, § 79; Laws 1993, LB 121, § 438; R.S.1943, (2003), § 71-4702; Laws 2007, LB247, § 52; Laws 2007, LB247, § 70; Laws 2007, LB463, § 573.

38-1510 Applicability of act.

(1) The Hearing Aid Instrument Dispensers and Fitters Practice Act is not intended to prevent any person from engaging in the practice of measuring human hearing for the purpose of selection of hearing aids if such person or organization employing such person does not sell hearing aids or accessories thereto.

(2) The act shall not apply to a person who is a physician licensed to practice in this state, except that such physician shall not delegate the authority to fit and dispense hearing aids unless the person to whom the authority is delegated is licensed under the act.

Source: Laws 1969, c. 767, § 4, p. 2905; Laws 1986, LB 701, § 4; Laws 1988, LB 1100, § 150; R.S.1943, (2003), § 71-4704; Laws 2007, LB463, § 574.

38-1511 Sale; conditions.

(1) Any person who practices the fitting and sale of hearing aids shall deliver to each person supplied with a hearing aid a receipt which shall contain the

licensee's signature and show his or her business address and the number of his or her certificate, together with specifications as to the make and model of the hearing aid furnished, and clearly stating the full terms of sale. If an aid which is not new is sold, the receipt and the container thereof shall be clearly marked as used or reconditioned, whichever is applicable, with terms of guarantee, if any.

(2) Such receipt shall bear in no smaller type than the largest used in the body copy portion the following: The purchaser has been advised at the outset of his or her relationship with the hearing aid instrument dispenser that any examination or representation made by a licensed hearing aid instrument dispenser and fitter in connection with the fitting and selling of this hearing aid is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefor must not be regarded as medical opinion or advice.

Source: Laws 1969, c. 767, § 3, p. 2905; Laws 1986, LB 701, § 3; R.S.1943, (2003), § 71-4703; Laws 2007, LB463, § 575.

38-1512 License; examination; conditions.

(1) Any person may obtain a license under the Hearing Aid Instrument Dispensers and Fitters Practice Act by successfully passing a qualifying examination if the applicant:

- (a) Is at least twenty-one years of age; and
- (b) Has an education equivalent to a four-year course in an accredited high school.

(2) The qualifying examination shall consist of written and practical tests. The examination shall not be conducted in such a manner that college training is required in order to pass. Nothing in this examination shall imply that the applicant is required to possess the degree of medical competence normally expected of physicians.

(3) The department shall give examinations approved by the board. A minimum of two examinations shall be offered each calendar year.

(4) The department shall issue a license without examination to a licensed audiologist who maintains a practice pursuant to licensure as an audiologist in which hearing aids are regularly dispensed or who intends to maintain such a practice upon application to the department, proof of licensure, and payment of a twenty-five-dollar fee.

Source: Laws 1969, c. 767, § 7, p. 2907; Laws 1986, LB 701, § 6; Laws 1987, LB 473, § 53; Laws 1988, LB 1100, § 153; R.S.1943, (2003), § 71-4707; Laws 2007, LB247, § 53; Laws 2007, LB247, § 71; Laws 2007, LB463, § 576.

Cross References

Uniform Credentialing Act, see section 38-101.

38-1513 Temporary license; issuance; supervision; renewal.

(1) The department, with the recommendation of the board, shall issue a temporary license to any person who has met the requirements for licensure pursuant to subsection (1) of section 38-1512. Previous experience or a waiting period shall not be required to obtain a temporary license.

(2) Any person who desires a temporary license shall make application to the department. The temporary license shall be issued for a period of one year. A person holding a valid license shall be responsible for the supervision and training of such applicant and shall maintain adequate personal contact with him or her.

(3) If a person who holds a temporary license under this section has not successfully passed the licensing examination within twelve months of the date of issuance of the temporary license, the temporary license may be renewed or reissued for a twelve-month period. In no case may a temporary license be renewed or reissued more than once. A renewal or reissuance may take place any time after the expiration of the first twelve-month period.

Source: Laws 1969, c. 767, § 8, p. 2907; Laws 1973, LB 515, § 22; Laws 1986, LB 701, § 7; Laws 1987, LB 473, § 55; Laws 1988, LB 1100, § 154; Laws 1991, LB 456, § 36; Laws 1997, LB 752, § 185; Laws 2003, LB 242, § 125; R.S.1943, (2003), § 71-4708; Laws 2007, LB463, § 577.

38-1514 Qualifying examination; contents; purpose.

The qualifying examination provided in section 38-1512 shall be designed to demonstrate the applicant's adequate technical qualifications by:

(1) Tests of knowledge in the following areas as they pertain to the fitting and sale of hearing aids:

- (a) Basic physics of sound;
- (b) The anatomy and physiology of the ear; and
- (c) The function of hearing aids; and

(2) Practical tests of proficiency in the following techniques as they pertain to the fitting of hearing aids:

- (a) Pure tone audiometry, including air conduction testing and bone conduction testing;
- (b) Live voice or recorded voice speech audiometry;
- (c) Masking when indicated;
- (d) Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of a hearing aid; and
- (e) Taking earmold impressions.

Source: Laws 1969, c. 767, § 9, p. 2908; Laws 1986, LB 701, § 8; R.S.1943, (2003), § 71-4709; Laws 2007, LB463, § 578.

38-1515 Applicant for licensure; continuing competency requirements.

An applicant for licensure to practice hearing aid instrument dispensing and fitting who has met the education and examination requirements in section 38-1512, who passed the examination more than three years prior to the time of application for licensure, and who is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 579.

38-1516 Applicant for licensure; reciprocity; continuing competency requirements.

An applicant for licensure to practice hearing aid instrument dispensing and fitting who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 580.

38-1517 Licensee; disciplinary action; additional grounds.

In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a credential issued under the Hearing Aid Instrument Dispensers and Fitters Practice Act may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant or credential holder is found guilty of any of the following acts or offenses:

- (1) Fitting and selling a hearing aid to a child under the age of sixteen who has not been examined and cleared for hearing aid use within a six-month period by an otolaryngologist without a signed waiver by the legal guardian. This subdivision shall not apply to the replacement with an identical model of any hearing aid within one year of its purchase;
- (2) Any other condition or acts which violate the Trade Practice Rules for the Hearing Aid Industry of the Federal Trade Commission or the Food and Drug Administration; or
- (3) Violation of any provision of the Hearing Aid Instrument Dispensers and Fitters Practice Act.

Source: Laws 1969, c. 767, § 12, p. 2909; Laws 1986, LB 701, § 10; Laws 1988, LB 1100, § 157; Laws 1991, LB 456, § 37; Laws 1994, LB 1223, § 51; R.S.1943, (2003), § 71-4712; Laws 2007, LB463, § 581.

38-1518 Fees.

The department shall establish and collect fees for credentialing activities under the Hearing Aid Instrument Dispensers and Fitters Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 1988, LB 1100, § 159; Laws 1992, LB 1019, § 80; Laws 2003, LB 242, § 127; R.S.1943, (2003), § 71-4714.01; Laws 2007, LB463, § 582.

ARTICLE 16

LICENSED PRACTICAL NURSE-CERTIFIED PRACTICE ACT

Cross References

- Advanced Practice Registered Nurse Practice Act**, see section 38-201.
- Alcohol or controlled substance testing**, agent of state, see sections 37-1254.06, 60-4,164.01, and 60-6,202.
- Certified Nurse Midwifery Practice Act**, see section 38-601.
- Certified Registered Nurse Anesthetist Practice Act**, see section 38-701.
- Child abuse**, duty to report, see section 28-711.
- Clinical Nurse Specialist Practice Act**, see section 38-901.
- Community nurses**, see sections 71-1637 to 71-1639.

Division of Public Health of the Department of Health and Human Services, see section 81-3113.
 Emergency Box Drug Act, see section 71-2410.
 Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.
 Good Samaritan provisions, see section 25-21,186.
 Health and Human Services Act, see section 81-3110.
 Health Care Facility Licensure Act, see section 71-401.
 Health Care Professional Credentialing Verification Act, see section 44-7001.
 Home health aides, see section 71-6601 et seq.
 License Suspension Act, see section 43-3301.
 Lien for services, see section 52-401.
 Medication Aide Act, see section 71-6718.
 Nebraska Center for Nursing Act, see section 71-1796.
 Nebraska Hospital-Medical Liability Act, see section 44-2855.
 Nebraska Nursing Home Act, see section 71-6037.
 Nebraska Regulation of Health Professions Act, see section 71-6201.
 Nurse Licensure Compact, see section 71-1795.
 Nurse Practice Act, see section 38-2201.
 Nurse Practitioner Practice Act, see section 38-2301.
 Nursing Faculty Student Loan Act, see section 71-17,108.
 Nursing Home Administrator Practice Act, see section 38-2401.
 Nursing Student Loan Act, see section 71-17,101.
 Patient Safety Improvement Act, see section 71-8701.
 Rural Health Systems and Professional Incentive Act, see section 71-5650.
 State Board of Health, duties, see section 71-2610 et seq.
 Statewide Trauma System Act, see section 71-8201.
 Uniform Controlled Substances Act, see section 28-401.01.

Section

- 38-1601. Act, how cited.
- 38-1602. Purposes of act.
- 38-1603. Definitions, where found.
- 38-1604. Administration, defined.
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- 38-1611. Licensed practitioner, defined.
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- 38-1613. Licensed practical nurse-certified; activities authorized.
- 38-1614. Applicability of act.
- 38-1615. Licensure; requirements.
- 38-1616. License; renewal; term.
- 38-1617. License; renewal; continuing competency activities.
- 38-1618. Expiration of license; restoration.
- 38-1619. Fees.
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- 38-1621. Intravenous therapy; performance of activities authorized; limitations; assessment required.
- 38-1622. Curriculum for training; department; duties; approved certification course; requirements.
- 38-1623. Approval of course; procedure.
- 38-1624. Approved certification course; disciplinary actions authorized.
- 38-1625. Approval to conduct certification course; reinstatement.

38-1601 Act, how cited.

Sections 38-1601 to 38-1625 shall be known and may be cited as the Licensed Practical Nurse-Certified Practice Act.

Source: Laws 1993, LB 536, § 20; R.S.1943, (2003), § 71-1772; Laws 2007, LB463, § 583.

38-1602 Purposes of act.

The purposes of the Licensed Practical Nurse-Certified Practice Act are (1) to provide a means by which licensed practical nurses-certified may perform

certain activities related to intravenous therapy, (2) to provide for approval of certification courses to prepare licensed practical nurses-certified, and (3) to ensure the health and safety of the general public.

Source: Laws 1993, LB 536, § 21; Laws 2003, LB 213, § 1; R.S.1943, (2003), § 71-1773; Laws 2007, LB463, § 584.

38-1603 Definitions, where found.

For purposes of the Licensed Practical Nurse-Certified Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1604 to 38-1612 apply.

Source: Laws 2007, LB463, § 585.

38-1604 Administration, defined.

Administration includes observing, initiating, monitoring, discontinuing, maintaining, regulating, adjusting, documenting, assessing, planning, intervening, and evaluating.

Source: Laws 2007, LB463, § 586.

38-1605 Approved certification course, defined.

Approved certification course means a course for the education and training of a licensed practical nurse-certified which the board has approved.

Source: Laws 2007, LB463, § 587.

38-1606 Board, defined.

Board means the Board of Nursing.

Source: Laws 2007, LB463, § 588.

38-1607 Direct supervision, defined.

Direct supervision means that the responsible licensed practitioner or registered nurse is physically present in the clinical area and is available to assess, evaluate, and respond immediately.

Source: Laws 2007, LB463, § 589.

38-1608 Initial venipuncture, defined.

Initial venipuncture means the initiation of intravenous therapy based on a new order from a licensed practitioner for an individual for whom a previous order for intravenous therapy was not in effect.

Source: Laws 2007, LB463, § 590.

38-1609 Intravenous therapy, defined.

Intravenous therapy means the therapeutic infusion or injection of substances through the venous system.

Source: Laws 2007, LB463, § 591.

38-1610 Licensed practical nurse-certified, defined.

Licensed practical nurse-certified means a licensed practical nurse who meets the standards established pursuant to section 38-1615 and who holds a

valid license issued by the department pursuant to the Licensed Practical Nurse-Certified Practice Act.

Source: Laws 2007, LB463, § 592.

38-1611 Licensed practitioner, defined.

Licensed practitioner means any person authorized by state law to prescribe intravenous therapy.

Source: Laws 2007, LB463, § 593.

38-1612 Pediatric patient, defined.

Pediatric patient means a patient who is both younger than eighteen years old and under the weight of thirty-five kilograms.

Source: Laws 2007, LB463, § 594.

38-1613 Licensed practical nurse-certified; activities authorized.

A licensed practical nurse-certified may perform the following activities related to the administration of intravenous therapy under the direction of a licensed practitioner or registered nurse:

- (1) Calculate the rate of intravenous fluid infusions, except for pediatric patients;
- (2) Perform venipuncture, excluding jugular, for purposes of peripheral intravenous therapy, except (a) for pediatric patients or (b) with devices which exceed three inches in length. Direct supervision by a licensed practitioner or registered nurse shall be required for initial venipuncture for purposes of peripheral intravenous therapy;
- (3) Except in the case of a pediatric patient, administer approved medications by approved methods. Approved methods of administration and approved medications shall be those for which nursing interventions are routine and predictable in nature related to individual responses and adverse reactions and as defined in rules and regulations of the board;
- (4) Flush intravenous ports with heparin solution or saline solution; and
- (5) Add pain medication solutions to a patient-controlled infusion pump.

Source: Laws 1993, LB 536, § 24; Laws 2000, LB 1115, § 64; Laws 2003, LB 213, § 4; R.S.1943, (2003), § 71-1776; Laws 2007, LB463, § 595.

38-1614 Applicability of act.

The Licensed Practical Nurse-Certified Practice Act shall not prohibit the performance of the activities identified in section 38-1613 by an unlicensed person if performed (1) in an emergency situation, (2) by a legally qualified person from another state employed by the federal government and performing official duties in this state, or (3) by a person enrolled in an approved certification course if performed as part of that approved certification course.

Source: Laws 1993, LB 536, § 37; R.S.1943, (2003), § 71-1789; Laws 2007, LB463, § 596.

38-1615 Licensure; requirements.

(1) In order to obtain a license as a licensed practical nurse-certified, an individual shall:

(a) Have a current license to practice as a licensed practical nurse in Nebraska;

(b) Have successfully completed an approved certification course within one year before application for licensure; and

(c) Have satisfactorily passed an examination approved by the board.

(2) There is no minimum age requirement for licensure as a licensed practical nurse-certified.

(3) An individual holding a certificate as a licensed practical nurse-certified on December 1, 2008, shall be deemed to be holding a license under this section on such date. The certificate holder may continue to practice under such certificate as a license until the next renewal date.

Source: Laws 1993, LB 536, § 25; Laws 2000, LB 1115, § 65; Laws 2003, LB 242, § 109; R.S.1943, (2003), § 71-1777; Laws 2007, LB463, § 597.

Cross References

Uniform Credentialing Act, see section 38-101.

38-1616 License; renewal; term.

A license to practice as a licensed practical nurse-certified shall be renewed biennially and shall expire on the same date as the applicant's Nebraska license to practice as a licensed practical nurse.

Source: Laws 1993, LB 536, § 26; Laws 1997, LB 752, § 176; Laws 2000, LB 1115, § 66; Laws 2003, LB 242, § 110; R.S.1943, (2003), § 71-1778; Laws 2007, LB463, § 598.

38-1617 License; renewal; continuing competency activities.

Continuing competency activities for renewal of a license to practice as a licensed practical nurse-certified shall relate to intravenous therapy and may be included in the continuing competency activities required under the Nurse Practice Act for renewal of a license as a licensed practical nurse.

Source: Laws 1993, LB 536, § 27; Laws 1995, LB 563, § 44; Laws 2002, LB 1021, § 65; Laws 2003, LB 213, § 5; R.S.1943, (2003), § 71-1779; Laws 2007, LB463, § 599.

Cross References

Nurse Practice Act, see section 38-2201.

38-1618 Expiration of license; restoration.

To restore a license to practice as a licensed practical nurse-certified after it expires, such individual shall be required to meet the requirements for licensure which are in effect at the time that he or she wishes to restore the license.

Source: Laws 1993, LB 536, § 40; R.S.1943, (2003), § 71-1792; Laws 2007, LB463, § 600.

38-1619 Fees.

The department shall establish and collect fees for credentialing under the Licensed Practical Nurse-Certified Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 601.

38-1620 Use of title and abbreviation authorized.

An individual licensed to practice as a licensed practical nurse-certified may use the title licensed practical nurse-certified and the abbreviation L.P.N.-C.

Source: Laws 1993, LB 536, § 38; R.S.1943, (2003), § 71-1790; Laws 2007, LB463, § 602.

38-1621 Intravenous therapy; performance of activities authorized; limitations; assessment required.

(1) Administration of intravenous therapy shall be a responsibility of the registered nurse as ordered by a licensed practitioner.

(2) A licensed practical nurse-certified may, under the direction of a licensed practitioner or registered nurse, perform the activities identified in section 38-1613 after the licensed practitioner or registered nurse has performed a physical assessment of the patient.

(3) A licensed practical nurse-certified shall perform appropriate activities associated with central venous lines only under direct supervision. Activities associated with central venous lines that are appropriate for the licensed practical nurse-certified to perform shall be defined in rules and regulations. A licensed practitioner or registered nurse shall provide direct supervision whenever a licensed practical nurse-certified is performing activities associated with central venous lines.

(4) A licensed practitioner or registered nurse need not be on the premises in order for the licensed practical nurse-certified to perform directed activities except for (a) initial venipuncture for purposes of peripheral intravenous therapy and (b) central-line activities.

(5) A licensed practitioner or registered nurse shall be present at least once during each twenty-four-hour interval and more frequently when a significant change in therapy or client condition has occurred to assess the client when the licensed practical nurse-certified is performing the activities identified in section 38-1613.

Source: Laws 1993, LB 536, § 23; Laws 2000, LB 1115, § 63; Laws 2003, LB 213, § 3; R.S.1943, (2003), § 71-1775; Laws 2007, LB463, § 603.

38-1622 Curriculum for training; department; duties; approved certification course; requirements.

(1) The board shall adopt and promulgate rules and regulations defining competencies required for enrollment in an approved certification course and acceptable means for measuring the competencies. Before enrolling in a course, a licensed practical nurse shall successfully demonstrate the prerequisite competencies.

(2) The department with the advice of the board shall prescribe a curriculum for training licensed practical nurses-certified, establish an examination, and adopt and promulgate rules and regulations setting minimum standards for

approved certification courses, including faculty qualifications, record keeping, faculty-to-student ratios, and other aspects of conducting such courses. The department may approve certification courses developed by associations, educational institutions, or other entities if such courses meet the requirements of this section and the criteria prescribed in the rules and regulations.

(3) An approved certification course shall be no less than forty-eight hours of classroom instruction and shall include a clinical competency component as defined in rules and regulations of the board. Classroom instruction shall include the following: (a) State laws governing the administration of intravenous therapy; (b) anatomy and physiology of the circulatory system; (c) pharmacology; (d) fluid and electrolyte balance; (e) procedures and precautions in performing intravenous therapy; (f) types of equipment for intravenous therapy; (g) actions, interactions, and effects of medications in intravenous therapy; (h) documentation; and (i) other subjects relevant to the administration of intravenous therapy. An approved certification course shall be supervised by a registered nurse with a minimum of three years of clinical experience immediately prior to supervision of the course. An educator may be a physician, pharmacist, or other qualified professional. Nothing in this section shall be deemed to prohibit any courses from exceeding the minimum requirements.

Source: Laws 1993, LB 536, § 28; Laws 2000, LB 1115, § 67; Laws 2003, LB 213, § 6; R.S.1943, (2003), § 71-1780; Laws 2007, LB463, § 604.

38-1623 Approval of course; procedure.

(1) An applicant for approval to conduct a certification course shall file an application and shall present proof satisfactory to the department that the proposed course meets the requirements of the Licensed Practical Nurse-Certified Practice Act and the rules and regulations adopted and promulgated under the act.

(2) The department may conduct such inspections or investigations of applicants for approval to conduct a certification course and of approved certification courses as may be necessary to ensure compliance with the act and the rules and regulations.

Source: Laws 1993, LB 536, § 29; Laws 2000, LB 1115, § 68; R.S.1943, (2003), § 71-1781; Laws 2007, LB463, § 605.

38-1624 Approved certification course; disciplinary actions authorized.

The department may deny, revoke, or suspend or otherwise take disciplinary measures against an approved certification course in accordance with section 38-196 for violation of the Licensed Practical Nurse-Certified Practice Act or the rules and regulations adopted and promulgated under the act.

Source: Laws 1993, LB 536, § 31; R.S.1943, (2003), § 71-1783; Laws 2007, LB463, § 606.

38-1625 Approval to conduct certification course; reinstatement.

A course provider whose approval to conduct a certification course has been suspended or revoked may apply for reinstatement at such time as the certification course meets the requirements of the Licensed Practical Nurse-Certified

Practice Act and rules and regulations adopted and promulgated under the act and will continue to meet such requirements.

Source: Laws 1993, LB 536, § 33; R.S.1943, (2003), § 71-1785; Laws 2007, LB463, § 607.

ARTICLE 17

MESSAGE THERAPY PRACTICE ACT

Cross References

Child abuse, duty to report, see section 28-711.
Division of Public Health of the Department of Health and Human Services, see section 81-3113.
Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.
Good Samaritan provisions, see section 25-21,186.
Health and Human Services Act, see section 81-3110.
Health Care Facility Licensure Act, see section 71-401.
Health Care Professional Credentialing Verification Act, see section 44-7001.
License Suspension Act, see section 43-3301.
Nebraska Nursing Home Act, see section 71-6037.
Nebraska Regulation of Health Professions Act, see section 71-6201.
Patient Safety Improvement Act, see section 71-8701.
State Board of Health, duties, see section 71-2610 et seq.

Section

38-1701. Act, how cited.
 38-1702. Definitions, where found.
 38-1703. Approved massage therapy school, defined.
 38-1704. Board, defined.
 38-1705. Massage therapist, defined.
 38-1706. Massage therapy, defined.
 38-1707. Massage therapy establishment, defined.
 38-1708. Massage therapy; persons excepted.
 38-1709. School or establishment; massage therapist; license required.
 38-1710. Massage therapy license; applicant; qualifications.
 38-1711. Massage therapy; temporary license; requirements.
 38-1712. Reciprocity.
 38-1713. Fees.
 38-1714. Unprofessional conduct.
 38-1715. Rules and regulations.

38-1701 Act, how cited.

Sections 38-1701 to 38-1715 shall be known and may be cited as the Massage Therapy Practice Act.

Source: Laws 2007, LB463, § 608.

38-1702 Definitions, where found.

For purposes of the Massage Therapy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1703 to 38-1707 apply.

Source: Laws 1955, c. 273, § 1, p. 861; Laws 1987, LB 473, § 42; R.S.Supp.,1987, § 71-2701; Laws 1988, LB 1100, § 132; Laws 1990, LB 1064, § 14; Laws 1991, LB 10, § 2; Laws 1993, LB 48, § 2; Laws 1999, LB 828, § 142; Laws 2003, LB 242, § 69; R.S.1943, (2003), § 71-1,278; Laws 2007, LB463, § 609.

38-1703 Approved massage therapy school, defined.

Approved massage therapy school means (1) one which is approved by the board, (2) one which requires for admission a diploma from an accredited high

school or its equivalent, (3) one which has attached to its staff a regularly licensed physician and employs one or more competent massage therapists as instructors, and (4) one which has a minimum requirement of a continuous course of study and training of not less than one thousand hours distributed over a term of not less than nine months. Such study and training shall consist of one hundred hours of each of the following: Physiology; anatomy; massage; pathology; hydrotherapy; hygiene and practical demonstration; and health service management. The remaining three hundred hours shall be obtained in subject areas related to the clinical practice of massage therapy.

Source: Laws 2007, LB463, § 610.

38-1704 Board, defined.

Board means the Board of Massage Therapy.

Source: Laws 2007, LB463, § 611.

38-1705 Massage therapist, defined.

Massage therapist means a person licensed to practice massage therapy.

Source: Laws 2007, LB463, § 612.

38-1706 Massage therapy, defined.

Massage therapy means the physical, mechanical, or electrical manipulation of soft tissue for the therapeutic purposes of enhancing muscle relaxation, reducing stress, improving circulation, or instilling a greater sense of well-being and may include the use of oil, salt glows, heat lamps, and hydrotherapy. Massage therapy does not include diagnosis or treatment or use of procedures for which a license to practice medicine or surgery, chiropractic, or podiatry is required nor the use of microwave diathermy, shortwave diathermy, ultrasound, transcutaneous electrical nerve stimulation, electrical stimulation of over thirty-five volts, neurological hyperstimulation, or spinal and joint adjustments.

Source: Laws 2007, LB463, § 613.

38-1707 Massage therapy establishment, defined.

Massage therapy establishment means any duly licensed place in which a massage therapist practices his or her profession of massage therapy.

Source: Laws 2007, LB463, § 614.

38-1708 Massage therapy; persons excepted.

The Massage Therapy Practice Act shall not be construed to include the following classes of persons:

(1) Licensed physicians and surgeons, osteopathic physicians, chiropractors, registered nurses, practical nurses, cosmetologists, estheticians, nail technicians, physical therapists, barbers, and other persons credentialed under the Uniform Credentialing Act who are exclusively engaged in the practice of their respective professions;

(2) Physicians who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States

Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;

(3) Students performing massage therapy services when they render such services within the scope of an approved massage therapy school under the supervision of a licensed massage therapist; and

(4) Individuals who hold a current license as a massage therapist in another state and who travel with and provide massage therapy services to theatrical groups, entertainers, or athletic organizations.

Source: Laws 1955, c. 273, § 2, p. 862; Laws 1957, c. 297, § 1, p. 1070; R.S.1943, (1986), § 71-2702; Laws 1988, LB 1100, § 133; Laws 1989, LB 342, § 28; Laws 1990, LB 1064, § 15; R.S.1943, (2003), § 71-1,279; Laws 2007, LB463, § 615.

38-1709 School or establishment; massage therapist; license required.

No person shall engage in the practice of massage therapy or the operation of a massage therapy school or establishment unless he or she obtains a license from the department for that purpose.

Source: Laws 1955, c. 273, § 11, p. 866; Laws 1957, c. 297, § 7, p. 1073; R.S.1943, (1986), § 71-2712; Laws 1988, LB 1100, § 137; Laws 2002, LB 1021, § 31; R.S.1943, (2003), § 71-1,280; Laws 2007, LB463, § 616.

38-1710 Massage therapy license; applicant; qualifications.

Every applicant for an initial license to practice massage therapy shall (1) present satisfactory evidence that he or she has attained the age of nineteen years, (2) present proof of graduation from an approved massage therapy school, and (3) pass an examination prescribed by the board.

Source: Laws 1955, c. 273, § 5, p. 863; Laws 1957, c. 297, § 3, p. 1071; Laws 1973, LB 512, § 1; R.S.1943, (1986), § 71-2705; Laws 1988, LB 1100, § 135; Laws 1999, LB 828, § 143; R.S.1943, (2003), § 71-1,281; Laws 2007, LB463, § 617.

Cross References

Uniform Credentialing Act, see section 38-101.

38-1711 Massage therapy; temporary license; requirements.

A temporary license to practice massage therapy may be granted to any person who meets all the requirements for a license except passage of the licensure examination required by section 38-1710. A temporary licensee shall be supervised in his or her practice by a licensed massage therapist. A temporary license shall be valid for sixty days or until the temporary licensee takes the examination, whichever occurs first. In the event a temporary licensee fails the examination required by such section, the temporary license shall be null and void, except that the department, with the recommendation of the board, may extend the temporary license upon a showing of good cause why such license should be extended. A temporary license may not be extended beyond six months. A temporary license shall not be issued to any person

failing the examination if such person did not hold a valid temporary license prior to his or her failure to pass the examination.

Source: Laws 1993, LB 48, § 3; Laws 1999, LB 828, § 144; Laws 2003, LB 242, § 70; R.S.1943, (2003), § 71-1,281.01; Laws 2007, LB463, § 618.

38-1712 Reciprocity.

The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who meets the requirements of the Massage Therapy Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board.

Source: Laws 2007, LB463, § 619.

38-1713 Fees.

The department shall establish and collect fees for credentialing under the Massage Therapy Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 620.

38-1714 Unprofessional conduct.

For purposes of the Massage Therapy Practice Act, unprofessional conduct includes the conduct listed in section 38-179 and the provision by a massage therapist of sexual stimulation as part of massage therapy.

Source: Laws 2007, LB463, § 621.

38-1715 Rules and regulations.

The department shall adopt and promulgate rules and regulations as it may deem necessary with reference to the conditions under which the practice of massage therapy shall be carried on and the precautions necessary to be employed to prevent the spread of infectious and contagious diseases. The department shall have the power to enforce the Massage Therapy Practice Act and all necessary inspections in connection therewith.

Source: Laws 2007, LB463, § 622.

ARTICLE 18

MEDICAL NUTRITION THERAPY PRACTICE ACT

Cross References

- Assisted-Living Facility Act, see section 71-5901.
- Child abuse, duty to report, see section 28-711.
- Diabetes, insurance coverage for medical nutrition therapy, requirements, see section 44-790.
- Division of Public Health of the Department of Health and Human Services, see section 81-3113.
- Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.
- Good Samaritan provisions, see section 25-21,186.
- Health and Human Services Act, see section 81-3110.
- Health Care Facility Licensure Act, see section 71-401.
- Health Care Professional Credentialing Verification Act, see section 44-7001.
- Home health aides, see section 71-6601 et seq.
- License Suspension Act, see section 43-3301.
- Medication Aide Act, see section 71-6718.
- Nebraska Hospital-Medical Liability Act, see section 44-2855.
- Nebraska Nursing Home Act, see section 71-6037.
- Nebraska Regulation of Health Professions Act, see section 71-6201.
- Patient Safety Improvement Act, see section 71-8701.
- State Board of Health, duties, see section 71-2610 et seq.

Section

- 38-1801. Act, how cited.
- 38-1802. Legislative findings.
- 38-1803. Definitions, where found.
- 38-1804. Assessment, defined.
- 38-1805. Board, defined.
- 38-1806. Consultation, defined.
- 38-1807. General nutrition services.
- 38-1808. Licensed medical nutrition therapist, defined.
- 38-1809. Medical nutrition therapy, defined.
- 38-1810. Patient, defined.
- 38-1811. Board; membership; qualifications.
- 38-1812. License required; activities not subject to act.
- 38-1813. Licensed medical nutrition therapist; qualifications.
- 38-1814. Reciprocity.
- 38-1815. Fees.
- 38-1816. Act, how construed.

38-1801 Act, how cited.

Sections 38-1801 to 38-1816 shall be known and may be cited as the Medical Nutrition Therapy Practice Act.

Source: Laws 2007, LB463, § 623.

38-1802 Legislative findings.

(1) The Legislature finds that:

- (a) The unregulated practice of medical nutrition therapy can clearly harm or endanger the health, safety, and welfare of the public;
- (b) The public can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and
- (c) The public cannot be effectively protected by a less cost-effective means than state regulation of the practice of medical nutrition therapy. The Legislature also finds that medical nutrition therapists must exercise independent judgment and that professional education, training, and experience are required to make such judgment.

(2) The Legislature further finds that the practice of medical nutrition therapy in the State of Nebraska is not sufficiently regulated for the protection of the health, safety, and welfare of the public. It declares that this is a matter of statewide concern and it shall be the policy of the State of Nebraska to promote high standards of professional performance by those persons representing themselves as licensed medical nutrition therapists.

Source: Laws 1988, LB 557, § 1; Laws 1995, LB 406, § 20; R.S.1943, (2003), § 71-1,285; Laws 2007, LB463, § 624.

38-1803 Definitions, where found.

For purposes of the Medical Nutrition Therapy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1804 to 38-1810 apply.

Source: Laws 1988, LB 557, § 2; Laws 1995, LB 406, § 21; Laws 1999, LB 828, § 146; R.S.1943, (2003), § 71-1,286; Laws 2007, LB463, § 625.

38-1804 Assessment, defined.

Assessment means the process of evaluating the nutritional status of patients. The assessment includes review and analysis of medical and diet histories, biochemical lab values, and anthropometric measurements to determine nutritional status and appropriate nutritional treatment.

Source: Laws 2007, LB463, § 626.

38-1805 Board, defined.

Board means the Board of Medical Nutrition Therapy.

Source: Laws 2007, LB463, § 627.

38-1806 Consultation, defined.

Consultation means conferring with a physician regarding the activities of the licensed medical nutrition therapist.

Source: Laws 2007, LB463, § 628.

38-1807 General nutrition services.

General nutrition services includes, but is not limited to:

- (1) Identifying the nutritional needs of individuals and groups in relation to normal nutritional requirements; and
- (2) Planning, implementing, and evaluating nutrition education programs for individuals and groups in the selection of food to meet normal nutritional needs throughout the life cycle.

Source: Laws 2007, LB463, § 629.

38-1808 Licensed medical nutrition therapist, defined.

Licensed medical nutrition therapist means a person who is licensed to practice medical nutrition therapy pursuant to the Uniform Credentialing Act and who holds a current license issued by the department pursuant to the Medical Nutrition Therapy Practice Act.

Source: Laws 2007, LB463, § 630.

38-1809 Medical nutrition therapy, defined.

Medical nutrition therapy means the assessment of the nutritional status of patients. Medical nutrition therapy involves the assessment of patient nutritional status followed by treatment, ranging from diet modification to specialized nutrition support, such as determining nutrient needs for enteral and parenteral nutrition, and monitoring to evaluate patient response to such treatment.

Source: Laws 2007, LB463, § 631.

38-1810 Patient, defined.

Patient means a person with a disease, illness, injury, or medical condition for which nutritional interventions are an essential component of standard care.

Source: Laws 2007, LB463, § 632.

38-1811 Board; membership; qualifications.

The board shall consist of three professional members, one physician, and one public member appointed pursuant to section 38-158. The members shall meet the requirements of sections 38-164 and 38-165.

Source: Laws 2007, LB463, § 633.

38-1812 License required; activities not subject to act.

No person shall practice medical nutrition therapy unless he or she is licensed for such purpose pursuant to the Uniform Credentialing Act. The practice of medical nutrition therapy shall not include:

(1) Any person credentialed in this state pursuant to the Uniform Credentialing Act and engaging in such profession or occupation for which he or she is credentialed;

(2) Any student engaged in an academic program under the supervision of a licensed medical nutrition therapist as part of a major course of study in human nutrition, food and nutrition, or dietetics, or an equivalent major course of study approved by the board, and who is designated with a title which clearly indicates the person's status as a student or trainee;

(3) Persons practicing medical nutrition therapy who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;

(4) Persons practicing medical nutrition therapy who are licensed in another state, United States possession, or country, or have received at least a baccalaureate degree, and are in this state for the purpose of:

(a) Consultation if the practice in this state is limited to consultation; or

(b) Conducting a teaching clinical demonstration in connection with a program of basic clinical education, graduate education, or postgraduate education which is sponsored by a dietetic education program or a major course of study in human nutrition, food and nutrition, or dietetics, or an equivalent major course of study approved by the board;

(5) Persons performing general nutrition services incidental to the practice of the profession insofar as it does not exceed the scope of their education and training;

(6) Persons who market or distribute food, food materials, or dietary supplements, including persons employed in health food stores, or persons engaged in the advising of the use of those products, or the preparation of those products, or the counseling of individuals or groups in the selection of products to meet general nutrition needs;

(7) Persons conducting classes or disseminating information related to general nutrition services;

(8) Persons who care for the sick in accordance with the tenets and practices of any bona fide church or religious denomination;

(9) Persons who provide information and instructions regarding food intake or exercise as a part of a weight control program; and

(10) Persons with advanced postgraduate degrees involved in academic teaching or research.

Source: Laws 1988, LB 557, § 3; Laws 1995, LB 406, § 22; R.S.1943, (2003), § 71-1,287; Laws 2007, LB463, § 634.

38-1813 Licensed medical nutrition therapist; qualifications.

A person shall be qualified to be a licensed medical nutrition therapist if such person furnishes evidence that he or she:

(1) Has met the requirements for and is a registered dietitian by the American Dietetic Association or an equivalent entity recognized by the board;

(2)(a) Has satisfactorily passed an examination approved by the board;

(b) Has received a baccalaureate degree from an accredited college or university with a major course of study in human nutrition, food and nutrition, dietetics, or an equivalent major course of study approved by the board; and

(c) Has satisfactorily completed a program of supervised clinical experience approved by the department. Such clinical experience shall consist of not less than nine hundred hours of a planned continuous experience in human nutrition, food and nutrition, or dietetics under the supervision of an individual meeting the qualifications of this section; or

(3)(a) Has satisfactorily passed an examination approved by the board; and

(b)(i) Has received a master's or doctorate degree from an accredited college or university in human nutrition, nutrition education, food and nutrition, or public health nutrition or in an equivalent major course of study approved by the board; or

(ii) Has received a master's or doctorate degree from an accredited college or university which includes a major course of study in clinical nutrition. Such course of study shall consist of not less than a combined two hundred hours of biochemistry and physiology and not less than seventy-five hours in human nutrition.

For purposes of this section, accredited college or university means an institution currently listed with the United States Secretary of Education as accredited. Applicants who have obtained their education outside of the United States and its territories shall have their academic degrees validated as equivalent to a baccalaureate or master's degree conferred by a United States regionally accredited college or university.

The practice of medical nutrition therapy shall be performed under the consultation of a physician licensed pursuant to section 38-2026 or sections 38-2029 to 38-2033.

Source: Laws 1988, LB 557, § 5; Laws 1995, LB 406, § 24; R.S.1943, (2003), § 71-1,289; Laws 2007, LB463, § 635.

Cross References

Uniform Credentialing Act, see section 38-101.

38-1814 Reciprocity.

The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who meets the requirements of the Medical Nutrition Therapy Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board.

Source: Laws 2007, LB463, § 636.

38-1815 Fees.

The department shall establish and collect fees for credentialing under the Medical Nutrition Therapy Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 637.

38-1816 Act, how construed.

Nothing in the Medical Nutrition Therapy Practice Act shall be construed to permit a licensed medical nutrition therapist to practice any other profession regulated under the Uniform Credentialing Act.

Source: Laws 1988, LB 557, § 9; Laws 1994, LB 853, § 1; Laws 1995, LB 406, § 29; R.S.1943, (2003), § 71-1,293; Laws 2007, LB463, § 638.

ARTICLE 19

MEDICAL RADIOGRAPHY PRACTICE ACT

Cross References

- Child abuse, duty to report, see section 28-711.
- Division of Public Health of the Department of Health and Human Services, see section 81-3113.
- Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.
- Good Samaritan provisions, see section 25-21,186.
- Health and Human Services Act, see section 81-3110.
- Health Care Facility Licensure Act, see section 71-401.
- License Suspension Act, see section 43-3301.
- Mammography provisions, see sections 71-7001.01 to 71-7013.
- Nebraska Regulation of Health Professions Act, see section 71-6201.
- Patient Safety Improvement Act, see section 71-8701.
- Radiation Control Act, see section 71-3519.
- Radiation sources, acquire, possess, or sell, see section 71-3515.
- State Board of Health, duties, see section 71-2610 et seq.
- Statewide Trauma System Act, see section 71-8201.
- Uniform Controlled Substances Act, see section 28-401.01.

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- 38-1901. Act, how cited.
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- 38-1907. Medical radiographer, defined.
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- 38-1909. Radiation, defined.
- 38-1910. Radiation-generating equipment, defined.
- 38-1911. Sources of radiation, defined.
- 38-1912. Undesirable radiation, defined.
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- 38-1914. Board; members; qualifications; terms; meetings.
- 38-1915. Medical radiographer; requirements.
- 38-1916. Limited radiographer; requirements; specific anatomical region.
- 38-1917. Student; provisions not applicable; temporary medical radiographer license; term.
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- 38-1917.02. Student; provisions not applicable; temporary limited computed tomography radiographer license; term.
- 38-1918. Educational programs; testing; requirements.
- 38-1919. Fees.
- 38-1920. Dental hygienists and dental assistants; exemptions from act.

38-1901 Act, how cited.

Sections 38-1901 to 38-1920 shall be known and may be cited as the Medical Radiography Practice Act.

Source: Laws 2007, LB463, § 639; Laws 2008, LB928, § 5.
Operative date December 1, 2008.

38-1902 Definitions, where found.

For purposes of the Medical Radiography Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1903 to 38-1913 apply.

Source: Laws 2007, LB463, § 640; Laws 2008, LB928, § 6.
Operative date December 1, 2008.

38-1903 Board, defined.

Board means the Board of Medical Radiography.

Source: Laws 2007, LB463, § 641.

38-1904 Interpretative fluoroscopic procedures, defined.

Interpretative fluoroscopic procedures means the use of radiation in continuous mode to provide information, data, and film or hardcopy images for diagnostic review and interpretation by a licensed practitioner as the images are being produced.

Source: Laws 2007, LB463, § 642.

38-1905 Licensed practitioner, defined.

Licensed practitioner means a person licensed to practice medicine, dentistry, podiatry, chiropractic, osteopathic medicine and surgery, or as an osteopathic physician.

Source: Laws 2007, LB463, § 643.

38-1905.01 Limited computed tomography radiographer, defined.

Limited computed tomography radiographer means a person licensed pursuant to section 38-1917.01 to practice medical radiography restricted to computed tomography.

Source: Laws 2008, LB928, § 8.
Operative date December 1, 2008.

38-1906 Limited radiographer, defined.

Limited radiographer means a person licensed to practice medical radiography pursuant to section 38-1916. Limited radiographer does not include a person certified under section 38-3012.

Source: Laws 2007, LB463, § 644.

38-1907 Medical radiographer, defined.

Medical radiographer means a person licensed pursuant to subsection (1) of section 38-1915 to practice medical radiography.

Source: Laws 2007, LB463, § 645; Laws 2008, LB928, § 7.
Operative date December 1, 2008.

38-1908 Medical radiography, defined.

Medical radiography means the application of radiation to humans for diagnostic purposes, including, but not limited to, adjustment or manipulation of X-ray systems and accessories including image receptors, positioning of patients, processing of films, and any other action that materially affects the radiation dose to patients.

Source: Laws 2007, LB463, § 646.

38-1908.01 Nuclear medicine technologist, defined.

Nuclear medicine technologist means a person who meets the requirements for training and experience for nuclear medicine technology under the Radiation Control Act and the rules and regulations adopted and promulgated under the act.

Source: Laws 2008, LB928, § 9.
Operative date December 1, 2008.

Cross References

Radiation Control Act, see section 71-3519.

38-1909 Radiation, defined.

Radiation means ionizing radiation and nonionizing radiation as follows:

(1) Ionizing radiation means gamma rays, X-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other atomic or nuclear particles or rays but does not include sound or radio waves or visible, infrared, or ultraviolet light; and

(2) Nonionizing radiation means (a) any electromagnetic radiation which can be generated during the operation of electronic products as defined in section 71-3503 to such energy density levels as to present a biological hazard to occupational and public health and safety and the environment, other than ionizing electromagnetic radiation, and (b) any sonic, ultrasonic, or infrasonic waves which are emitted from an electronic product as defined in section 71-3503 as a result of the operation of an electronic circuit in such product and to such energy density levels as to present a biological hazard to occupational and public health and safety and the environment.

Source: Laws 2007, LB463, § 647.

38-1910 Radiation-generating equipment, defined.

Radiation-generating equipment means any manufactured product or device, component part of such a product or device, or machine or system which during operation can generate or emit radiation except devices which emit radiation only from radioactive material.

Source: Laws 2007, LB463, § 648.

38-1911 Sources of radiation, defined.

Sources of radiation means any radioactive material, any radiation-generating equipment, or any device or equipment emitting or capable of emitting radiation or radioactive material.

Source: Laws 2007, LB463, § 649.

38-1912 Undesirable radiation, defined.

Undesirable radiation means radiation in such quantity and under such circumstances as determined from time to time by rules and regulations adopted and promulgated by the department.

Source: Laws 2007, LB463, § 650.

38-1913 X-ray system, defined.

X-ray system means an assemblage of components for the controlled production of X-rays, including, but not limited to, an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

Source: Laws 2007, LB463, § 651.

38-1914 Board; members; qualifications; terms; meetings.

The board shall consist of four medical radiographers and one limited radiographer. Of the first four medical radiographers appointed, one shall be appointed for a term of one year, one shall be appointed for a term of two years, one shall be appointed for a term of three years, and one shall be appointed for a term of four years. The first limited radiographer shall be appointed for a term of five years. Thereafter each appointment shall be for a term of five years. The board shall meet at least two times per calendar year.

Source: Laws 2005, LB 453, § 2; R.S.Supp.,2006, § 71-3512; Laws 2007, LB463, § 652.

38-1915 Medical radiographer; requirements.

(1) A person licensed by the department, with the recommendation of the board, as a medical radiographer may practice medical radiography on any part of the human anatomy for interpretation by and under the direction of a licensed practitioner, including computed tomography but excluding interpretative fluoroscopic procedures, and may use fluoroscopy in conjunction with a certified registered nurse anesthetist as authorized in section 38-711.

(2) An applicant for a license as a medical radiographer shall:

(a) Complete an educational program in radiography approved by the board pursuant to subsection (1) of section 38-1918;

(b) Complete an application in accordance with the Uniform Credentialing Act; and

(c) Successfully complete an examination approved by the board.

(3) Presentation of proof of registration in radiography with the American Registry of Radiologic Technologists is proof of meeting the requirements of subdivisions (2)(a) and (c) of this section.

Source: Laws 1987, LB 390, § 23; Laws 1995, LB 406, § 46; Laws 1997, LB 752, § 181; Laws 2002, LB 1021, § 75; Laws 2006, LB 994,

§ 104; R.S.Supp.,2006, § 71-3515.01; Laws 2007, LB463, § 653; Laws 2008, LB928, § 10.
Operative date December 1, 2008.

Cross References

Uniform Credentialing Act, see section 38-101.

38-1916 Limited radiographer; requirements; specific anatomical region.

(1) A person licensed by the department, with the recommendation of the board, as a limited radiographer may practice medical radiography on limited regions of the human anatomy, using only routine radiographic procedures, for the interpretation by and under the direction of a licensed practitioner, excluding computed tomography, the use of contrast media, and the use of fluoroscopic or mammographic equipment. An applicant for a license as a limited radiographer shall successfully complete an examination approved by the board, as described in subdivision (2)(a) of section 38-1918 and at least one of the anatomical regions listed in subdivision (2)(b) of such section or successfully complete an examination approved by the department, as described in subsection (3) of section 38-1918.

(2) Each license issued shall be specific to the anatomical region or regions for which the applicant has passed an approved examination, except that an applicant may be licensed in the anatomical region of Abdomen upon successful passage of the examinations described in subdivisions (2)(a) and (2)(b)(iv) of section 38-1918 and upon a finding by the department, with the recommendation of the board, that continued provision of service for a community would be in jeopardy.

Source: Laws 2007, LB463, § 654.

Cross References

Uniform Credentialing Act, see section 38-101.

38-1917 Student; provisions not applicable; temporary medical radiographer license; term.

The requirements of sections 38-1915 and 38-1916 do not apply to a student while enrolled and participating in an educational program in medical radiography who, as a part of an educational program, applies X-rays to humans while under the supervision of the licensed practitioners or medical radiographers associated with the educational program. Students who have completed at least twelve months of the training course described in subsection (1) of section 38-1918 may apply for licensure as a temporary medical radiographer. Temporary medical radiographer licenses shall expire eighteen months after issuance and shall not be renewed. Persons licensed as temporary medical radiographers shall be permitted to perform the duties of a limited radiographer licensed in all anatomical regions of subdivision (2)(b) of section 38-1918 and Abdomen.

Source: Laws 2007, LB463, § 655.

38-1917.01 Limited computed tomography radiographer; requirements; nuclear medicine technologist; activities authorized.

(1) A person licensed by the department, with the recommendation of the board, as a limited computed tomography radiographer may practice medical

radiography restricted to computed tomography. An applicant for a license as a limited computed tomography radiographer shall:

(a) Complete an application in accordance with the Uniform Credentialing Act;

(b) Be certified by (i) the Nuclear Medicine Technology Certification Board or (ii) the American Registry of Radiologic Technologists in nuclear medicine technology; and

(c) Be certified by the American Registry of Radiologic Technologists in computed tomography.

(2) A nuclear medicine technologist may perform computed tomography without being licensed under the Medical Radiography Practice Act if such practice is limited to X-rays produced by a combination nuclear medicine-computed tomography system and administered as an integral part of a nuclear medicine procedure that uses a computed tomography protocol for purposes of attenuation correction and anatomical localization only and if the nuclear medicine technologist has received documented device-specific training on the combination nuclear medicine-computed tomography system.

Source: Laws 2008, LB928, § 11.

Operative date December 1, 2008.

Cross References

Uniform Credentialing Act, see section 38-101.

38-1917.02 Student; provisions not applicable; temporary limited computed tomography radiographer license; term.

The requirements of section 38-1917.01 do not apply to a student while enrolled and participating in an educational program in nuclear medicine technology who, as part of the educational program, applies X-rays to humans using a computed tomography system while under the supervision of the licensed practitioners, medical radiographers, or limited computed tomography radiographers associated with the educational program. A person registered by the Nuclear Medicine Technology Certification Board or the American Registry of Radiologic Technologists in nuclear medicine technology may apply for a license as a temporary limited computed tomography radiographer. Temporary limited computed tomography radiographer licenses shall expire twenty-four months after issuance and shall not be renewed. Persons licensed as temporary limited computed tomography radiographers shall be permitted to perform medical radiography restricted to computed tomography while under the direct supervision and in the physical presence of licensed practitioners, medical radiographers, or limited computed tomography radiographers.

Source: Laws 2008, LB928, § 12.

Operative date December 1, 2008.

38-1918 Educational programs; testing; requirements.

(1) The educational program for medical radiographers shall consist of twenty-four months of instruction in radiography approved by the board which includes, but is not limited to, radiographic procedures, imaging equipment, image production and evaluation, film processing, radiation physics, radiation protection, radiation biology, radiographic pathology, and quality assurance activities. The board shall recognize equivalent courses of instruction success-

fully completed by individuals who are applying for licensure as medical radiographers when determining if the requirements of section 38-1915 have been met.

(2) The examination for limited radiographers shall include, but not be limited to:

(a) Radiation protection, equipment maintenance and operation, image production and evaluation, and patient care and management; and

(b) The anatomy of, and positioning for, specific regions of the human anatomy. The anatomical regions shall include at least one of the following:

(i) Chest;

(ii) Extremities;

(iii) Skull and sinus;

(iv) Spine; or

(v) Ankle and foot.

(3) The examination for limited radiographers in bone density shall include, but not be limited to, basic concepts of bone densitometry, equipment operation and quality control, radiation safety, and dual X-ray absorptiometry (DXA) scanning of the finger, heel, forearm, lumbar spine, and proximal femur.

(4) The department, with the recommendation of the board, shall adopt and promulgate rules and regulations regarding the examinations required in sections 38-1915 and 38-1916. Such rules and regulations shall provide for (a) the administration of examinations based upon national standards, such as the Examination in Radiography from the American Registry of Radiologic Technologists for medical radiographers, the Examination for the Limited Scope of Practice in Radiography or the Bone Densitometry Equipment Operator Examination from the American Registry of Radiologic Technologists for limited radiographers, or equivalent examinations that, as determined by the board, meet the standards for educational and psychological testing as recommended by the American Psychological Association, the American Educational Research Association, and the National Council on Measurement in Education, (b) procedures to be followed for examinations, (c) the method of grading and the passing grades for such examinations, (d) security protection for questions and answers, and (e) for medical radiographers, the contents of such examination based on the course requirements for medical radiographers prescribed in subsection (1) of this section. Any costs incurred in determining the extent to which examinations meet the examining standards of this subsection shall be paid by the individual or organization proposing the use of such examination.

(5) No applicant for a license as a limited radiographer may take the examination for licensure, or for licensure for any specific anatomical region, more than three times without first waiting a period of one year after the last unsuccessful attempt of the examination and submitting proof to the department of completion of continuing competency activities as required by the board for each subsequent attempt.

Source: Laws 1987, LB 390, § 24; Laws 1990, LB 1064, § 21; Laws 1995, LB 406, § 47; Laws 1996, LB 1044, § 656; Laws 2000, LB 1115, § 74; Laws 2002, LB 1021, § 76; Laws 2003, LB 242, § 115; Laws 2006, LB 994, § 105; R.S.Supp., 2006, § 71-3515.02; Laws 2007, LB463, § 656.

38-1919 Fees.

The department shall establish and collect fees for credentialing under the Medical Radiography Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 657.

38-1920 Dental hygienists and dental assistants; exemptions from act.

(1) Persons authorized under the Dentistry Practice Act to practice as dental hygienists and dental assistants who meet the requirements of section 38-1135 shall not be required to be licensed under the Medical Radiography Practice Act.

(2) The department may exempt certain users of sources of radiation from licensing requirements established under the Medical Radiography Practice Act when the board finds that the exemption will not constitute a significant risk to occupational and public health and safety and the environment.

(3) Individuals who are currently licensed in the State of Nebraska as podiatrists, chiropractors, dentists, physicians and surgeons, osteopathic physicians, physician assistants, and veterinarians shall be exempt from the rules and regulations of the department pertaining to the qualifications of persons for the use of X-ray radiation-generating equipment operated for diagnostic purposes.

Source: Laws 2007, LB463, § 658.

Cross References

Dentistry Practice Act, see section 38-1101.

ARTICLE 20**MEDICINE AND SURGERY PRACTICE ACT****Cross References**

Abortions, not required to perform, limitation of liability, see section 28-337 et seq.

Access to medical records, see section 71-8401 et seq.

Alcohol or controlled substance testing, agent of state, see sections 37-1254.06, 60-4,164.01, and 60-6,202.

Alcoholic liquor, possession and use in practice, see section 53-168.06.

Child abuse, duty to report, see section 28-711.

Clinical privileges, standards and procedures, see section 71-2048.01.

Division of Public Health of the Department of Health and Human Services, see section 81-3113.

Education loan program, Rural Health Systems and Professional Incentive Act, see section 71-5650.

Emergency Box Drug Act, see section 71-2410.

Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.

Foster care, see sections 71-1901 to 71-1906.01.

Good Samaritan provisions, see section 25-21,186.

Health and Human Services Act, see section 81-3110.

Health Care Facility Licensure Act, see section 71-401.

Health Care Professional Credentialing Verification Act, see section 44-7001.

Hospital medical staff committee or hospital utilization committee, members, limitation of liability, see section 25-12,121.

Liability limitations:

Malpractice, Nebraska Hospital-Medical Liability Act, see section 44-2801 et seq.

Rendering emergency aid, see section 25-21,186.

License Suspension Act, see section 43-3301.

Lien for services, see section 52-401.

Limited Liability Company Act, see section 21-2601.

Medicaid coverage, see section 68-911.

Medication Aide Act, see section 71-6718.

Nebraska Hospital-Medical Liability Act, see section 44-2855.

Nebraska Professional Corporation Act, see section 21-2201.

Nebraska Regulation of Health Professions Act, see section 71-6201.

Nurse Practice Act, see section 38-2201.

Patient Safety Improvement Act, see section 71-8701.

Perfusion Practice Act, see section 38-2701.

Rural Health Systems and Professional Incentive Act, see section 71-5650.

State Board of Health, duties, see section 71-2610 et seq.

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Statewide Trauma System Act, see section 71-8201.

Student loan program, Rural Health Systems and Professional Incentive Act, see section 71-5650.

Uniform Controlled Substances Act, see section 28-401.01.

Volunteer in free clinic or other facility, immunity from liability, see section 25-21,188.02.

Wholesale Drug Distributor Licensing Act, see section 71-7427.

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38-2001 Act, how cited.

Sections 38-2001 to 38-2061 shall be known and may be cited as the Medicine and Surgery Practice Act.

Source: Laws 2007, LB463, § 659.

38-2002 Definitions, where found.

For the purposes of the Medicine and Surgery Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2003 to 38-2022 apply.

Source: Laws 1969, c. 560, § 7, p. 2283; Laws 1971, LB 150, § 4; Laws 1989, LB 342, § 17; Laws 1996, LB 1044, § 425; Laws 1999, LB 828, § 83; R.S.1943, (2003), § 71-1,107.01; Laws 2007, LB463, § 660.

38-2003 Accredited hospital, defined.

Accredited hospital means a hospital accredited by the department, with the recommendation of the board.

Source: Laws 2007, LB463, § 661.

38-2004 Accredited school or college of medicine, defined.

An accredited school or college of medicine means one approved by the board, and such school or college shall meet and maintain generally minimum standards approved by the board. Such minimum standards shall apply equally to all accredited schools, and any school to be accredited shall permit inspections by the department.

A school or college of osteopathic medicine and surgery fulfilling all such requirements shall not be refused standing as an accredited medical school because it may also specialize in giving instruction according to any special system of healing.

Source: Laws 1927, c. 167, § 103, p. 483; C.S.1929, § 71-1404; Laws 1943, c. 150, § 21, p. 549; R.S.1943, § 71-1,105; Laws 1969, c. 563, § 8, p. 2295; Laws 1989, LB 342, § 16; Laws 1996, LB 1044, § 422; Laws 1999, LB 828, § 81; R.S.1943, (2003), § 71-1,105; Laws 2007, LB463, § 662.

38-2005 Accredited school or college of osteopathic medicine, defined.

An accredited school or college of osteopathic medicine means one approved by the board. An accredited school or college of osteopathic medicine shall

meet and maintain general minimum standards approved by the board. The minimum standards shall apply equally to all such accredited schools and colleges. Any school or college seeking accreditation shall permit inspections by the department.

Nothing in this section shall be construed to prohibit the department, with the recommendation of the board, from accepting accreditation of a school or college of osteopathic medicine by the American Osteopathic Association as evidence of meeting the specified requirements of this section or the equivalent thereof.

Source: Laws 1927, c. 167, § 118, p. 489; C.S.1929, § 71-1704; R.S. 1943, § 71-1,140; Laws 1969, c. 565, § 4, p. 2301; Laws 1981, LB 451, § 12; Laws 1989, LB 342, § 25; Laws 1996, LB 1044, § 445; Laws 1999, LB 828, § 106; R.S.1943, (2003), § 71-1,140; Laws 2007, LB463, § 663.

38-2006 Acupuncture, defined.

Acupuncture means the insertion, manipulation, and removal of acupuncture needles and the application of manual, mechanical, thermal, electrical, and electromagnetic treatment to such needles at specific points or meridians on the human body in an effort to promote, maintain, and restore health and for the treatment of disease, based on acupuncture theory. Acupuncture may include the recommendation of therapeutic exercises, dietary guidelines, and nutritional support to promote the effectiveness of the acupuncture treatment. Acupuncture does not include manipulation or mobilization of or adjustment to the spine, extraspinal manipulation, or the practice of medical nutrition therapy.

Source: Laws 2001, LB 270, § 8; Laws 2003, LB 242, § 80; R.S.1943, (2003), § 71-1,344; Laws 2007, LB463, § 664.

38-2007 Acupuncturist, defined.

Acupuncturist means a person engaged in the practice of acupuncture.

Source: Laws 2007, LB463, § 665.

38-2008 Approved program, defined.

Approved program means a program for the education of physician assistants which the board formally approves.

Source: Laws 2007, LB463, § 666.

38-2009 Backup physician, defined.

Backup physician means a physician designated by the supervising physician to ensure supervision of the physician assistant in the supervising physician's absence. A backup physician shall be subject to the same requirements imposed upon the supervising physician when the backup physician is acting as a supervising physician.

Source: Laws 2007, LB463, § 667.

38-2010 Board, defined.

Board means the Board of Medicine and Surgery.

Source: Laws 2007, LB463, § 668.

38-2011 Committee, defined.

Committee means the Physician Assistant Committee created in section 38-2056.

Source: Laws 2007, LB463, § 669.

38-2012 Fellowship, defined.

Fellowship means a program of supervised educational training, approved by the board, in a medical specialty or subspecialty at an accredited hospital, an accredited school or college of medicine, or an accredited school or college of osteopathic medicine, that follows the completion of undergraduate medical education.

Source: Laws 2007, LB463, § 670.

38-2013 Graduate medical education or residency, defined.

Graduate medical education or residency means a program of supervised educational training, approved by the board, in a medical specialty at an accredited hospital, an accredited school or college of medicine, or an accredited school or college of osteopathic medicine, that follows the completion of undergraduate medical education.

Source: Laws 2007, LB463, § 671.

38-2014 Physician assistant, defined.

Physician assistant means any person who graduates from a program approved by the Commission on Accreditation of Allied Health Education Programs or its predecessor or successor agency and the board, who satisfactorily completes a proficiency examination, and whom the department, with the recommendation of the board, approves to perform medical services under the supervision of a physician or group of physicians approved by the department, with the recommendation of the board, to supervise such assistant.

Source: Laws 1973, LB 101, § 2; R.S.Supp.,1973, § 85-179.05; Laws 1985, LB 132, § 2; Laws 1993, LB 316, § 1; Laws 1996, LB 1044, § 436; Laws 1996, LB 1108, § 8; Laws 1999, LB 828, § 92; Laws 2001, LB 209, § 8; R.S.1943, (2003), § 71-1,107.16; Laws 2007, LB296, § 338; Laws 2007, LB463, § 672.

38-2015 Proficiency examination, defined.

Proficiency examination means the initial proficiency examination approved by the board for the licensure of physician assistants, including, but not limited to, the examination administered by the National Commission on Certification of Physician Assistants or other national organization established for such purpose that is recognized by the board.

Source: Laws 2007, LB463, § 673.

38-2016 Refresher course, defined.

Refresher course means a planned program of supervised educational training, approved by the board, that provides a review of medical knowledge and skills for the purpose of the enhancement of clinical competency.

Source: Laws 2007, LB463, § 674.

38-2017 Supervising physician, defined.

Supervising physician means (1) a board-approved physician who utilizes a licensed physician assistant or (2) a backup physician.

Source: Laws 2007, LB463, § 675.

38-2018 Supervision, defined.

Supervision means the ready availability of the supervising physician for consultation and direction of the activities of the physician assistant. Contact with the supervising physician by telecommunication shall be sufficient to show ready availability if the board finds that such contact is sufficient to provide quality medical care. The level of supervision may vary by geographic location as provided in section 38-2047.

Source: Laws 2007, LB463, § 676.

38-2019 Temporary educational permit, defined.

Temporary educational permit means a permit to practice medicine and surgery, osteopathic medicine and surgery, or any of their allied specialties in graduate medical education, a fellowship, or a refresher course.

Source: Laws 2007, LB463, § 677.

38-2020 Trainee, defined.

Trainee means any person who is currently enrolled in an approved program.

Source: Laws 2007, LB463, § 678.

38-2021 Unprofessional conduct, defined.

Unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of medicine and surgery or the ethics of the profession, regardless of whether a person, patient, or entity is injured, or conduct that is likely to deceive or defraud the public or is detrimental to the public interest, including, but not limited to:

(1) Performance by a physician of an abortion as defined in subdivision (1) of section 28-326 under circumstances when he or she will not be available for a period of at least forty-eight hours for postoperative care unless such postoperative care is delegated to and accepted by another physician;

(2) Performing an abortion upon a minor without having satisfied the notice requirements of sections 71-6901 to 71-6908; and

(3) The intentional and knowing performance of a partial-birth abortion as defined in subdivision (9) of section 28-326, unless such procedure is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

Source: Laws 2007, LB463, § 679.

38-2022 Visiting faculty permit, defined.

Visiting faculty permit means a permit for a physician qualified by virtue of previous medical training and experience to teach students of medicine, to conduct research, or both.

Source: Laws 2007, LB463, § 680.

38-2023 Board; membership; qualifications.

The board shall consist of eight members, including at least two public members. Two of the six professional members of the board shall be officials or members of the instructional staff of an accredited medical school in this state. One of the six professional members of the board shall be a person who has a license to practice osteopathic medicine and surgery in this state.

Source: Laws 2007, LB463, § 681.

38-2024 Practice of medicine and surgery, defined.

For purposes of the Uniform Credentialing Act, and except as provided in section 38-2025 or as otherwise provided by law, the following classes of persons shall be deemed to be engaged in the practice of medicine and surgery:

- (1) Persons who publicly profess to be physicians or surgeons or publicly profess to assume the duties incident to the practice of medicine, surgery, or any of their branches;
- (2) Persons who prescribe and furnish medicine for some illness, disease, ailment, injury, pain, deformity, or any physical or mental condition, or treat the same by surgery;
- (3) Persons holding themselves out to the public as being qualified in the diagnosis or treatment of diseases, ailments, pain, deformity, or any physical or mental condition, or injuries of human beings;
- (4) Persons who suggest, recommend, or prescribe any form of treatment for the intended palliation, relief, or cure of any physical or mental ailment of any person;
- (5) Persons who maintain an office for the examination or treatment of persons afflicted with ailments, diseases, injuries, pain, deformity, or any physical or mental condition of human beings;
- (6) Persons who attach to their name the title of M.D., surgeon, physician, physician and surgeon, or any word or abbreviation and who indicate that they are engaged in the treatment or diagnosis of ailments, diseases, injuries, pain, deformity, infirmity, or any physical or mental condition of human beings; and
- (7) Persons who are physically located in another state but who, through the use of any medium, including an electronic medium, perform for compensation any service which constitutes the healing arts that would affect the diagnosis or treatment of an individual located in this state.

Source: Laws 1927, c. 167, § 100, p. 482; C.S.1929, § 71-1401; Laws 1943, c. 150, § 18, p. 546; R.S.1943, § 71-1,102; Laws 1969, c. 563, § 1, p. 2291; Laws 1997, LB 452, § 1; Laws 2006, LB 833, § 2; R.S.Supp.,2006, § 71-1,102; Laws 2007, LB463, § 682.

Cross References

Alcoholic liquor, possession and use in practice, see section 53-168.06.
Physician's lien for services, see section 52-401 et seq.

Person engaging in the practice of medicine and surgery without a license may be restrained by injunction. State ex rel. Johnson v. Wagner, 139 Neb. 471, 297 N.W. 906 (1941).

An emergency exists when the exigency is of so pressing a character that action must be taken before the services of a regularly qualified medical practitioner can be readily procured. Williams v. State, 118 Neb. 281, 224 N.W. 286 (1929).

Practice of naprapathy was within definition of practice of medicine of former statute and unlawful unless statutory license obtained. Carpenter v. State, 106 Neb. 742, 184 N.W. 941 (1921).

Sale of patent medicines by itinerant vendor does not constitute practice of medicine. Watkins Medical Co. v. Hunt, 104 Neb. 266, 177 N.W. 462 (1920).

Healing by manipulation and adjustment of nerves, bones, and tissues was practicing medicine, within the definition of former statute. Harvey v. State, 96 Neb. 786, 148 N.W. 924 (1914).

A corporation of licensed physicians making contracts for the services of its members was not practicing medicine within the definition of former statute. State Electro-Medical Institute v. State, 74 Neb. 40, 103 N.W. 1078 (1905).

Former statute defining the practice of medicine construed to include the practice of Christian Science healing. State v. Buswell, 40 Neb. 158, 58 N.W. 728 (1894), 24 L.R.A. 68 (1894).

38-2025 Medicine and surgery; practice; persons excepted.

The following classes of persons shall not be construed to be engaged in the unauthorized practice of medicine:

- (1) Persons rendering gratuitous services in cases of emergency;
- (2) Persons administering ordinary household remedies;
- (3) The members of any church practicing its religious tenets, except that they shall not prescribe or administer drugs or medicines, perform surgical or physical operations, nor assume the title of or hold themselves out to be physicians, and such members shall not be exempt from the quarantine laws of this state;
- (4) Students of medicine who are studying in an accredited school or college of medicine and who gratuitously prescribe for and treat disease under the supervision of a licensed physician;
- (5) Physicians who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;
- (6) Physicians who are licensed in good standing to practice medicine under the laws of another state when incidentally called into this state or contacted via electronic or other medium for consultation with a physician licensed in this state. For purposes of this subdivision, consultation means evaluating the medical data of the patient as provided by the treating physician and rendering a recommendation to such treating physician as to the method of treatment or analysis of the data. The interpretation of a radiological image by a physician who specializes in radiology is not a consultation;
- (7) Physicians who are licensed in good standing to practice medicine in another state but who, from such other state, order diagnostic or therapeutic services on an irregular or occasional basis, to be provided to an individual in this state, if such physicians do not maintain and are not furnished for regular use within this state any office or other place for the rendering of professional services or the receipt of calls;
- (8) Physicians who are licensed in good standing to practice medicine in another state and who, on an irregular and occasional basis, are granted temporary hospital privileges to practice medicine and surgery at a hospital or other medical facility licensed in this state;
- (9) Persons providing or instructing as to use of braces, prosthetic appliances, crutches, contact lenses, and other lenses and devices prescribed by a physician licensed to practice medicine while working under the direction of such physician;

- (10) Dentists practicing their profession when licensed and practicing in accordance with the Dentistry Practice Act;
- (11) Optometrists practicing their profession when licensed and practicing under and in accordance with the Optometry Practice Act;
- (12) Osteopathic physicians practicing their profession if licensed and practicing under and in accordance with sections 38-2029 to 38-2033;
- (13) Chiropractors practicing their profession if licensed and practicing under the Chiropractic Practice Act;
- (14) Podiatrists practicing their profession when licensed and practicing under and in accordance with the Podiatry Practice Act;
- (15) Psychologists practicing their profession when licensed and practicing under and in accordance with the Psychology Practice Act;
- (16) Advanced practice registered nurses practicing in their clinical specialty areas when licensed under the Advanced Practice Registered Nurse Practice Act and practicing under and in accordance with their respective practice acts;
- (17) Persons licensed or certified under the laws of this state to practice a limited field of the healing art, not specifically named in this section, when confining themselves strictly to the field for which they are licensed or certified, not assuming the title of physician, surgeon, or physician and surgeon, and not professing or holding themselves out as qualified to prescribe drugs in any form or to perform operative surgery;
- (18) Persons obtaining blood specimens while working under an order of or protocols and procedures approved by a physician, registered nurse, or other independent health care practitioner licensed to practice by the state if the scope of practice of that practitioner permits the practitioner to obtain blood specimens; and
- (19) Other trained persons employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act or clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act to withdraw human blood for scientific or medical purposes.

Any person who has held or applied for a license to practice medicine and surgery in this state, and such license or application has been denied or such license has been refused renewal or disciplined by order of limitation, suspension, or revocation, shall be ineligible for the exceptions described in subdivisions (5) through (8) of this section until such license or application is granted or such license is renewed or reinstated. Every act or practice falling within the practice of medicine and surgery as defined in section 38-2024 and not specially excepted in this section shall constitute the practice of medicine and surgery and may be performed in this state only by those licensed by law to practice medicine in Nebraska.

Source: Laws 1927, c. 167, § 101, p. 482; C.S.1929, § 71-1402; Laws 1943, c. 150, § 19, p. 547; R.S.1943, § 71-1,103; Laws 1961, c. 337, § 12, p. 1056; Laws 1969, c. 563, § 2, p. 2291; Laws 1969, c. 564, § 1, p. 2297; Laws 1971, LB 150, § 1; Laws 1984, LB 724, § 1; Laws 1989, LB 342, § 15; Laws 1991, LB 2, § 11; Laws 1992, LB 291, § 17; Laws 1992, LB 1019, § 40; Laws 1994, LB 1210, § 55; Laws 1996, LB 414, § 3; Laws 1996, LB 1044, § 420; Laws 1997, LB 452, § 2; Laws 1999, LB 366, § 9;

Laws 1999, LB 828, § 78; Laws 2000, LB 819, § 86; Laws 2000, LB 1115, § 14; Laws 2002, LB 1062, § 17; Laws 2005, LB 256, § 23; Laws 2006, LB 833, § 3; R.S.Supp.,2006, § 71-1,103; Laws 2007, LB463, § 683.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Chiropractic Practice Act, see section 38-801.
Dentistry Practice Act, see section 38-1101.
Health Care Facility Licensure Act, see section 71-401.
Optometry Practice Act, see section 38-2601.
Podiatry Practice Act, see section 38-3001.
Psychology Practice Act, see section 38-3101.

Indictment charging illegal practice of medicine need not contain negative averments relative to exceptions set forth in this section. *Carpenter v. State*, 106 Neb. 742, 184 N.W. 941 (1921).

Information charging illegal practice of medicine under former statute was not defective for failure to contain negative

averments relative to exceptions set forth in this section. *Sofield v. State*, 61 Neb. 600, 85 N.W. 840 (1901).

Under former statute a person not licensed to practice medicine or exempted from the provisions of the statute, who treated physical or mental ailments for pay, was liable to prosecution even though he acted under direction of a licensed physician or surgeon. *State v. Paul*, 56 Neb. 369, 76 N.W. 861 (1898).

38-2026 Medicine and surgery; license; qualifications; foreign medical graduates; requirements.

Each applicant for a license to practice medicine and surgery shall:

(1)(a) Present proof that he or she is a graduate of an accredited school or college of medicine, (b) if a foreign medical graduate, provide a copy of a permanent certificate issued by the Educational Commission on Foreign Medical Graduates that is currently effective and relates to such applicant or provide such credentials as are necessary to certify that such foreign medical graduate has successfully passed the Visa Qualifying Examination or its successor or equivalent examination required by the United States Department of Health and Human Services and the United States Citizenship and Immigration Services, or (c) if a graduate of a foreign medical school who has successfully completed a program of American medical training designated as the Fifth Pathway and who additionally has successfully passed the Educational Commission on Foreign Medical Graduates examination but has not yet received the permanent certificate attesting to the same, provide such credentials as certify the same to the Division of Public Health of the Department of Health and Human Services;

(2) Present proof that he or she has served at least one year of graduate medical education approved by the board or, if a foreign medical graduate, present proof that he or she has served at least three years of graduate medical education approved by the board;

(3) Pass a licensing examination approved by the board covering appropriate medical subjects; and

(4) Present proof satisfactory to the department that he or she, within the three years immediately preceding the application for licensure, (a) has been in the active practice of the profession of medicine and surgery in some other state, a territory, the District of Columbia, or Canada for a period of one year, (b) has had at least one year of graduate medical education as described in subdivision (2) of this section, (c) has completed continuing education in medicine and surgery approved by the board, (d) has completed a refresher course in medicine and surgery approved by the board, or (e) has completed the special purposes examination approved by the board.

Source: Laws 1927, c. 167, § 102, p. 483; C.S.1929, § 71-1403; Laws 1943, c. 150, § 20, p. 548; R.S.1943, § 71-1,104; Laws 1963, c.

408, § 6, p. 1312; Laws 1969, c. 563, § 3, p. 2293; Laws 1971, LB 150, § 2; Laws 1975, LB 92, § 3; Laws 1976, LB 877, § 25; Laws 1978, LB 761, § 1; Laws 1985, LB 250, § 13; Laws 1987, LB 390, § 1; Laws 1990, LB 1064, § 13; Laws 1991, LB 400, § 22; Laws 1994, LB 1210, § 56; Laws 1994, LB 1223, § 14; Laws 1996, LB 1044, § 421; Laws 1999, LB 828, § 79; Laws 2002, LB 1062, § 18; Laws 2003, LB 242, § 39; R.S.1943, (2003), § 71-1,104; Laws 2007, LB296, § 332; Laws 2007, LB463, § 684.

Cross References

Uniform Credentialing Act, see section 38-101.

The practice of chiropractic and the practice of medicine are distinct professions with different licensing requirements. *Nelsen v. Grzywa*, 9 Neb. App. 702, 618 N.W.2d 472 (2000).

38-2027 Department; waiver of requirements; authorized; conditions; disciplinary action authorized.

(1) The department, with the recommendation of the board, may waive any requirement for more than one year of approved graduate medical education, as set forth in subdivision (2) of section 38-2026, if the applicant has served at least one year of graduate medical education approved by the board and if the following conditions are met:

(a) The applicant meets all other qualifications for a license to practice medicine and surgery;

(b) The applicant submits satisfactory proof that the issuance of a license based on the waiver of the requirement of more than one year of approved graduate medical education will not jeopardize the health, safety, and welfare of the citizens of this state; and

(c) The applicant submits proof that he or she will enter into the practice of medicine in a health profession shortage area designated as such by the Nebraska Rural Health Advisory Commission immediately upon obtaining a license to practice medicine and surgery based upon a waiver of the requirement for more than one year of graduate medical education.

(2) A license issued on the basis of such a waiver shall be subject to the limitation that the licensee continue in practice in the health profession shortage area and such other limitations, if any, deemed appropriate under the circumstances by the director, with the recommendation of the board, which may include, but shall not be limited to, supervision by a medical practitioner, training, education, and scope of practice. After two years of practice under a limited license issued on the basis of a waiver of the requirement of more than one year of graduate medical education, a licensee may apply to the department for removal of the limitations. The director, with the recommendation of the board, may grant or deny such application or may continue the license with limitations.

(3) In addition to any other grounds for disciplinary action against the license contained in the Uniform Credentialing Act, the department may take disciplinary action against a license granted on the basis of a waiver of the requirement of more than one year of graduate medical education for violation of the limitations on the license.

Source: Laws 2007, LB463, § 685.

38-2028 Reciprocity; requirements.

An applicant for a license to practice medicine and surgery based on a license in another state or territory of the United States or the District of Columbia shall meet the standards set by the board pursuant to section 38-126, except that an applicant who has not passed one of the licensing examinations specified in the rules and regulations but has been duly licensed to practice medicine and surgery in some other state or territory of the United States of America or in the District of Columbia and obtained that license based upon a state examination, as approved by the board, may be issued a license by the department, with the recommendation of the board, to practice medicine and surgery.

Source: Laws 2007, LB463, § 686.

38-2029 Practice as osteopathic physicians, defined.

(1) For purposes of the Uniform Credentialing Act, the following classes of persons shall be deemed to be engaged in practice as osteopathic physicians:

(a) Persons publicly professing to be osteopathic physicians or publicly professing to assume the duties incident to the practice of osteopathic physicians; and

(b) Persons who are graduates of a school or college of osteopathic medicine and who treat human ailments by that system of the healing art which was advocated and taught by the school or college of osteopathic medicine from which such person graduated at the time of his or her graduation as determined by the department, with the recommendation of the board.

(2) No license issued to osteopathic physicians under the Medicine and Surgery Practice Act shall authorize the person so licensed to perform surgical procedures except those usually performed by general practitioners, as determined by the department, with the recommendation of the board.

(3) Nothing in this section shall be construed to prohibit an osteopathic physician licensed in accordance with the act from serving as an assistant in surgery more complex than that usually performed by general practitioners, as determined by the department, with the recommendation of the board, when such surgery is performed by an osteopathic physician licensed pursuant to section 38-2032 or by an osteopathic physician or doctor of medicine licensed pursuant to section 38-2026. In no event shall this section or section 38-2032 be construed as authorizing any physician to engage in any procedure which he or she is not qualified by training to perform according to the standards prevailing in the State of Nebraska at the time.

(4) Persons who are licensed to practice as osteopathic physicians who have demonstrated to the department, with the recommendation of the board, that they have acquired adequate training and knowledge for such purpose and have been so authorized by the department, with the recommendation of the board, may prescribe and administer drugs and medicines.

Source: Laws 1927, c. 167, § 115, p. 488; C.S.1929, § 71-1701; R.S. 1943, § 71-1,137; Laws 1969, c. 565, § 1, p. 2299; Laws 1972, LB 1498, § 2; Laws 1981, LB 451, § 9; Laws 1989, LB 342, § 21; Laws 1996, LB 1044, § 442; Laws 1999, LB 828, § 103; R.S.1943, (2003), § 71-1,137; Laws 2007, LB463, § 687.

Osteopath may operate hospital. *Morgan v. State*, 155 Neb. 247, 51 N.W.2d 382 (1952).

The practice of osteopathy consists of a system of manipulation of the limbs and body of the patient with the hands by

kneading, rubbing or pressing upon the parts of the body. *State ex rel. Johnson v. Wagner*, 139 Neb. 471, 297 N.W. 906 (1941).

The practice of osteopathy is regulated by statute and requires a license. *Harvey v. State*, 96 Neb. 786, 148 N.W. 924 (1914).

38-2030 Practice as osteopathic physicians; persons excepted.

For purposes of the Uniform Credentialing Act, the following classes of persons shall not be construed as engaged in practice as osteopathic physicians:

- (1) Licensed physicians and surgeons, podiatrists, nurses, and dentists who are exclusively engaged in the practice of their respective professions;
- (2) Physicians and surgeons who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment; and
- (3) Osteopathic physicians licensed in another state when incidentally called into this state in consultation with a licensed physician or an osteopathic physician licensed in this state.

Source: Laws 1927, c. 167, § 116, p. 488; C.S.1929, § 71-1702; R.S. 1943, § 71-1,138; Laws 1961, c. 337, § 13, p. 1057; Laws 1969, c. 565, § 2, p. 2300; Laws 1989, LB 342, § 22; R.S.1943, (2003), § 71-1,138; Laws 2007, LB463, § 688.

38-2031 Osteopathic physician; license; requirements.

Every applicant for a license to practice as an osteopathic physician shall (1) present proof of having completed a four-year course in an accredited high school or its equivalent, (2) present proof of having graduated from an accredited school or college of osteopathic medicine, and (3) pass an examination, as approved by the board, in the science of osteopathy and the practice of the same.

Source: Laws 1927, c. 167, § 117, p. 489; C.S.1929, § 71-1703; R.S. 1943, § 71-1,139; Laws 1981, LB 451, § 10; Laws 1989, LB 342, § 23; Laws 1996, LB 1044, § 443; Laws 1997, LB 752, § 159; Laws 1999, LB 828, § 104; R.S.1943, (2003), § 71-1,139; Laws 2007, LB463, § 689.

Cross References

Uniform Credentialing Act, see section 38-101.

38-2032 Osteopathic physician; license; additional requirements.

(1) If a person (a) has graduated from an accredited school or college of osteopathic medicine since January 1, 1963, (b) meets all statutory requirements for licensure as an osteopathic physician, (c) has served one year of internship or its equivalent at an institution approved for such training by the board, (d) after his or her internship, has taken and passed the examination provided in section 38-2026, and (e) presents proof satisfactory to the department, with the recommendation of the board, that he or she, within the three years immediately preceding the application for licensure, (i) has been in the active practice of the profession of osteopathic medicine and surgery in some other state, a territory, the District of Columbia, or Canada for a period of one year, (ii) has had one year of graduate medical education as described in subdivision (1)(c) of this section, (iii) has completed continuing education in

medicine and surgery or osteopathic medicine and surgery approved by the board, (iv) has completed a refresher course in medicine and surgery or osteopathic medicine and surgery approved by the board, or (v) has completed the special purposes examination approved by the board, such person, upon making application therefor, shall receive a license as a Doctor of Osteopathic Medicine and Surgery which shall qualify such person to practice osteopathic medicine and surgery.

(2) With respect to persons who have graduated from an accredited school or college of osteopathic medicine prior to January 1, 1963, the department, with the recommendation of the board, may issue a license to practice osteopathic medicine and surgery to any such graduate who meets all the requirements for issuance of such license except graduation from an accredited school or college of osteopathic medicine after January 1, 1963.

Source: Laws 1963, c. 408, § 1, p. 1310; Laws 1969, c. 565, § 3, p. 2301; Laws 1981, LB 451, § 11; Laws 1989, LB 342, § 24; Laws 1996, LB 1044, § 444; Laws 1999, LB 828, § 105; Laws 2002, LB 1062, § 33; R.S.1943, (2003), § 71-1,139.01; Laws 2007, LB463, § 690.

38-2033 Osteopathic physician; license; scope.

(1) With respect to licenses issued pursuant to sections 38-2031 and 38-2032 and any renewals thereof, the department shall designate the extent of such practice as follows:

- (a) License to practice as an osteopathic physician; or
- (b) License to practice osteopathic medicine and surgery.

(2) Every license issued under sections 38-2031 and 38-2032 shall confer upon the holder thereof the right to practice osteopathic medicine and surgery as taught in the schools or colleges of osteopathic medicine recognized by the American Osteopathic Association in the manner and to the extent provided by such license.

Source: Laws 1927, c. 167, § 119, p. 490; C.S.1929, § 71-1705; R.S. 1943, § 71-1,141; Laws 1969, c. 565, § 5, p. 2302; Laws 1989, LB 342, § 26; Laws 1996, LB 1044, § 446; R.S.1943, (2003), § 71-1,141; Laws 2007, LB296, § 343; Laws 2007, LB463, § 691.

The practice of obstetrics and the use of anaesthetics, though not within the definition of osteopathy, has by legislative action been included within the scope of the license to practice osteopathy. *State ex rel. Johnson v. Wagner*, 139 Neb. 471, 297 N.W. 906 (1941).

38-2034 Applicant; reciprocity; requirements.

An applicant for a license to practice osteopathic medicine and surgery based on a license in another state or territory of the United States or the District of Columbia shall meet the standards set by the board pursuant to section 38-126, except that an applicant who has not passed one of the licensing examinations specified in the rules and regulations but has been duly licensed to practice osteopathic medicine and surgery in some other state or territory of the United States of America or in the District of Columbia and obtained that license based upon a state examination, as approved by the board, may be issued a license by the department, upon the recommendation of the board, to practice osteopathic medicine and surgery.

Source: Laws 2007, LB463, § 692.

38-2035 Applicant; examination; retaking examination.

Applicants for licensure in medicine and surgery and osteopathic medicine and surgery shall pass the licensing examination. An applicant who fails to pass any part of the licensing examination within four attempts shall complete one additional year of postgraduate medical education at an accredited school or college of medicine or osteopathic medicine. All parts of the licensing examination shall be successfully completed within ten years. An applicant who fails to successfully complete the licensing examination within the time allowed shall retake that part of the examination which was not completed within the time allowed.

Source: Laws 2007, LB463, § 693.

38-2036 Physician locum tenens; issuance authorized; conditions; term.

A physician locum tenens may be issued by the department, with the recommendation of the board, to an individual who holds an active license to practice medicine and surgery or osteopathic medicine and surgery in another state when circumstances indicate a need for the issuance of a physician locum tenens in the State of Nebraska. A physician locum tenens may be issued for a period not to exceed ninety days in any twelve-month period.

Source: Laws 2007, LB463, § 694.

38-2037 Additional grounds for disciplinary action.

In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a license to practice medicine and surgery or osteopathic medicine and surgery may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant or licensee fails to comply with the provisions of section 71-603.01, 71-604, 71-605, or 71-606 relating to the signing of birth and death certificates.

Source: Laws 2007, LB463, § 695.

38-2038 Temporary educational or visiting faculty permit; use.

The holder of a temporary educational permit or of a visiting faculty permit shall be entitled to practice medicine and surgery and any of its allied specialties, including prescribing medicine and controlled substances, while serving in graduate medical education, a fellowship, or a refresher course in the State of Nebraska, but neither the holder of a temporary educational permit nor the holder of a visiting faculty permit shall be qualified to engage in the practice of medicine and surgery or any of its allied specialties within the State of Nebraska and outside of the assigned graduate medical education, fellowship, refresher course, teaching program, or research program.

Source: Laws 1969, c. 560, § 9, p. 2283; Laws 1971, LB 150, § 6; R.S.1943, (2003), § 71-1,107.03; Laws 2007, LB463, § 696.

38-2039 Temporary educational permit; application; department; duties.

Before granting any temporary educational permit, the department, with the recommendation of the board, shall ascertain that an authorized provider of graduate medical education, a fellowship, or a refresher course has requested the issuance of a temporary educational permit for an applicant to participate

in its graduate medical education, fellowship, or refresher course for the period involved.

Source: Laws 1969, c. 560, § 13, p. 2284; Laws 1971, LB 150, § 10; Laws 1996, LB 1044, § 430; R.S.1943, (2003), § 71-1,107.07; Laws 2007, LB296, § 336; Laws 2007, LB463, § 697.

38-2040 Visiting faculty permit; application; department; duties.

Before a visiting faculty permit is issued, the department, with the recommendation of the board, shall determine that an accredited school or college of medicine in the State of Nebraska has requested issuance of a visiting faculty permit for the individual involved to serve as a member of the faculty of such school or college of medicine. Any application for issuing a visiting faculty permit shall outline the faculty duties to be performed pursuant to the permit.

Source: Laws 1969, c. 560, § 14, p. 2284; Laws 1971, LB 150, § 11; Laws 1996, LB 1044, § 431; R.S.1943, (2003), § 71-1,107.08; Laws 2007, LB296, § 337; Laws 2007, LB463, § 698.

38-2041 Temporary educational or visiting faculty permits; recommend, when.

The recommendation of the board for the issuance of any temporary educational permits or any visiting faculty permits shall be made at regular meetings of such board, but the chairperson or one other member of the board shall have the power to recommend the issuance of such permits between the meetings of the board.

Source: Laws 1969, c. 560, § 15, p. 2285; Laws 1971, LB 150, § 12; Laws 1999, LB 828, § 87; R.S.1943, (2003), § 71-1,107.09; Laws 2007, LB463, § 699.

38-2042 Temporary educational or visiting faculty permit; duration; renewal.

The duration of any temporary educational or visiting faculty permit shall be determined by the department but in no case shall it be in excess of one year. The permit may be renewed annually as long as the holder of a temporary educational permit is still enrolled and participating in the program of supervised educational training or as long as the holder of a visiting faculty permit is still teaching students of medicine or conducting research.

Source: Laws 1969, c. 560, § 12, p. 2284; Laws 1971, LB 150, § 9; Laws 1989, LB 342, § 18; Laws 1996, LB 1044, § 429; R.S.1943, (2003), § 71-1,107.06; Laws 2007, LB296, § 335; Laws 2007, LB463, § 700.

38-2043 Temporary educational or visiting faculty permit; disciplinary action; grounds.

Any temporary educational or visiting faculty permit may be suspended, limited, or revoked by the department, with the recommendation of the board, at any time upon a finding that the reasons for issuing such permit no longer

exist or that the person to whom such permit has been issued is no longer qualified to hold such permit.

Source: Laws 1969, c. 560, § 17, p. 2285; Laws 1971, LB 150, § 14; Laws 1996, LB 1044, § 433; Laws 1999, LB 828, § 89; R.S. 1943, (2003), § 71-1,107.11; Laws 2007, LB463, § 701.

38-2044 Temporary educational permit; to whom issued; qualifications.

A temporary educational permit may be issued to graduates of foreign schools or colleges of medicine or to individuals if the applicant, in addition to meeting the other requirements for the issuance of such permit, presents to the department a copy of a permanent certificate of the Educational Commission on Foreign Medical Graduates currently effective and relating to such applicant or, in lieu thereof, such credentials as are necessary to certify to successful passage of the Visa Qualifying Examination, or its successor or equivalent examination, required by the United States Department of Health and Human Services and the United States Citizenship and Immigration Services or, if a graduate of a foreign medical school who has successfully completed a program of American medical training designated as the Fifth Pathway and who additionally has successfully passed the Educational Commission on Foreign Medical Graduates examination but has not yet received a permanent certificate attesting to the same, and provides such credentials as are necessary to certify the same to the department, at such time as the department, with the recommendation of the board, determines, and, if so directed by the department, passes an examination approved by the board to measure his or her clinical competence to proceed to advanced training before advancing beyond the initial phase of the training program, and if such examination is required, pays the required fee.

Source: Laws 1969, c. 560, § 19, p. 2286; Laws 1971, LB 150, § 15; Laws 1974, LB 811, § 10; Laws 1978, LB 761, § 2; Laws 1991, LB 2, § 12; Laws 1996, LB 1044, § 434; Laws 1999, LB 828, § 90; Laws 2003, LB 242, § 41; R.S.1943, (2003), § 71-1,107.13; Laws 2007, LB463, § 702.

38-2045 Visiting faculty permit; issuance; conditions.

A visiting faculty permit may be issued to graduates of foreign schools or colleges of medicine or to individuals if an accredited college or school of medicine in the State of Nebraska has requested that such permit be issued. It shall not be necessary for such applicant to provide a certificate of the Educational Commission on Foreign Medical Graduates as required in the case of temporary educational permits. If directed by the department an applicant for a visiting faculty permit may be required to pass an examination approved by the board to measure his or her clinical competence to practice medicine and if such examination is required the applicant shall pay the required fee.

Source: Laws 1971, LB 150, § 16; Laws 1974, LB 811, § 11; Laws 1996, LB 1044, § 435; Laws 1999, LB 828, § 91; Laws 2003, LB 242, § 42; R.S.1943, (2003), § 71-1,107.14; Laws 2007, LB463, § 703.

38-2046 Physician assistants; legislative findings.

The Legislature finds that:

(1) In its concern with the geographic maldistribution of health care services in Nebraska it is essential to develop additional health personnel; and

(2) It is essential to encourage the more effective utilization of the skills of physicians by enabling them to delegate health care tasks to qualified physician assistants when such delegation is consistent with the patient's health and welfare.

It is the intent of the Legislature to encourage the utilization of such physician assistants by physicians.

Source: Laws 1973, LB 101, § 1; R.S.Supp.,1973, § 85-179.04; Laws 1985, LB 132, § 1; R.S.1943, (2003), § 71-1,107.15; Laws 2007, LB463, § 704.

Cross References

Student loan program, Rural Health Systems and Professional Incentive Act, see section 71-5650.

38-2047 Physician assistants; services performed; supervision requirements.

(1) Notwithstanding any other provision of law, a physician assistant may perform medical services when he or she renders such services under the supervision of a licensed physician or group of physicians approved by the department, with the recommendation of the board, in the specialty area or areas for which the physician assistant shall be trained or experienced. Any physician assistant licensed under the Medicine and Surgery Practice Act to perform services may perform those services only:

(a) In the office of the supervising physician where such physician maintains his or her primary practice;

(b) In any other office which is operated by the supervising physician with the personal presence of the supervising physician. The physician assistant may function without the personal presence of the supervising physician in an office other than where such physician maintains his or her primary practice as provided in subsection (2) of this section and when approved on an individual basis by the department, with the recommendation of the board. Any such approval shall require site visits by the supervising physician, regular reporting to the supervising physician by the physician assistant, and arrangements for supervision at all times by the supervising physician which are sufficient to provide quality medical care;

(c) In a hospital, with the approval of the governing board of such hospital, where the supervising physician is a member of the staff and the physician assistant is subject to the rules and regulations of the hospital. Such rules and regulations may include, but need not be limited to, reasonable requirements that physician assistants and the supervising physician maintain professional liability insurance with such coverage and limits as may be established by the hospital governing board, upon the recommendation of the medical staff; or

(d) On calls outside such offices, when authorized by the supervising physician and with the approval of the governing board of any affected hospital.

(2) The department, with the recommendation of the board, shall adopt and promulgate rules and regulations establishing minimum requirements for the personal presence of the supervising physician, stated in hours or percentage of practice time. The board may provide different minimum requirements for the personal presence of the supervising physician based on the geographic loca-

tion of the supervising physician's primary and other practice sites and other factors the board deems relevant.

Source: Laws 1973, LB 101, § 3; R.S.Supp.,1973, § 85-179.06; Laws 1985, LB 132, § 3; Laws 1993, LB 316, § 2; Laws 1996, LB 1108, § 9; R.S.1943, (2003), § 71-1,107.17; Laws 2007, LB463, § 705.

Cross References

Liability limitations:

Malpractice, Nebraska Hospital-Medical Liability Act, see section 44-2801 et seq.
 Rendering emergency aid, see section 25-21,186.

38-2048 Physician assistants; trainee; services performed.

Notwithstanding any other provision of law, a trainee may perform medical services when he or she renders such services within the scope of an approved program.

Source: Laws 1973, LB 101, § 4; R.S.Supp.,1973, § 85-179.07; Laws 1985, LB 132, § 4; R.S.1943, (2003), § 71-1,107.18; Laws 2007, LB463, § 706.

38-2049 Physician assistants; licenses; temporary licenses; issuance.

(1) The department, with the recommendation of the board, shall issue licenses to persons who are graduates of physician assistant programs approved by the board and have satisfactorily completed a proficiency examination.

(2) The department, with the recommendation of the board, shall issue temporary licenses to persons who have successfully completed an approved program for the education and training of physician assistants but have not yet passed a proficiency examination. Any temporary license issued pursuant to this subsection shall be issued for a period not to exceed one year and under such conditions as determined by the department, with the recommendation of the board. Upon a showing of good cause, the temporary license may be extended by the department, with the recommendation of the board.

(3) The board may recognize groups of specialty classifications of training for physician assistants. These classifications shall reflect the training and experience of the physician assistant. The physician assistant may receive training in one or more such classifications which shall be shown on the license issued.

(4) Physician assistants approved by the board prior to April 16, 1985, shall not be required to complete the proficiency examination.

Source: Laws 1973, LB 101, § 5; R.S.Supp.,1973, § 85-179.08; Laws 1985, LB 132, § 5; Laws 1996, LB 1108, § 10; R.S.1943, (2003), § 71-1,107.19; Laws 2007, LB463, § 707.

Cross References

Uniform Credentialing Act, see section 38-101.

38-2050 Physician assistants; department; guidelines; formulate.

(1) The department, with the recommendation of the board, shall formulate guidelines for the consideration of applications by a licensed physician or physicians to supervise physician assistants. Any application made by a physician or physicians shall include all of the following:

(a) The qualifications, including related experience, of the physician assistant intended to be employed;

(b) The professional background and specialty of the physician or physicians; and

(c) A description by the physician of his or her, or physicians of their, practice and the way in which the assistant or assistants shall be utilized. The application shall provide for the personal presence of the supervising physician in conformance with requirements established by the department, with the recommendation of the board, under section 38-2047.

(2) The department, with the recommendation of the board, shall approve an application by a licensed physician to supervise a physician assistant when the department, with the recommendation of the board, is satisfied that the proposed assistant is a graduate of an approved program, has satisfactorily completed a proficiency examination, and is fully qualified to perform medical services under the responsible supervision of a licensed physician. The public shall be adequately protected by the arrangement proposed in the application.

(3) The department, with the recommendation of the board, shall approve no more than two physician assistants for any practicing physician, except that this limitation may be waived by the department, with the recommendation of the board, upon a showing of good cause by the practicing physician.

Source: Laws 1973, LB 101, § 6; R.S.Supp.,1973, § 85-179.09; Laws 1985, LB 132, § 6; Laws 1993, LB 316, § 3; R.S.1943, (2003), § 71-1,107.20; Laws 2007, LB463, § 708.

38-2051 Physician assistants; termination of supervision; notice to department.

If the supervision of a physician assistant is terminated by the physician or physician assistant, the physician shall notify the department of such termination. A physician who thereafter assumes the responsibility for such supervision shall obtain a certificate to supervise a physician assistant from the department prior to the use of the physician assistant in the practice of medicine.

Source: Laws 1973, LB 101, § 9; R.S.Supp.,1973, § 85-179.12; Laws 1985, LB 132, § 8; Laws 1987, LB 473, § 21; Laws 1988, LB 352, § 117; R.S.1943, (2003), § 71-1,107.23; Laws 2007, LB463, § 709.

38-2052 Physician assistants; misrepresentation; penalty.

Any person who has not been licensed by the department, with the recommendation of the board, and who holds himself or herself out as a physician assistant, or who uses any other term to indicate or imply that he or she is a physician assistant, shall be guilty of a Class IV felony.

Source: Laws 1973, LB 101, § 7; R.S.Supp.,1973, § 85-179.10; Laws 1977, LB 39, § 319; Laws 1985, LB 132, § 7; R.S.1943, (2003), § 71-1,107.21; Laws 2007, LB463, § 710.

38-2053 Physician assistants; negligent acts; liability.

Any physician or physician groups utilizing physician assistants shall be liable for any negligent acts or omissions of physician assistants while acting under their supervision and control.

Source: Laws 1973, LB 101, § 14; R.S.Supp.,1973, § 85-179.17; Laws 1985, LB 132, § 13; R.S.1943, (2003), § 71-1,107.28; Laws 2007, LB463, § 711.

38-2054 Physician assistants; licensed; not engaged in unauthorized practice of medicine.

Any physician assistant who is licensed and who renders services under the supervision and control of a licensed physician as provided by the Medicine and Surgery Practice Act shall not be construed to be engaged in the unauthorized practice of medicine.

Source: Laws 1973, LB 101, § 15; R.S.Supp.,1973, § 85-179.18; Laws 1985, LB 132, § 14; Laws 1996, LB 1108, § 13; R.S.1943, (2003), § 71-1,107.29; Laws 2007, LB463, § 712.

38-2055 Physician assistants; prescribe drugs and devices; restrictions.

A physician assistant may prescribe drugs and devices as delegated to do so by a supervising physician. Any limitation placed by the supervising physician on the prescribing authority of the physician assistant shall be recorded on the physician assistant's scope of practice agreement established pursuant to rules and regulations adopted and promulgated under the Medicine and Surgery Practice Act. All prescriptions and prescription container labels shall bear the name of the supervising physician and the physician assistant. A physician assistant to whom has been delegated the authority to prescribe controlled substances shall obtain a federal Drug Enforcement Administration registration number. When prescribing Schedule II controlled substances, the prescription container label shall bear all information required by the federal Controlled Substances Act of 1970.

Source: Laws 1985, LB 132, § 15; Laws 1992, LB 1019, § 41; Laws 1999, LB 379, § 4; Laws 1999, LB 828, § 94; Laws 2005, LB 175, § 1; R.S.Supp.,2006, § 71-1,107.30; Laws 2007, LB463, § 713.

Cross References

Schedules of controlled substances, see section 28-405.

38-2056 Physician Assistant Committee; created; membership; powers and duties; per diem; expenses.

(1) There is hereby created the Physician Assistant Committee which shall review and make recommendations to the board regarding all matters relating to physician assistants that come before the board. Such matters shall include, but not be limited to, (a) applications for licensure, (b) physician assistant education, (c) scope of practice, (d) proceedings arising pursuant to sections 38-178 and 38-179, (e) physician assistant licensure and supervising physician requirements, and (f) continuing competency. The committee shall be directly responsible to the board.

(2) The committee shall be appointed by the State Board of Health and shall be composed of two physician assistants, one supervising physician, one mem-

ber of the Board of Medicine and Surgery, and one public member. The chairperson of the committee shall be elected by a majority vote of the committee members.

(3) At the expiration of the four-year terms of the members serving on December 1, 2008, appointments shall be for five-year terms. Members shall serve no more than two consecutive full five-year terms. Reappointments shall be made by the State Board of Health.

(4) The committee shall meet on a regular basis and committee members shall, in addition to necessary traveling and lodging expenses, receive a per diem for each day actually engaged in the discharge of his or her duties, including compensation for the time spent in traveling to and from the place of conducting business. Traveling and lodging expenses shall be reimbursed on the same basis as provided in sections 81-1174 to 81-1177. The compensation shall not exceed fifty dollars per day and shall be determined by the committee with the approval of the department.

Source: Laws 1973, LB 101, § 11; R.S.Supp.,1973, § 85-179.14; Laws 1985, LB 132, § 10; Laws 1996, LB 1108, § 11; Laws 1999, LB 828, § 93; Laws 2002, LB 1021, § 18; R.S.1943, (2003), § 71-1,107.25; Laws 2007, LB463, § 714.

38-2057 Acupuncture; exemptions.

The provisions of the Medicine and Surgery Practice Act relating to acupuncture do not apply to:

(1) Any other health care practitioner credentialed under the Uniform Credentialing Act practicing within the scope of his or her profession;

(2) A student practicing acupuncture under the supervision of a person licensed to practice acupuncture under the Uniform Credentialing Act as part of a course of study approved by the department; or

(3) The practice of acupuncture by any person licensed or certified to practice acupuncture in any other jurisdiction when practicing in an educational seminar sponsored by a state-approved acupuncture or professional organization if the practice is supervised directly by a person licensed to practice acupuncture under the Uniform Credentialing Act.

Source: Laws 2001, LB 270, § 9; Laws 2003, LB 242, § 81; R.S.1943, (2003), § 71-1,345; Laws 2007, LB463, § 715.

38-2058 Acupuncture; license required; standard of care.

It is unlawful to practice acupuncture on a person in this state unless the acupuncturist is licensed to practice acupuncture under the Uniform Credentialing Act and has been presented by the patient with a prior letter of referral from or a medical diagnosis and evaluation completed by a practitioner licensed to practice medicine and surgery or osteopathic medicine and surgery within ninety days immediately preceding the date of an initial acupuncture treatment. An acupuncturist licensed under the Uniform Credentialing Act shall provide the same standard of care to patients as that provided by a person licensed under the Uniform Credentialing Act to practice medicine and surgery, osteopathy, or osteopathic medicine and surgery.

Source: Laws 2001, LB 270, § 10; R.S.1943, (2003), § 71-1,346; Laws 2007, LB463, § 716.

38-2059 Acupuncture; consent required.

The practice of acupuncture shall not be performed upon any person except with the voluntary and informed consent of such person. Information provided in connection with obtaining such informed consent shall include, but not be limited to, the following:

- (1) The distinctions and differences between the practice of acupuncture and the practice of medicine;
- (2) The disclosure that an acupuncturist is not licensed to practice medicine or to make a medical diagnosis of the person’s disease or condition and that a physician should be consulted for such medical diagnosis;
- (3) The nature and the purpose of the acupuncture treatment; and
- (4) Any medical or other risks associated with such treatment.

Source: Laws 2001, LB 270, § 11; R.S.1943, (2003), § 71-1,347; Laws 2007, LB463, § 717.

38-2060 Acupuncture; license requirements.

At the time of application for an initial license to practice acupuncture, the applicant shall present to the department proof that he or she:

- (1) Has graduated from, after having successfully completed the acupuncture curriculum requirements of, a formal, full-time acupuncture program at a university, college, or school of acupuncture approved by the board which includes at least one thousand seven hundred twenty-five hours of entry-level acupuncture education consisting of a minimum of one thousand didactic and five hundred clinical hours;
- (2) Has successfully passed an acupuncture examination approved by the board which shall include a comprehensive written examination in acupuncture theory, diagnosis and treatment technique, and point location; and
- (3) Has successfully completed a clean-needle technique course approved by the board.

Source: Laws 2001, LB 270, § 12; R.S.1943, (2003), § 71-1,348; Laws 2007, LB463, § 718.

Cross References

Uniform Credentialing Act, see section 38-101.

38-2061 Fees.

The department shall establish and collect fees for credentialing under the Medicine and Surgery Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 719.

ARTICLE 21

MENTAL HEALTH PRACTICE ACT

Cross References

- Access to medical records, see section 71-8401 et seq.
- Child abuse, duty to report, see section 28-711.
- Division of Public Health of the Department of Health and Human Services, see section 81-3113.
- Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.
- Good Samaritan provisions, see section 25-21,186.
- Health and Human Services Act, see section 81-3110.
- Health Care Facility Licensure Act, see section 71-401.
- Health Care Professional Credentialing Verification Act, see section 44-7001.

Insurance coverage of mental health conditions, see sections 44-791 to 44-795.

License Suspension Act, see section 43-3301.

Medicaid coverage, see section 68-911.

Nebraska Behavioral Health Services Act, see section 71-801.

Nebraska Mental Health Commitment Act, see section 71-901.

Nebraska Regulation of Health Professions Act, see section 71-6201.

Patient Safety Improvement Act, see section 71-8701.

Psychology Practice Act, see section 38-3101.

Rural Health Systems and Professional Incentive Act, see section 71-5650.

State Board of Health, duties, see section 71-2610 et seq.

Statewide Trauma System Act, see section 71-8201.

Uniform Controlled Substances Act, see section 28-401.01.

Section

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- 38-2125. Reciprocity.
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- 38-2127. Practice of social work; certificate required; exceptions.
- 38-2128. Certified master social worker; certified social worker; qualifications.
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- 38-2130. Certified marriage and family therapist, certified professional counselor, social worker; reciprocity.
- 38-2131. Certified social workers; certified master social workers; act, how construed.
- 38-2132. Certified professional counselor; qualifications.
- 38-2133. Marriage and family therapist; certification; qualifications.
- 38-2134. Marriage and family therapists; act, how construed.
- 38-2135. Fees.
- 38-2136. Mental health practitioners; confidentiality; exception.
- 38-2137. Mental health practitioner; duty to warn of patient's threatened violent behavior; limitation on liability.
- 38-2138. Code of ethics; board; duties; duty to report violations.
- 38-2139. Additional grounds for disciplinary action.

38-2101 Act, how cited.

Sections 38-2101 to 38-2139 shall be known and may be cited as the Mental Health Practice Act.

Source: Laws 2007, LB247, § 72; Laws 2007, LB463, § 720.

38-2102 Legislative findings.

The Legislature finds that, because many mental health practitioners are not regulated in this state, anyone may offer mental health services by using an unrestricted title and that there is no means for identifying qualified practitioners, for enforcing professional standards, or for holding such practitioners accountable for their actions. Therefore the Legislature determines that, in the interest of consumer protection and for the protection of public health, safety, and welfare, individuals should be provided a means by which they can be assured that their selection of a mental health practitioner is based on sound criteria and that the activities of those persons who by any title may offer or deliver therapeutic mental health services should be regulated.

The purpose of licensing mental health practitioners is to provide for an omnibus title for such persons and to provide for associated certification of social workers, master social workers, professional counselors, and marriage and family therapists.

Source: Laws 1993, LB 669, § 14; R.S.1943, (2003), § 71-1,295; Laws 2007, LB463, § 721.

38-2103 Definitions, where found.

For purposes of the Mental Health Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2104 to 38-2119 apply.

Source: Laws 1993, LB 669, § 15; R.S.1943, (2003), § 71-1,296; Laws 2007, LB247, § 38; Laws 2007, LB463, § 722.

38-2104 Approved educational program, defined.

Approved educational program means a program of education and training approved by the board. Such approval may be based on the program's accreditation by an accrediting agency or on standards established by the board in the manner and form provided in section 38-133.

Source: Laws 1986, LB 286, § 12; R.S.1943, (1990), § 71-1,255; Laws 1993, LB 669, § 16; R.S.1943, (2003), § 71-1,297; Laws 2007, LB463, § 723.

38-2105 Board, defined.

Board means the Board of Mental Health Practice.

Source: Laws 1993, LB 669, § 17; Laws 1999, LB 828, § 148; R.S.1943, (2003), § 71-1,298; Laws 2007, LB463, § 724.

38-2106 Certified marriage and family therapist, defined.

Certified marriage and family therapist means a person who is certified to practice marriage and family therapy pursuant to the Uniform Credentialing Act and who holds a current certificate issued by the department.

Source: Laws 1993, LB 669, § 18; R.S.1943, (2003), § 71-1,299; Laws 2007, LB463, § 725.

38-2107 Certified master social work, defined.

Certified master social work means the specialized application of social work values, knowledge, principles, and methods in all areas of social work practice. Certified master social work may include the private, independent, and autonomous practice of social work.

Source: Laws 1986, LB 286, § 6; R.S.1943, (1990), § 71-1,249; Laws 1993, LB 669, § 19; R.S.1943, (2003), § 71-1,300; Laws 2007, LB463, § 726.

38-2108 Certified master social worker, defined.

Certified master social worker means a person who meets the standards established in subsection (1) of section 38-2128 and who holds a current certificate issued by the department.

Source: Laws 1986, LB 286, § 8; R.S.1943, (1990), § 71-1,251; Laws 1993, LB 669, § 20; R.S.1943, (2003), § 71-1,301; Laws 2007, LB463, § 727.

38-2109 Certified professional counselor, defined.

Certified professional counselor means a person who is certified to practice professional counseling pursuant to the Uniform Credentialing Act and who holds a current certificate issued by the department.

Source: Laws 1993, LB 669, § 21; R.S.1943, (2003), § 71-1,302; Laws 2007, LB463, § 728.

38-2110 Certified social work, defined.

Certified social work means the professional application of social work values, knowledge, principles, and methods in all areas of social work practice, except that certified social work shall not include private, independent, and autonomous practice of social work.

Source: Laws 1986, LB 286, § 7; R.S.1943, (1990), § 71-1,250; Laws 1993, LB 669, § 22; R.S.1943, (2003), § 71-1,303; Laws 2007, LB463, § 729.

38-2111 Certified social worker, defined.

Certified social worker means a person who meets the standards established in subsection (2) of section 38-2128 and who holds a current certificate issued by the department.

Source: Laws 1986, LB 286, § 9; R.S.1943, (1990), § 71-1,252; Laws 1993, LB 669, § 23; R.S.1943, (2003), § 71-1,304; Laws 2007, LB463, § 730.

38-2112 Consultation, defined.

Consultation means a professional collaborative relationship between a licensed mental health practitioner and a consultant who is a psychologist licensed to engage in the practice of psychology as provided in section 38-3111, a qualified physician, or a licensed independent mental health practitioner in which (1) the consultant makes a diagnosis based on information supplied by the licensed mental health practitioner and any additional assessment deemed necessary by the consultant and (2) the consultant and the licensed mental health practitioner jointly develop a treatment plan which indicates the respon-

sibility of each professional for implementing elements of the plan, updating the plan, and assessing the client's progress.

Source: Laws 1993, LB 669, § 24; Laws 1994, LB 1210, § 95; R.S.1943, (2003), § 71-1,305; Laws 2007, LB463, § 731; Laws 2008, LB1108, § 1.

Operative date December 1, 2008.

38-2113 Independent mental health practice, defined.

(1) Independent mental health practice means the provision of treatment, assessment, psychotherapy, counseling, or equivalent activities to individuals, couples, families, or groups for behavioral, cognitive, social, mental, or emotional disorders, including interpersonal or personal situations.

(2) Independent mental health practice includes diagnosing major mental illness or disorder, using psychotherapy with individuals suspected of having major mental or emotional disorders, or using psychotherapy to treat the concomitants of organic illness, with or without consultation with a qualified physician or licensed psychologist.

(3) Independent mental health practice does not include the practice of psychology or medicine, prescribing drugs or electroconvulsive therapy, treating physical disease, injury, or deformity, or measuring personality or intelligence for the purpose of diagnosis or treatment planning.

Source: Laws 2007, LB247, § 39; R.S.Supp.,2007, § 71-1,305.01.

38-2114 Marriage and family therapy, defined.

Marriage and family therapy means the assessment and treatment of mental and emotional disorders, whether cognitive, affective, or behavioral, within the context of marriage and family systems through the professional application of psychotherapeutic and family systems theories and techniques in the delivery of services to individuals, couples, and families for the purpose of treating such disorders.

Source: Laws 1993, LB 669, § 25; R.S.1943, (2003), § 71-1,306; Laws 2007, LB463, § 732.

38-2115 Mental health practice, defined; limitation on practice.

(1) Mental health practice means the provision of treatment, assessment, psychotherapy, counseling, or equivalent activities to individuals, couples, families, or groups for behavioral, cognitive, social, mental, or emotional disorders, including interpersonal or personal situations.

(2) Mental health practice does not include:

(a) The practice of psychology or medicine;

(b) Prescribing drugs or electroconvulsive therapy;

(c) Treating physical disease, injury, or deformity;

(d) Diagnosing major mental illness or disorder except in consultation with a qualified physician, a psychologist licensed to engage in the practice of psychology as provided in section 38-3111, or a licensed independent mental health practitioner;

(e) Measuring personality or intelligence for the purpose of diagnosis or treatment planning;

(f) Using psychotherapy with individuals suspected of having major mental or emotional disorders except in consultation with a qualified physician, a licensed psychologist, or a licensed independent mental health practitioner; or

(g) Using psychotherapy to treat the concomitants of organic illness except in consultation with a qualified physician or licensed psychologist.

(3) Mental health practice includes the initial assessment of organic mental or emotional disorders for the purpose of referral or consultation.

(4) Nothing in sections 38-2114, 38-2118, and 38-2119 shall be deemed to constitute authorization to engage in activities beyond those described in this section. Persons certified under the Mental Health Practice Act but not licensed under section 38-2122 shall not engage in mental health practice.

Source: Laws 1993, LB 669, § 26; Laws 1994, LB 1210, § 96; R.S.1943, (2003), § 71-1,307; Laws 2007, LB247, § 40; Laws 2007, LB463, § 733; Laws 2008, LB1108, § 2.
Operative date December 1, 2008.

38-2116 Mental health practitioner, independent mental health practitioner, defined; use of titles.

(1) Mental health practitioner means a person who holds himself or herself out as a person qualified to engage in mental health practice or a person who offers or renders mental health practice services. Independent mental health practitioner means a person who holds himself or herself out as a person qualified to engage in independent mental health practice or a person who offers or renders independent mental health practice services.

(2) A person who is licensed as a mental health practitioner and certified as a master social worker may use the title licensed clinical social worker. A person who is licensed as a mental health practitioner and certified as a professional counselor may use the title licensed professional counselor. A person who is licensed as a mental health practitioner and certified as a marriage and family therapist may use the title licensed marriage and family therapist. No person shall use the title licensed clinical social worker, licensed professional counselor, or licensed marriage and family therapist unless he or she is licensed and certified as provided in this subsection.

(3) A person who is licensed as an independent mental health practitioner and certified as a master social worker may use the title licensed independent clinical social worker. A person who is licensed as an independent mental health practitioner and certified as a professional counselor may use the title licensed independent professional counselor. A person who is licensed as an independent mental health practitioner and certified as a marriage and family therapist may use the title licensed independent marriage and family therapist. No person shall use the title licensed independent clinical social worker, licensed independent professional counselor, or licensed independent marriage and family therapist unless he or she is licensed and certified as provided in this subsection.

(4) A mental health practitioner shall not represent himself or herself as a physician or psychologist and shall not represent his or her services as being

medical or psychological in nature. An independent mental health practitioner shall not represent himself or herself as a physician or psychologist.

Source: Laws 1993, LB 669, § 27; R.S.1943, (2003), § 71-1,308; Laws 2007, LB247, § 41; Laws 2007, LB463, § 734; Laws 2008, LB1108, § 3.
Operative date December 1, 2008.

38-2117 Mental health program, defined.

Mental health program means an educational program in a field such as, but not limited to, social work, professional counseling, marriage and family therapy, human development, psychology, or family relations, the content of which contains an emphasis on therapeutic mental health and course work in psychotherapy and the assessment of mental disorders.

Source: Laws 1993, LB 669, § 28; R.S.1943, (2003), § 71-1,309; Laws 2007, LB463, § 735.

38-2118 Professional counseling, defined.

Professional counseling means the assessment and treatment of mental and emotional disorders within the context of professional counseling theory and practice of individuals, couples, families, or groups and includes, but is not limited to:

- (1) Assisting individuals or groups through the counseling relationship to develop understanding, define goals, plan action, and change behavior with the goal of reflecting interests, abilities, aptitudes, and needs as they are related to personal and social concerns, educational progress, and occupations;
- (2) Appraisal activities which shall mean selecting, administering, scoring, and interpreting instruments designed to assess a person's aptitudes, attitudes, abilities, achievements, interests, and personal characteristics, except that nothing in this subdivision shall be construed to authorize a certified professional counselor to engage in the practice of clinical psychology as defined in section 38-3111;
- (3) Referral activities which evaluate data to identify which persons or groups may better be served by other specialists;
- (4) Research activities which shall mean reporting, designing, conducting, or consulting on research in counseling with human subjects;
- (5) Therapeutic, vocational, or personal rehabilitation in relationship to adapting to physical, emotional, or intellectual disability; and
- (6) Consulting on any activity listed in this section.

Source: Laws 1986, LB 579, § 2; Laws 1988, LB 1100, § 88; R.S.1943, (1990), § 71-1,266; Laws 1993, LB 669, § 29; Laws 1994, LB 1210, § 97; R.S.1943, (2003), § 71-1,310; Laws 2007, LB463, § 736.

38-2119 Social work practice or the practice of social work, defined.

(1) Social work practice or the practice of social work means the professional activity of helping individuals, groups, and families or larger systems such as organizations and communities to improve, restore, or enhance their capacities for personal and social functioning and the professional application of social

work values, knowledge, principles, and methods in the following areas of practice:

(a) Information, resource identification and development, and referral services;

(b) Preparation and evaluation of psychosocial assessments and development of social work service plans;

(c) Case management, coordination, and monitoring of social work service plans in the areas of personal, social, or economic resources, conditions, or problems;

(d) Development, implementation, and evaluation of social work programs and policies;

(e) Supportive contacts to assist individuals and groups with personal adjustment to crisis, transition, economic change, or a personal or family member's health condition, especially in the area of services given in hospitals, health clinics, home health agencies, schools, shelters for the homeless, shelters for the urgent care of victims of sexual assault, child abuse, elder abuse, or domestic violence, nursing homes, and correctional facilities. Nothing in this subdivision shall be construed to prevent charitable and religious organizations, the clergy, governmental agencies, hospitals, health clinics, home health agencies, schools, shelters for the homeless, shelters for the urgent care of victims of sexual assault, child abuse, elder abuse, or domestic violence, nursing homes, or correctional facilities from providing supportive contacts to assist individuals and groups with adjustment to crisis, transition, economic change, or personal or a family member's health condition if such persons or organizations do not represent themselves to be social workers;

(f) Social casework for and prevention of psychosocial dysfunction, disability, or impairment; and

(g) Social work research, consultation, and education.

(2) Social work practice does not include the following:

(a) The measuring and testing of personality or intelligence;

(b) Accepting fees or compensation for the treatment of disease, injury, or deformity of persons by drugs, surgery, or any manual or mechanical treatment whatsoever;

(c) Prescribing drugs or electroconvulsive therapy; and

(d) Treating organic diseases or major psychiatric diseases.

(3) A certified master social worker who practices within the confines of this section shall not be required to be licensed as a mental health practitioner.

Source: Laws 1986, LB 286, § 5; R.S.1943, (1990), § 71-1,248; Laws 1993, LB 669, § 30; Laws 1994, LB 1210, § 98; R.S.1943, (2003), § 71-1,311; Laws 2007, LB463, § 737.

38-2120 Board; membership; qualifications.

The board shall consist of eight professional members and two public members appointed pursuant to section 38-158. The members shall meet the requirements of sections 38-164 and 38-165. Two professional members shall be certified master social workers, two professional members shall be certified professional counselors, two professional members shall be certified marriage

and family therapists, and two professional members shall be licensed mental health practitioners that do not hold an associated certification.

Source: Laws 2007, LB463, § 738.

38-2121 License; required; exceptions.

The requirement to be licensed as a mental health practitioner pursuant to the Uniform Credentialing Act in order to engage in mental health practice shall not be construed to prevent:

- (1) Qualified members of other professions who are licensed, certified, or registered by this state from practice of any mental health activity consistent with the scope of practice of their respective professions;
- (2) Alcohol and drug counselors who are licensed by the Division of Public Health of the Department of Health and Human Services and problem gambling counselors who are certified by the Department of Health and Human Services from practicing their profession. Such exclusion shall include students training and working under the supervision of an individual qualified under section 38-315;
- (3) Any person employed by an agency, bureau, or division of the federal government from discharging his or her official duties, except that if such person engages in mental health practice in this state outside the scope of such official duty or represents himself or herself as a licensed mental health practitioner, he or she shall be licensed;
- (4) Teaching or the conduct of research related to mental health services or consultation with organizations or institutions if such teaching, research, or consultation does not involve the delivery or supervision of mental health services to individuals or groups of individuals who are themselves, rather than a third party, the intended beneficiaries of such services;
- (5) The delivery of mental health services by:
 - (a) Students, interns, or residents whose activities constitute a part of the course of study for medicine, psychology, nursing, school psychology, social work, clinical social work, counseling, marriage and family therapy, or other health care or mental health service professions; or
 - (b) Individuals seeking to fulfill postgraduate requirements for licensure when those individuals are supervised by a licensed professional consistent with the applicable regulations of the appropriate professional board;
- (6) Duly recognized members of the clergy from providing mental health services in the course of their ministerial duties and consistent with the codes of ethics of their profession if they do not represent themselves to be mental health practitioners;
- (7) The incidental exchange of advice or support by persons who do not represent themselves as engaging in mental health practice, including participation in self-help groups when the leaders of such groups receive no compensation for their participation and do not represent themselves as mental health practitioners or their services as mental health practice;
- (8) Any person providing emergency crisis intervention or referral services or limited services supporting a service plan developed by and delivered under the supervision of a licensed mental health practitioner, licensed physician, or a psychologist licensed to engage in the practice of psychology if such persons

are not represented as being licensed mental health practitioners or their services are not represented as mental health practice; or

(9) Staff employed in a program designated by an agency of state government to provide rehabilitation and support services to individuals with mental illness from completing a rehabilitation assessment or preparing, implementing, and evaluating an individual rehabilitation plan.

Source: Laws 1993, LB 669, § 31; Laws 1994, LB 1210, § 99; Laws 1995, LB 275, § 5; Laws 1996, LB 1044, § 479; Laws 2004, LB 1083, § 114; R.S.Supp.,2006, § 71-1,312; Laws 2007, LB296, § 361; Laws 2007, LB463, § 739.

38-2122 Mental health practitioner; qualifications.

A person shall be qualified to be a licensed mental health practitioner if he or she:

(1) Has received a master's or doctorate degree that consists of course work and training which was primarily therapeutic mental health in content and included a practicum or internship and was from an approved educational program. Practicums or internships completed after September 1, 1995, must include a minimum of three hundred clock hours of direct client contact under the supervision of a qualified physician, a licensed psychologist, or a licensed mental health practitioner;

(2) Has successfully completed three thousand hours of supervised experience in mental health practice of which fifteen hundred hours were in direct client contact in a setting where mental health services were being offered and the remaining fifteen hundred hours included, but were not limited to, review of client records, case conferences, direct observation, and video observation. For purposes of this subdivision, supervised means monitored by a qualified physician, a licensed clinical psychologist, or a certified master social worker, certified professional counselor, or marriage and family therapist qualified for certification on September 1, 1994, for any hours completed before such date or by a qualified physician, a psychologist licensed to engage in the practice of psychology, or a licensed mental health practitioner for any hours completed after such date, including evaluative face-to-face contact for a minimum of one hour per week. Such three thousand hours shall be accumulated after completion of the master's or doctorate degree and during the five years immediately preceding the application for licensure; and

(3) Has satisfactorily passed an examination approved by the board. An individual who by reason of educational background is eligible for certification as a certified master social worker, a certified professional counselor, or a certified marriage and family therapist shall take and pass a certification examination approved by the board before becoming licensed as a mental health practitioner.

Source: Laws 1993, LB 669, § 33; Laws 1994, LB 1210, § 100; Laws 1995, LB 406, § 31; Laws 1997, LB 622, § 84; Laws 1997, LB 752, § 160; R.S.1943, (2003), § 71-1,314; Laws 2007, LB463, § 740.

Cross References

Uniform Credentialing Act, see section 38-101.

38-2123 Provisional mental health practitioner license; qualifications; application; expiration; disclosure required.

(1) A person who needs to obtain the required three thousand hours of supervised experience in mental health practice as specified in section 38-2122 to qualify for a mental health practitioner license shall obtain a provisional mental health practitioner license. To qualify for a provisional mental health practitioner license, such person shall:

(a) Have a master's or doctorate degree that consists of course work and training which was primarily therapeutic mental health in content and included a practicum or internship and was from an approved educational program as specified in such section;

(b) Apply prior to earning the three thousand hours of supervised experience; and

(c) Pay the provisional mental health practitioner license fee.

(2) A provisional mental health practitioner license shall expire upon receipt of licensure as a mental health practitioner or five years after the date of issuance, whichever comes first.

(3) A person who holds a provisional mental health practitioner license shall inform all clients that he or she holds a provisional license and is practicing mental health under supervision and shall identify the supervisor. Failure to make such disclosure is a ground for discipline as set forth in section 38-2139.

Source: Laws 1997, LB 622, § 81; Laws 2003, LB 242, § 73; R.S.1943, (2003), § 71-1,314.01; Laws 2007, LB463, § 741.

38-2124 Independent mental health practitioner; qualifications.

(1) No person shall hold himself or herself out as an independent mental health practitioner unless he or she is licensed as such by the department. A person shall be qualified to be a licensed independent mental health practitioner if he or she:

(a)(i)(A) Graduated with a master's or doctoral degree from an educational program which is accredited, at the time of graduation or within four years after graduation, by the Council for Accreditation of Counseling and Related Educational Programs, the Commission on Accreditation for Marriage and Family Therapy Education, or the Council on Social Work Education or (B) graduated with a master's or doctoral degree from an educational program deemed by the board to be equivalent in didactic content and supervised clinical experience to an accredited program;

(ii)(A) Is licensed as a licensed mental health practitioner or (B) is licensed as a provisional mental health practitioner and has satisfactorily passed an examination approved by the board pursuant to subdivision (3) of section 38-2122; and

(iii) Has three thousand hours of experience obtained in a period of not less than two nor more than five years and supervised by a licensed physician, a licensed psychologist, or a licensed independent mental health practitioner, one-half of which is comprised of experience with clients diagnosed under the major mental illness or disorder category; or

(b)(i) Graduated from an educational program which does not meet the requirements of subdivision (a)(i) of this subsection;

(ii)(A) Is licensed as a licensed mental health practitioner or (B) is licensed as a provisional mental health practitioner and has satisfactorily passed an examination approved by the board pursuant to subdivision (3) of section 38-2122; and

(iii) Has seven thousand hours of experience obtained in a period of not less than ten years and supervised by a licensed physician, a licensed psychologist, or a licensed independent mental health practitioner, one-half of which is comprised of experience with clients diagnosed under the major mental illness or disorder category.

(2) The experience required under this section shall be documented in a reasonable form and manner as prescribed by the board, which may consist of sworn statements from the applicant and his or her employers and supervisors. The board shall not in any case require the applicant to produce individual case records.

(3) The application for an independent mental health practitioner license shall include the applicant's social security number.

Source: Laws 2007, LB247, § 42; R.S.Supp.,2007, § 71-1,314.02; Laws 2008, LB1108, § 4.

Operative date December 1, 2008.

Cross References

Uniform Credentialing Act, see section 38-101.

38-2125 Reciprocity.

The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who meets the licensure requirements of the Mental Health Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board.

Source: Laws 2007, LB463, § 742.

38-2126 Certified social workers and certified master social workers; legislative findings.

The Legislature finds that certified social workers and certified master social workers provide a wide range of psychosocial assessment, intervention, and support services that do not constitute the clinical treatment services of licensed mental health practitioners, psychologists, or physicians. The Legislature therefor finds that it is appropriate to provide for certification of social workers and master social workers.

Source: Laws 1993, LB 669, § 36; R.S.1943, (2003), § 71-1,317; Laws 2007, LB463, § 743.

38-2127 Practice of social work; certificate required; exceptions.

The requirement to be certified as a social worker pursuant to the Uniform Credentialing Act in order to represent himself or herself as a social worker shall not be construed to prevent:

(1) Qualified members of other professions, including, but not limited to, licensed physicians, registered or licensed practical nurses, attorneys, marriage and family therapists, psychologists, psychotherapists, vocational guidance

counselors, school psychologists, members of the clergy, court employees, or other persons credentialed under the Uniform Credentialing Act from doing work consistent with the scope of practice of their respective professions, except that such qualified members shall not hold themselves out to the public by title as being engaged in the practice of social work; or

(2) The activities and services of a student or intern in social work practice who is pursuing a course of study in an approved educational program if the activities and services constitute a part of his or her supervised course of study or experience for certification and are performed under the supervision of a certified master social worker and the person is identified by an appropriate title as a social work student or intern. For purposes of this subdivision, supervision means that written records of services or procedures are examined and evaluative interviews are conducted relative thereto by a certified master social worker.

Source: Laws 1986, LB 286, § 13; Laws 1987, LB 473, § 31; R.S.1943, (1990), § 71-1,256; Laws 1993, LB 669, § 37; R.S.1943, (2003), § 71-1,318; Laws 2007, LB463, § 744.

38-2128 Certified master social worker; certified social worker; qualifications.

(1) A person shall be qualified to be a certified master social worker if he or she:

(a) Has a doctorate or a master’s degree in social work from an approved educational program;

(b) Has had a minimum of at least three thousand hours of experience, in addition to the master’s or doctorate degree, in social work under the supervision as defined in section 38-2127 of a certified master social worker;

(c) Provides evidence to the department that he or she meets the requirements of subdivisions (1)(a) and (1)(b) of this section; and

(d) Completes an application and satisfactorily passes an examination approved by the board.

(2) A person shall be qualified to be a certified social worker if he or she provides evidence to the board that he or she has a baccalaureate or master’s degree in social work from an approved educational program and completes an application form.

Source: Laws 1986, LB 286, § 15; Laws 1988, LB 1100, § 85; Laws 1990, LB 1080, § 1; R.S.1943, (1990), § 71-1,258; Laws 1993, LB 669, § 38; Laws 1993, LB 506, § 1; Laws 1994, LB 1210, § 101; Laws 1997, LB 752, § 161; R.S.1943, (2003), § 71-1,319; Laws 2007, LB463, § 745.

Cross References

Uniform Credentialing Act, see section 38-101.

38-2129 Provisional certification as master social worker; qualifications; application; expiration.

(1) A person who needs to obtain the required three thousand hours of supervised experience in social work as specified in section 38-2128 to qualify for certification as a master social worker shall obtain a provisional certifica-

tion as a master social worker. To qualify for a provisional certification as a master social worker, such person shall:

(a) Have a doctorate or master's degree in social work from an approved educational program; and

(b) Apply prior to earning the three thousand hours of supervised experience.

(2) A provisional master social worker certification shall expire upon receipt of certification as a master social worker or five years after the date of issuance, whichever comes first.

(3) A person who holds a provisional certification as a master social worker shall inform all clients that he or she holds a provisional certification and is practicing social work under supervision and shall identify the supervisor. Failure to make such disclosure is a ground for discipline as set forth in section 38-2139.

Source: Laws 1997, LB 622, § 82; Laws 2003, LB 242, § 74; R.S.1943, (2003), § 71-1,319.01; Laws 2007, LB463, § 746.

38-2130 Certified marriage and family therapist, certified professional counselor, social worker; reciprocity.

The department, with the recommendation of the board, may issue a certificate based on licensure in another jurisdiction to represent oneself as a certified marriage and family therapist, a certified professional counselor, or a social worker to an individual who meets the requirements of the Mental Health Practice Act relating to marriage and family therapy, professional counseling, or social work, as appropriate, or substantially equivalent requirements as determined by the department, with the recommendation of the board.

Source: Laws 2007, LB463, § 747.

38-2131 Certified social workers; certified master social workers; act, how construed.

Nothing in the Mental Health Practice Act shall be construed to require the State of Nebraska, any agency of the State of Nebraska, or any of the entities which operate under rules and regulations of a state agency, which either employ or contract for the services of social services workers, to employ or contract with only persons certified pursuant to the act for the performance of any of the professional activities enumerated in section 38-2119.

Source: Laws 1986, LB 286, § 21; R.S.1943, (1990), § 71-1,264; Laws 1993, LB 669, § 42; R.S.1943, (2003), § 71-1,323; Laws 2007, LB463, § 748.

38-2132 Certified professional counselor; qualifications.

A person shall be qualified to be a certified professional counselor if he or she:

(1) Has received a master's degree from an approved educational program;

(2) Has had three thousand hours of experience in professional counseling approved by the board after receipt of the master's degree; and

(3) Completes an application and satisfactorily passes an examination approved by the board.

Source: Laws 1986, LB 579, § 5; Laws 1988, LB 1100, § 91; R.S.1943, (1990), § 71-1,269; Laws 1993, LB 669, § 44; Laws 1994, LB 1210, § 104; Laws 1997, LB 752, § 162; R.S.1943, (2003), § 71-1,325; Laws 2007, LB463, § 749.

Cross References

Uniform Credentialing Act, see section 38-101.

38-2133 Marriage and family therapist; certification; qualifications.

(1) A person who applies to the department for certification as a marriage and family therapist shall be qualified for such certification if he or she:

(a) Provides evidence to the department that he or she has a master’s or doctoral degree in marriage and family therapy from a program approved by the board or a graduate degree in a field determined by the board to be related to marriage and family therapy and graduate-level course work determined by the board to be equivalent to a master’s degree in marriage and family therapy;

(b) Provides evidence to the department that he or she has had at least three thousand hours of experience in marriage and family therapy under a qualified supervisor following receipt of the graduate degree; and

(c) Completes an application and passes an examination approved by the board.

(2) For purposes of this section:

(a) Actively engaged in the practice of marriage and family therapy may include (i) services and activities provided under the direct supervision of a person with at least a master’s degree in marriage and family therapy from a program approved by the board or (ii) services and activities that are classified by title or by description of duties and responsibilities as marriage and family therapy practice;

(b) Qualified supervisor means a licensed mental health practitioner, a psychologist licensed to engage in the practice of psychology, or a licensed physician who meets supervisory standards established by rules and regulations of the board and the department; and

(c) Supervision means face-to-face contact between an applicant and a qualified supervisor during which the applicant apprises the supervisor of the diagnosis and treatment of each client, the clients’ cases are discussed, the supervisor provides the applicant with oversight and guidance in treating and dealing with clients, and the supervisor evaluates the applicant’s performance. In order for a supervised period of time to be credited toward the time of supervision required by subsection (1) of this section, it shall consist of the following:

(i) A minimum of a ratio of two hours of supervision per fifteen hours of the applicant’s contact with clients;

(ii) Focus on raw data from the applicant’s clinical work which is made directly available to the supervisor through such means as written clinical materials, direct observation, and video and audio recordings;

(iii) A process which is distinguishable from personal psychotherapy or didactic instruction; and

(iv) A proportion of individual and group supervision as determined by the rules and regulations of the board.

Source: Laws 1993, LB 669, § 48; Laws 1994, LB 1210, § 107; Laws 1997, LB 752, § 163; Laws 2000, LB 1135, § 15; Laws 2003, LB 242, § 78; R.S.1943, (2003), § 71-1,329; Laws 2007, LB463, § 750.

Cross References

Uniform Credentialing Act, see section 38-101.

38-2134 Marriage and family therapists; act, how construed.

Nothing in the Mental Health Practice Act shall be construed to require the State of Nebraska, any agency of the State of Nebraska, or any of the entities which operate under rules and regulations of a state agency, which employ or contract for the services of marriage and family therapists, to employ or contract with only persons certified pursuant to the act for the performance of any of the professional activities enumerated in section 38-2119.

Source: Laws 1993, LB 669, § 51; R.S.1943, (2003), § 71-1,332; Laws 2007, LB463, § 751.

38-2135 Fees.

The department shall establish and collect fees for credentialing under the Mental Health Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 752.

38-2136 Mental health practitioners; confidentiality; exception.

No person licensed or certified pursuant to the Mental Health Practice Act shall disclose any information he or she may have acquired from any person consulting him or her in his or her professional capacity except:

(1) With the written consent of the person or, in the case of death or disability, of the person's personal representative, any other person authorized to sue on behalf of the person, or the beneficiary of an insurance policy on the person's life, health, or physical condition. When more than one person in a family receives therapy conjointly, each such family member who is legally competent to execute a waiver shall agree to the waiver referred to in this subdivision. Without such a waiver from each family member legally competent to execute a waiver, a practitioner shall not disclose information received from any family member who received therapy conjointly;

(2) As such privilege is limited by the laws of the State of Nebraska or as the board may determine by rule and regulation;

(3) When the person waives the privilege by bringing charges against the licensee; or

(4) When there is a duty to warn under the limited circumstances set forth in section 38-2137.

Source: Laws 1993, LB 669, § 54; Laws 1994, LB 1210, § 109; Laws 1999, LB 828, § 150; R.S.1943, (2003), § 71-1,335; Laws 2007, LB247, § 46; Laws 2007, LB463, § 753.

38-2137 Mental health practitioner; duty to warn of patient’s threatened violent behavior; limitation on liability.

(1) There shall be no monetary liability on the part of, and no cause of action shall arise against, any person who is licensed or certified pursuant to the Mental Health Practice Act for failing to warn of and protect from a patient’s threatened violent behavior or failing to predict and warn of and protect from a patient’s violent behavior except when the patient has communicated to the mental health practitioner a serious threat of physical violence against himself, herself, or a reasonably identifiable victim or victims.

(2) The duty to warn of or to take reasonable precautions to provide protection from violent behavior shall arise only under the limited circumstances specified in subsection (1) of this section. The duty shall be discharged by the mental health practitioner if reasonable efforts are made to communicate the threat to the victim or victims and to a law enforcement agency.

(3) No monetary liability and no cause of action shall arise under section 38-2136 against a licensee or certificate holder for information disclosed to third parties in an effort to discharge a duty arising under subsection (1) of this section according to the provisions of subsection (2) of this section.

Source: Laws 1993, LB 669, § 55; R.S.1943, (2003), § 71-1,336; Laws 2007, LB247, § 47; Laws 2007, LB463, § 754.

38-2138 Code of ethics; board; duties; duty to report violations.

The board shall adopt a code of ethics which is essentially in agreement with the current code of ethics of the national and state associations of the specialty professions included in mental health practice and which the board deems necessary to assure adequate protection of the public in the provision of mental health services to the public. A violation of the code of ethics shall be considered an act of unprofessional conduct.

The board shall ensure through the code of ethics and the rules and regulations adopted and promulgated under the Mental Health Practice Act that persons licensed or certified pursuant to the act limit their practice to demonstrated areas of competence as documented by relevant professional education, training, and experience.

Intentional failure by a mental health practitioner to report known acts of unprofessional conduct by a mental health practitioner to the department or the board shall be considered an act of unprofessional conduct and shall be grounds for disciplinary action under appropriate sections of the Uniform Credentialing Act unless the mental health practitioner has acquired such knowledge in a professional relationship otherwise protected by confidentiality.

Source: Laws 1993, LB 669, § 56; Laws 1999, LB 828, § 151; R.S.1943, (2003), § 71-1,337; Laws 2007, LB247, § 48; Laws 2007, LB463, § 755.

38-2139 Additional grounds for disciplinary action.

In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a credential subject to the Mental Health Practice Act may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the

applicant or licensee fails to disclose the information required by section 38-2123 or 38-2129.

Source: Laws 2007, LB463, § 756.

ARTICLE 22 NURSE PRACTICE ACT

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Alcohol or controlled substance testing, agent of state, see sections 37-1254.06, 60-4,164.01, and 60-6,202.
Assisted-Living Facility Act, see section 71-5901.
Certified Nurse Midwifery Practice Act, see section 38-601.
Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Child abuse, duty to report, see section 28-711.
Clinical Nurse Specialist Practice Act, see section 38-901.
Community nurses, see sections 71-1637 to 71-1639.
Division of Public Health of the Department of Health and Human Services, see section 81-3113.
Emergency Box Drug Act, see section 71-2410.
Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.
Foster care, see sections 71-1901 to 71-1906.01.
Good Samaritan provisions, see section 25-21,186.
Health and Human Services Act, see section 81-3110.
Health Care Facility Licensure Act, see section 71-401.
Health Care Professional Credentialing Verification Act, see section 44-7001.
Home health aides, see section 71-6601 et seq.
Hospital medical staff committee or hospital utilization committee, members, limitation of liability, see section 25-12,121.
License Suspension Act, see section 43-3301.
Licensed Practical Nurse-Certified Practice Act, see section 38-1601.
Lien for services, see section 52-401.
Medication Aide Act, see section 71-6718.
Nebraska Center for Nursing Act, see section 71-1796.
Nebraska Hospital-Medical Liability Act, see section 44-2855.
Nebraska Nursing Home Act, see section 71-6037.
Nebraska Regulation of Health Professions Act, see section 71-6201.
Nurse Licensure Compact, see section 71-1795.
Nurse Practitioner Practice Act, see section 38-2301.
Nursing Faculty Student Loan Act, see section 71-17,108.
Nursing Home Administrator Practice Act, see section 38-2401.
Nursing Student Loan Act, see section 71-17,101.
Patient Safety Improvement Act, see section 71-8701.
Rural Health Systems and Professional Incentive Act, see section 71-5650.
State Board of Health, duties, see section 71-2610 et seq.
Statewide Trauma System Act, see section 71-8201.
Uniform Controlled Substances Act, see section 28-401.01.

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38-2201 Act, how cited.

Sections 38-2201 to 38-2236 shall be known and may be cited as the Nurse Practice Act.

Source: Laws 1995, LB 563, § 4; Laws 2000, LB 523, § 2; R.S.1943, (2003), § 71-1,132.01; Laws 2007, LB463, § 757.

38-2202 Definitions, where found.

For purposes of the Nurse Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2203 to 38-2212 apply.

Source: Laws 2007, LB463, § 758.

38-2203 Assigning, defined.

Assigning means appointing or designating another individual the responsibility for the performance of nursing interventions.

Source: Laws 2007, LB463, § 759.

38-2204 Board, defined.

Board means the Board of Nursing.

Source: Laws 2007, LB463, § 760.

38-2205 Delegating, defined.

Delegating means transferring to another individual the authority, responsibility, and accountability to perform nursing interventions.

Source: Laws 2007, LB463, § 761.

38-2206 Directing, defined.

Directing means managing, guiding, and supervising the nursing interventions performed by another individual.

Source: Laws 2007, LB463, § 762.

38-2207 Executive director, defined.

Executive director means the executive director of the board.

Source: Laws 2007, LB463, § 763.

38-2208 License, defined.

License, for purposes of discipline, includes the multistate licensure privilege to practice granted by the Nurse Licensure Compact. If the multistate licensure privilege is restricted due to disciplinary action by the home state, the department may, upon request by the individual, grant the authority to practice in this state.

Source: Laws 2007, LB463, § 764.

Cross References

Nurse Licensure Compact, see section 71-1795.

38-2209 Licensed practitioner, defined.

Licensed practitioner means a person lawfully authorized to prescribe medications or treatments.

Source: Laws 2007, LB463, § 765.

38-2210 Practice of nursing, defined.

Practice of nursing means the performance for compensation or gratuitously of any act expressing judgment or skill based upon a systematized body of nursing knowledge. Such acts include the identification of and intervention in actual or potential health problems of individuals, families, or groups, which acts are directed toward maintaining health status, preventing illness, injury, or infirmity, improving health status, and providing care supportive to or restorative of life and well-being through nursing assessment and through the execution of nursing care and of diagnostic or therapeutic regimens prescribed by any person lawfully authorized to prescribe. Each nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. Licensed nurses may use the services of unlicensed individuals to provide assistance with personal care and activities of daily living.

Source: Laws 2007, LB463, § 766.

38-2211 Practice of nursing by a licensed practical nurse, defined.

(1) Practice of nursing by a licensed practical nurse means the assumption of responsibilities and accountability for nursing practice in accordance with knowledge and skills acquired through an approved program of practical nursing. A licensed practical nurse may function at the direction of a licensed practitioner or a registered nurse.

(2) Such responsibilities and performances of acts must utilize procedures leading to predictable outcomes and must include, but not be limited to:

(a) Contributing to the assessment of the health status of individuals and groups;

(b) Participating in the development and modification of a plan of care;

(c) Implementing the appropriate aspects of the plan of care;

- (d) Maintaining safe and effective nursing care rendered directly or indirectly;
- (e) Participating in the evaluation of response to interventions; and
- (f) Assigning and directing nursing interventions that may be performed by others and that do not conflict with the Nurse Practice Act.

Source: Laws 2007, LB463, § 767.

38-2212 Practice of nursing by a registered nurse, defined.

- (1) The practice of nursing by a registered nurse means assuming responsibility and accountability for nursing actions.
- (2) Nursing actions include, but are not limited to:
 - (a) Assessing human responses to actual or potential health conditions;
 - (b) Establishing nursing diagnoses;
 - (c) Establishing goals and outcomes to meet identified health care needs;
 - (d) Establishing and maintaining a plan of care;
 - (e) Prescribing nursing interventions to implement the plan of care;
 - (f) Implementing the plan of care;
 - (g) Teaching health care practices;
 - (h) Delegating, directing, or assigning nursing interventions that may be performed by others and that do not conflict with the Nurse Practice Act;
 - (i) Maintaining safe and effective nursing care rendered directly or indirectly;
 - (j) Evaluating responses to interventions, including, but not limited to, performing physical and psychological assessments of patients under restraint and seclusion as required by federal law, if the registered nurse has been trained in the use of emergency safety intervention;
 - (k) Teaching theory and practice of nursing;
 - (l) Conducting, evaluating, and utilizing nursing research;
 - (m) Administering, managing, and supervising the practice of nursing; and
 - (n) Collaborating with other health professionals in the management of health care.

Source: Laws 2007, LB463, § 768.

38-2213 Board; members; qualifications.

- (1) The board shall consist of eight registered nurse members, two licensed practical nurse members, and two public members. The registered nurses on the board shall be from the following areas: (a) One practical nurse educator; (b) one associate degree or diploma nurse educator; (c) one baccalaureate nurse educator; (d) two nursing service administrators; (e) two staff nurses; and (f) one advanced practice registered nurse.
- (2) The State Board of Health shall attempt to ensure that the membership of the Board of Nursing is representative of acute care, long-term care, and community-based care. A minimum of three and a maximum of five members shall be appointed from each congressional district, and each member shall have been a bona fide resident of the congressional district from which he or

she is appointed for a period of at least one year prior to the time of the appointment of such member.

Source: Laws 1953, c. 245, § 4(1), p. 838; Laws 1955, c. 272, § 3, p. 856; Laws 1959, c. 320, § 2, p. 1171; Laws 1961, c. 338, § 1, p. 1059; Laws 1961, c. 282, § 4, p. 825; Laws 1975, LB 422, § 4; Laws 1987, LB 473, § 22; Laws 1988, LB 1100, § 37; Laws 1993, LB 375, § 1; Laws 1994, LB 1223, § 15; Laws 1995, LB 563, § 11; Laws 1996, LB 414, § 4; Laws 2000, LB 1115, § 15; Laws 2002, LB 1062, § 21; Laws 2005, LB 256, § 25; R.S.Supp.,2006, § 71-1,132.07; Laws 2007, LB463, § 769.

Cross References

For limits and designations of congressional districts, see section 32-504.

38-2214 Board members; additional qualifications.

(1) Each licensed practical nurse educator on the board shall (a) be a registered nurse currently licensed in the state, (b) have graduated with a graduate degree in nursing or a related field of study, (c) have had a minimum of five years' experience in administration, teaching, or consultation in practical nurse education, and (d) be currently employed as a practical nurse educator.

(2) Each associate degree or diploma nurse educator on the board and the baccalaureate nurse educator on the board shall (a) be a registered nurse currently licensed in the state, (b) have graduated with a graduate degree in nursing, (c) have had a minimum of five years' experience in administration, teaching, or consultation in nursing education, and (d) be currently employed in the field being represented.

(3) Each staff nurse on the board shall (a) be a registered nurse currently licensed in the state, (b) have had a minimum of five years' experience in nursing, and (c) be currently employed as a staff nurse in the provision of patient care services.

(4) Each nursing service administrator on the board shall (a) be a registered nurse currently licensed in the state, (b) have had a minimum of five years' experience in nursing service administration, and (c) be currently employed in such field.

(5) Each licensed practical nurse member shall (a) have completed at least four years of high school study, (b) be licensed as a licensed practical nurse in this state, (c) have obtained a certificate or diploma from a state-approved practical nursing program, (d) have been actively engaged in practical nursing for at least five years, and (e) be currently employed in the provision of patient care services as a licensed practical nurse in the state.

(6) Each public member shall meet the requirements of section 38-165.

(7) The advanced practice registered nurse on the board shall (a) have a minimum of five years' experience as an advanced practice registered nurse, (b) be currently employed as an advanced practice registered nurse, and (c) be licensed as an advanced practice registered nurse.

(8) Members serving on December 1, 2008, may complete their respective terms even if they do not meet the requirements for appointment as changed by Laws 2007, LB 463.

Source: Laws 1953, c. 245, § 4(2), p. 838; Laws 1955, c. 272, § 4, p. 857; Laws 1975, LB 422, § 5; Laws 1988, LB 1100, § 38; Laws 1994, LB 1223, § 16; Laws 1995, LB 563, § 12; Laws 1996, LB 414, § 5; Laws 2000, LB 1115, § 16; Laws 2005, LB 256, § 26; R.S.Supp.,2006, § 71-1,132.08; Laws 2007, LB463, § 770.

The Board of Nursing has power to deny a license upon proof applicant is guilty of unprofessional conduct, and upon review de novo district court may not substitute its own judgment on that issue. *Scott v. State ex rel. Board of Nursing*, 196 Neb. 681, 244 N.W.2d 683 (1976).

38-2215 Executive director; qualifications; practice consultant, education consultant, and nurse investigators; department; appoint.

(1) The department shall appoint an executive director who is a registered nurse currently licensed in this state and who has a graduate degree in nursing. The executive director shall have a minimum of five years' experience within the last ten years in the areas of administration, teaching, or consultation in the field of nursing. The salary of the executive director shall be fixed by the department and be competitive with salaries for similar positions of responsibility which require similar education and experience. The executive director shall not be a member of the board. The executive director shall be administrator of the Nurse Licensure Compact. As administrator, the executive director shall give notice of withdrawal to the executive heads of all other party states within thirty days after the effective date of any statute repealing the compact enacted by the Legislature pursuant to Article X of the compact. The executive director serving on December 1, 2008, may continue serving until replaced by the department pursuant to this section.

(2) The department shall appoint a practice consultant and an education consultant, each of whom is a registered nurse currently licensed in this state and has a minimum of five years' experience. On and after January 1, 1995, any person newly appointed to these positions shall also have a graduate degree in nursing. The salaries for these positions shall be fixed by the department and be competitive with salaries for similar positions of responsibility which require similar education. The nursing education consultant and nursing practice consultant shall not be members of the board.

(3) The department shall appoint one or more nurse investigators to conduct investigations of violations of the Nurse Practice Act. Each nurse investigator shall be a registered nurse currently licensed in this state and have a minimum of five years' experience in nursing practice. The nurse investigators shall not be members of the board.

Source: Laws 1995, LB 563, § 10; Laws 2000, LB 523, § 8; R.S.1943, (2003), § 71-1,132.31; Laws 2007, LB463, § 771.

Cross References

Nurse Licensure Compact, see section 71-1795.

38-2216 Board; rules and regulations; powers and duties; enumerated.

In addition to the duties listed in sections 38-126 and 38-161, the board shall:

(1) Adopt reasonable and uniform standards for nursing practice and nursing education;

(2) If requested, issue or decline to issue advisory opinions defining acts which in the opinion of the board are or are not permitted in the practice of nursing. Such opinions shall be considered informational only and are non-binding. Practice-related information provided by the board to registered nurses or licensed practical nurses licensed under the Nurse Practice Act shall be made available by the board on request to nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact;

(3) Establish rules and regulations for approving and classifying programs preparing nurses, taking into consideration administrative and organizational patterns, the curriculum, students, student services, faculty, and instructional resources and facilities, and provide surveys for each educational program as determined by the board;

(4) Approve educational programs which meet the requirements of the Nurse Practice Act;

(5) Keep a record of all its proceedings and compile an annual report for distribution;

(6) Adopt rules and regulations establishing standards for delegation of nursing activities, including training or experience requirements, competency determination, and nursing supervision;

(7) Collect data regarding nursing;

(8) Provide consultation and conduct conferences, forums, studies, and research on nursing practice and education;

(9) Join organizations that develop and regulate the national nursing licensure examinations and exclusively promote the improvement of the legal standards of the practice of nursing for the protection of the public health, safety, and welfare;

(10) Administer the Licensed Practical Nurse-Certified Practice Act; and

(11) Administer the Nurse Licensure Compact. In reporting information to the coordinated licensure information system under Article VII of the compact, the department may disclose personal identifying information about a nurse, including his or her social security number.

Source: Laws 1953, c. 245, § 5, p. 839; Laws 1959, c. 310, § 3, p. 1172; Laws 1965, c. 414, § 1, p. 1322; Laws 1975, LB 422, § 6; Laws 1976, LB 692, § 1; Laws 1978, LB 653, § 24; Laws 1978, LB 658, § 1; Laws 1980, LB 847, § 3; Laws 1981, LB 379, § 36; Laws 1991, LB 703, § 19; Laws 1995, LB 563, § 15; Laws 1996, LB 414, § 6; Laws 1999, LB 594, § 36; Laws 2000, LB 523, § 6; Laws 2000, LB 1115, § 17; Laws 2002, LB 1021, § 19; Laws 2002, LB 1062, § 22; Laws 2005, LB 256, § 27; R.S.Supp., 2006, § 71-1,132.11; Laws 2007, LB463, § 772.

Cross References

Licensed Practical Nurse-Certified Practice Act, see section 38-1601.

Nurse Licensure Compact, see section 71-1795.

38-2217 Nursing; license; required.

In the interest of health and morals and the safeguarding of life, any person practicing or offering to practice nursing in this state for compensation or gratuitously, except as provided in section 38-2218, shall submit satisfactory evidence as provided in the Nurse Practice Act that he or she is qualified to so

practice and is licensed as provided by the act. Except as provided in section 38-2218, the practice or attempted practice of nursing, the holding out or attempted holding out of oneself as a registered nurse or a licensed practical nurse, or the use of any title, abbreviation, card, or device to indicate that such a person is practicing nursing is unlawful unless such person has been duly licensed and registered according to the provisions of the act. The practice of nursing by any such unlicensed person or by a nurse whose license has been suspended, revoked, or expired or is on inactive status is declared to be a danger to the public health and welfare.

Source: Laws 1953, c. 245, § 1, p. 835; Laws 1975, LB 422, § 1; Laws 1995, LB 563, § 5; Laws 2002, LB 1062, § 19; R.S.1943, (2003), § 71-1,132.04; Laws 2007, LB463, § 773.

38-2218 Nursing; practices permitted.

The Nurse Practice Act confers no authority to practice medicine or surgery. The act does not prohibit:

(1) Home care provided by parents, foster parents, family, or friends so long as any such person does not represent or hold himself or herself out to be a nurse or use any designation in connection with his or her name which tends to imply that he or she is licensed to practice under the act;

(2) Christian Science nursing consistent with the theology of Christian Science provided by a Christian Science nurse who does not hold himself or herself out as a registered nurse or a licensed practical nurse;

(3) Auxiliary patient care services provided by persons carrying out duties under the direction of a licensed practitioner;

(4) Auxiliary patient care services provided by persons carrying out interventions for the support of nursing service as delegated by a registered nurse or as assigned and directed by a licensed practical nurse licensed under the act;

(5) The gratuitous rendering of assistance by anyone in the case of an emergency;

(6) Nursing by any legally licensed nurse of any other state whose engagement requires him or her to (a) accompany and care for a patient temporarily residing in this state during the period of one such engagement not to exceed six months in length, (b) transport patients into, out of, or through this state provided each transport does not exceed twenty-four hours, (c) provide patient care during periods of transition following transport, (d) provide educational programs or consultative services within this state for a period not to exceed fourteen consecutive days if neither the education nor the consultation includes the provision or the direction of patient care, and (e) provide nursing care in the case of a disaster. These exceptions do not permit a person to represent or hold himself or herself out as a nurse licensed to practice in this state;

(7) Nursing services rendered by a student enrolled in an approved program of nursing when the services are a part of the student's course of study;

(8) The practice of nursing by any legally licensed nurse of another state who serves in the armed forces of the United States or the United States Public Health Service or who is employed by the United States Department of Veterans Affairs or other federal agencies, if the practice is limited to that service or employment; or

(9) The practice of nursing, if permitted by federal law, as a citizen of a foreign country temporarily residing in Nebraska for a period not to exceed one year for the purpose of postgraduate study, certified to be such by an appropriate agency satisfactory to the board.

Source: Laws 1953, c. 245, § 3, p. 836; Laws 1955, c. 272, § 2, p. 854; Laws 1975, LB 422, § 3; Laws 1989, LB 342, § 20; Laws 1991, LB 703, § 18; Laws 1995, LB 563, § 8; Laws 1996, LB 1155, § 24; Laws 2002, LB 1062, § 20; R.S.1943, (2003), § 71-1,132.06; Laws 2007, LB463, § 774.

38-2219 Health maintenance activities; authorized.

(1) The Nurse Practice Act does not prohibit performance of health maintenance activities by a designated care aide for a competent adult at the direction of such adult or at the direction of a caretaker for a minor child or incompetent adult.

(2) Health maintenance activities are those activities which enable the minor child or adult to live in his or her home and community. Such activities are those specialized procedures, beyond activities of daily living, which the minor child or adult is unable to perform for himself or herself and which the attending physician or registered nurse determines can be safely performed in the home and community by a designated care aide as directed by a competent adult or caretaker.

(3) A competent adult is someone who has the capability and capacity to make an informed decision.

(4) For purposes of this section, caretaker means a person who (a) is directly and personally involved in providing care for a minor child or incompetent adult and (b) is the parent, foster parent, family member, friend, or legal guardian of such minor child or incompetent adult.

Source: Laws 1995, LB 563, § 9; Laws 1997, LB 66, § 1; Laws 1999, LB 594, § 41; R.S.1943, (2003), § 71-1,132.30; Laws 2007, LB463, § 775.

38-2220 Nursing; license; application; requirements.

An applicant for a license to practice as a registered nurse shall submit satisfactory proof that the applicant has completed four years of high school study or its equivalent as determined by the board and has completed the basic professional curriculum in and holds a diploma from an accredited program of registered nursing approved by the board. There is no minimum age requirement for licensure as a registered nurse. Graduates of foreign nursing programs shall pass the Canadian Nurses Association examination or hold a certificate from the Commission on Graduates of Foreign Nursing Schools.

Source: Laws 1953, c. 245, § 7, p. 841; Laws 1965, c. 414, § 2, p. 1323; Laws 1974, LB 811, § 12; Laws 1975, LB 422, § 8; Laws 1980, LB 847, § 4; Laws 1989, LB 344, § 6; Laws 1995, LB 563, § 17; Laws 1997, LB 752, § 157; Laws 1999, LB 594, § 37; Laws 2002, LB 1062, § 23; Laws 2003, LB 242, § 44; R.S.1943, (2003), § 71-1,132.13; Laws 2007, LB463, § 776.

Cross References

Uniform Credentialing Act, see section 38-101.

The Board of Nursing has power to deny a license upon proof applicant is guilty of unprofessional conduct, and upon review de novo district court may not substitute its own judgment on that issue. *Scott v. State ex rel. Board of Nursing*, 196 Neb. 681, 244 N.W.2d 683 (1976).

38-2221 Practical nursing; license; requirements.

An applicant for a license to practice as a licensed practical nurse shall submit satisfactory proof that the applicant has completed four years of high school study or its equivalent as determined by the board and has completed the basic curriculum in and holds a diploma from an approved program of nursing. There is no minimum age requirement for licensure as a licensed practical nurse.

Source: Laws 1955, c. 272, § 8, p. 859; Laws 1974, LB 811, § 13; Laws 1975, LB 422, § 17; Laws 1980, LB 847, § 19; Laws 1989, LB 344, § 7; Laws 1995, LB 563, § 32; Laws 1997, LB 752, § 158; Laws 1999, LB 594, § 42; Laws 2003, LB 242, § 47; R.S.1943, (2003), § 71-1,132.37; Laws 2007, LB463, § 777.

Cross References

Uniform Credentialing Act, see section 38-101.

38-2222 Nursing; license; examination.

An applicant for a license as a registered nurse or as a licensed practical nurse shall pass an examination as prescribed by the board in rules and regulations.

Source: Laws 1953, c. 245, § 8(1), p. 841; Laws 1975, LB 422, § 9; Laws 1980, LB 847, § 5; Laws 1983, LB 472, § 2; Laws 1987, LB 473, § 23; Laws 1994, LB 1210, § 57; Laws 1995, LB 563, § 18; R.S.1943, (2003), § 71-1,132.14; Laws 2007, LB463, § 778.

38-2223 Registered nurse; licensed practical nurse; reciprocity; continuing competency requirements.

An applicant for a license as a registered nurse or a licensed practical nurse based on licensure in another jurisdiction shall meet the continuing competency requirements as specified in rules and regulations adopted and promulgated by the board in addition to the standards set by the board pursuant to section 38-126.

Source: Laws 1953, c. 245, § 8(2), p. 841; Laws 1975, LB 422, § 10; Laws 1980, LB 847, § 6; Laws 1995, LB 563, § 19; R.S.1943, (2003), § 71-1,132.15; Laws 2007, LB463, § 779.

The Board of Nursing has power to deny a license upon proof applicant is guilty of unprofessional conduct, and upon review de novo district court may not substitute its own judgment on that issue. *Scott v. State ex rel. Board of Nursing*, 196 Neb. 681, 244 N.W.2d 683 (1976).

38-2224 Nursing license; reciprocity; compact requirements.

Before recognizing a home state license to practice nursing issued by a state which is a party to the Nurse Licensure Compact, the board shall determine that such state's qualifications for a nursing license are substantially equivalent to or more stringent than the minimum qualifications for issuance of a Nebraska license under the Nurse Practice Act.

Source: Laws 2000, LB 523, § 4; R.S.1943, (2003), § 71-1,132.19; Laws 2007, LB463, § 780.

Cross References

Nurse Licensure Compact, see section 71-1795.

38-2225 Nursing; temporary license; issuance; conditions; how long valid; extension.

(1) A temporary license to practice nursing may be issued to:

(a) An individual seeking to obtain licensure or reinstatement of his or her license as a registered nurse or licensed practical nurse when he or she has not practiced nursing in the last five years. A temporary license issued under this subdivision is valid only for the duration of the review course of study and only for nursing practice required for the review course of study;

(b) Graduates of approved programs of nursing who have passed the licensure examination, pending the completion of application for Nebraska licensure as a registered nurse or licensed practical nurse. A temporary license issued under this subdivision is valid for a period not to exceed sixty days; or

(c) Nurses currently licensed in another state as either a registered nurse or a licensed practical nurse who have graduated from an educational program approved by the board, pending completion of application for Nebraska licensure as a registered nurse or licensed practical nurse. A temporary license issued under this subdivision shall be valid for a period not to exceed sixty days.

(2) A temporary license issued pursuant to this section may be extended by the department, with the recommendation of the board.

(3) An individual holding a temporary permit to practice nursing on December 1, 2008, shall be deemed to be holding a temporary license under this section on such date. The permitholder may continue to practice under such temporary permit as a temporary license until it would have expired under its terms or after any period of extension under subsection (2) of this section.

Source: Laws 1953, c. 245, § 8(3), p. 841; Laws 1975, LB 422, § 11; Laws 1980, LB 847, § 7; Laws 1994, LB 1210, § 58; Laws 1995, LB 563, § 20; Laws 2002, LB 1062, § 24; R.S.1943, (2003), § 71-1,132.16; Laws 2007, LB463, § 781.

The Board of Nursing has power to deny a license upon proof that applicant is guilty of unprofessional conduct, and upon review de novo district court may not substitute its own judgment on that issue. *Scott v. State ex rel. Board of Nursing*, 196 Neb. 681, 244 N.W.2d 683 (1976).

38-2226 License on inactive status; reinstatement.

Any licensed practical nurse or registered nurse whose license has been placed on inactive status due to a change in primary state of residence under the Nurse Licensure Compact may apply to reinstate his or her license upon (1) change in primary state of residence back to Nebraska or to another noncompact state, (2) meeting the continuing competency requirements, and (3) paying the renewal fee.

Source: Laws 2007, LB463, § 782.

Cross References

Nurse Licensure Compact, see section 71-1795.

38-2227 Fees.

The department shall establish and collect fees for credentialing under the Nurse Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 783.

38-2228 Nursing; use of title; restriction.

(1) In the interest of public safety and consumer awareness, it is unlawful for any person to use the title nurse in reference to himself or herself in any capacity, except individuals who are or have been licensed as a registered nurse or a licensed practical nurse. A Christian Science nurse may refer to himself or herself only as a Christian Science nurse.

(2) The terms “nurse”, “registered nurse”, and “licensed practical nurse” include persons licensed as registered nurses or licensed practical nurses by a state that is a party to the Nurse Licensure Compact. Unless the context otherwise indicates or unless doing so would be inconsistent with the compact, nurses practicing in this state under a license issued by a state that is a party to the compact have the same rights and obligations as imposed by the laws of this state on licensees licensed under the Nurse Practice Act. The department has the authority to determine whether a right or obligation imposed on licensees applies to nurses practicing in this state under a license issued by a state that is a party to the compact, unless that determination is inconsistent with the compact.

Source: Laws 1995, LB 563, § 6; Laws 1996, LB 1155, § 25; Laws 2000, LB 523, § 7; R.S.1943, (2003), § 71-1,132.17; Laws 2007, LB463, § 784.

Cross References

Nurse Licensure Compact, see section 71-1795.

38-2229 Nursing; license; title or abbreviation; use.

Any person who holds a license to practice as a registered nurse in this state has the right to use the title Registered Nurse and the abbreviation R.N. No other person shall assume or use such title or abbreviation or any words, letters, signs, or devices to indicate that the person using the same is authorized to practice registered nursing.

Source: Laws 1953, c. 245, § 10, p. 842; Laws 1992, LB 1019, § 43; Laws 1995, LB 563, § 21; Laws 2002, LB 1062, § 25; Laws 2005, LB 256, § 28; R.S.Supp.,2006, § 71-1,132.18; Laws 2007, LB463, § 785.

38-2230 Practical nursing; license; title or abbreviation; use.

Any person who holds a license to practice as a licensed practical nurse in this state shall have the right to use the title Licensed Practical Nurse and the abbreviation L.P.N. No other person shall assume or use such title or abbreviation or any words, letters, signs, or devices to indicate that the person using the same is authorized to practice practical nursing in this state.

Source: Laws 1955, c. 272, § 12, p. 860; Laws 1995, LB 563, § 33; R.S.1943, (2003), § 71-1,132.41; Laws 2007, LB463, § 786.

38-2231 Disciplinary actions; limitations imposed by compact.

(1) In order to effectuate the transition into compact administration, the board shall require all licensees entering into or becoming subject to an order of probation or other disciplinary action that limits practice or requires monitoring to agree, as of the date of the order, not to practice in any other state which is a party to the Nurse Licensure Compact during the term of such

probation or disciplinary action without prior authorization from the other party state.

(2) Any licensee subject to disciplinary action, such as revocation, suspension, probation, or any other action which affects a licensee's authorization to practice, on the effective date of entering the compact, is not entitled to a multistate license privilege while such disciplinary action is in effect unless practice in another state is authorized by this state and any other state in which the licensee wishes to practice.

Source: Laws 2000, LB 523, § 3; R.S.1943, (2003), § 71-1,132.38; Laws 2007, LB463, § 787.

Cross References

Nurse Licensure Compact, see section 71-1795.

38-2232 Nursing program; application.

An institution desiring to conduct a program of nursing shall apply to the board and submit evidence to the board that it is prepared to carry out the prescribed basic nursing curriculum and to meet the other standards established by the Nurse Practice Act and by the board.

Source: Laws 1953, c. 245, § 15(1), p. 843; Laws 1955, c. 272, § 6, p. 858; Laws 1980, LB 847, § 10; Laws 1995, LB 563, § 24; Laws 2002, LB 1062, § 27; R.S.1943, (2003), § 71-1,132.24; Laws 2007, LB463, § 788.

38-2233 Nursing program; application; form.

An application to conduct a program of nursing shall be made in writing upon a form to be approved and furnished by the board.

Source: Laws 1953, c. 245, § 15(2), p. 843; Laws 1955, c. 272, § 7, p. 858; Laws 1995, LB 563, § 25; Laws 2002, LB 1062, § 28; R.S.1943, (2003), § 71-1,132.25; Laws 2007, LB463, § 789.

38-2234 Nursing program; survey; report; approval.

A survey of the program institution shall be made by the executive director or other representative appointed by the board, who shall submit a written report of the survey to the board. If, in the opinion of the board, the program meets the requirements for approval, the board shall approve the program.

Source: Laws 1953, c. 245, § 15(3), p. 843; Laws 1995, LB 563, § 26; R.S.1943, (2003), § 71-1,132.26; Laws 2007, LB463, § 790.

38-2235 Nursing programs; survey; report.

The board shall, through the executive director or other representative appointed by the board, survey all programs of nursing in the state at time intervals to be determined by the board through rules and regulations. Written reports of such surveys shall be submitted to the board. The board shall act on the report to grant or deny continuing approval of the program.

Source: Laws 1953, c. 245, § 15(4), p. 844; Laws 1975, LB 422, § 13; Laws 1995, LB 563, § 27; Laws 1999, LB 594, § 40; R.S.1943, (2003), § 71-1,132.27; Laws 2007, LB463, § 791.

38-2236 Nursing programs; failure to maintain standards; notice; discontinue; hearing.

If the board determines that any approved program of nursing is not maintaining the standards required by the statutes, rules, and regulations, notice in writing, specifying the defect or defects, shall be immediately given to the program. A program which fails to correct these conditions to the satisfaction of the board within a reasonable time shall be discontinued after hearing.

Source: Laws 1953, c. 245, § 15(5), p. 844; Laws 1980, LB 847, § 11; Laws 1995, LB 563, § 28; R.S.1943, (2003), § 71-1,132.28; Laws 2007, LB463, § 792.

ARTICLE 23**NURSE PRACTITIONER PRACTICE ACT****Cross References**

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Alcohol or controlled substance testing, agent of state, see sections 37-1254.06, 60-4,164.01, and 60-6,202.
Certified Nurse Midwifery Practice Act, see section 38-601.
Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Child abuse, duty to report, see section 28-711.
Clinical Nurse Specialist Practice Act, see section 38-901.
Community nurses, see sections 71-1637 to 71-1639.
Division of Public Health of the Department of Health and Human Services, see section 81-3113.
Emergency Box Drug Act, see section 71-2410.
Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.
Good Samaritan provisions, see section 25-21,186.
Health and Human Services Act, see section 81-3110.
Health Care Facility Licensure Act, see section 71-401.
Health Care Professional Credentialing Verification Act, see section 44-7001.
Home health aides, see section 71-6601 et seq.
License Suspension Act, see section 43-3301.
Licensed Practical Nurse-Certified Practice Act, see section 38-1601.
Lien for services, see section 52-401.
Medication Aide Act, see section 71-6718.
Nebraska Center for Nursing Act, see section 71-1796.
Nebraska Hospital-Medical Liability Act, see section 44-2855.
Nebraska Nursing Home Act, see section 71-6037.
Nebraska Regulation of Health Professions Act, see section 71-6201.
Nurse Licensure Compact, see section 71-1795.
Nurse Practice Act, see section 38-2201.
Nursing Faculty Student Loan Act, see section 71-17,108.
Nursing Home Administrator Practice Act, see section 38-2401.
Nursing Student Loan Act, see section 71-17,101.
Patient Safety Improvement Act, see section 71-8701.
Rural Health Systems and Professional Incentive Act, see section 71-5650.
State Board of Health, duties, see section 71-2610 et seq.
Statewide Trauma System Act, see section 71-8201.
Uniform Controlled Substances Act, see section 28-401.01.

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- 38-2301. Act, how cited.
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 38-2322. Nurse practitioner; commencement of practice; requirements; waiver.
 38-2323. Nurse practitioner; actions not prohibited.

38-2301 Act, how cited.

Sections 38-2301 to 38-2323 shall be known and may be cited as the Nurse Practitioner Practice Act.

Source: Laws 1981, LB 379, § 1; Laws 1984, LB 724, § 2; Laws 1996, LB 414, § 11; Laws 2000, LB 1115, § 26; Laws 2005, LB 256, § 47; R.S.Supp.,2006, § 71-1704; Laws 2007, LB463, § 793.

38-2302 Definitions, where found.

For purposes of the Nurse Practitioner Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2303 to 38-2314 apply.

Source: Laws 1981, LB 379, § 3; Laws 1984, LB 724, § 3; Laws 1992, LB 1019, § 70; Laws 1996, LB 414, § 13; Laws 2000, LB 1115, § 28; Laws 2005, LB 256, § 48; R.S.Supp.,2006, § 71-1706; Laws 2007, LB463, § 794.

38-2303 Approved certification program, defined.

Approved certification program means a certification process for nurse practitioners utilized by an approved certifying body that (1) requires evidence of completion of a formal program of study in the nurse practitioner clinical specialty, (2) requires successful completion of a nationally recognized certification examination developed by the approved certifying body, (3) provides an ongoing recertification program, and (4) is approved by the board.

Source: Laws 1984, LB 724, § 7; Laws 1996, LB 414, § 20; Laws 2000, LB 1115, § 38; Laws 2005, LB 256, § 53; R.S.Supp.,2006, § 71-1716.02; Laws 2007, LB463, § 795.

38-2304 Approved certifying body, defined.

Approved certifying body means a national certification organization which certifies qualified licensed nurses for advanced practice in a clinical specialty area and which (1) requires eligibility criteria related to education and practice, (2) offers an examination in an advanced nursing area which meets current psychometric guidelines and tests, and (3) is approved by the board.

Source: Laws 1984, LB 724, § 6; Laws 1996, LB 414, § 19; Laws 2000, LB 1115, § 37; R.S.1943, (2003), § 71-1716.01; Laws 2007, LB463, § 796.

38-2305 Approved nurse practitioner program, defined.

Approved nurse practitioner program means a program which:

(1) Is a minimum of one full-time academic year or nine months in length and includes both a didactic component and a preceptorship of five hundred contact hours;

(2) Includes, but is not limited to, instruction in biological, behavioral, and health sciences relevant to practice as a nurse practitioner in a specific clinical area; and

(3) For the specialties of women's health and neonatal, grants a post-master certificate, master's degree, or doctoral degree for all applicants who graduated on or after July 1, 2007, and for all other specialties, grants a post-master certificate, master's degree, or doctoral degree for all applicants who graduated on or after July 19, 1996.

Source: Laws 1981, LB 379, § 14; Laws 1984, LB 724, § 12; Laws 1993, LB 536, § 67; Laws 1996, LB 414, § 22; Laws 2000, LB 1115, § 41; Laws 2005, LB 256, § 56; R.S.Supp.,2006, § 71-1717; Laws 2007, LB463, § 797.

38-2306 Board, defined.

Board means the Board of Advanced Practice Registered Nurses.

Source: Laws 1981, LB 379, § 5; Laws 1996, LB 414, § 15; Laws 2000, LB 1115, § 30; R.S.1943, (2003), § 71-1708; Laws 2007, LB463, § 798.

38-2307 Boards, defined.

Boards means the Board of Advanced Practice Registered Nurses and the Board of Nursing of the State of Nebraska.

Source: Laws 1984, LB 724, § 4; Laws 1996, LB 414, § 16; Laws 2000, LB 1115, § 31; R.S.1943, (2003), § 71-1709.01; Laws 2007, LB463, § 799.

38-2308 Collaboration, defined.

Collaboration means a process and relationship in which a nurse practitioner, together with other health professionals, delivers health care within the scope of authority of the various clinical specialty practices.

Source: Laws 1981, LB 379, § 13; Laws 1984, LB 724, § 11; Laws 1996, LB 414, § 18; Laws 2000, LB 1115, § 36; Laws 2005, LB 256, § 52; R.S.Supp.,2006, § 71-1716; Laws 2007, LB463, § 800.

38-2309 Consultation, defined.

Consultation means a process whereby a nurse practitioner seeks the advice or opinion of a physician or another health care practitioner.

Source: Laws 1996, LB 414, § 23; Laws 2000, LB 1115, § 32; Laws 2005, LB 256, § 50; R.S.Supp.,2006, § 71-1709.02; Laws 2007, LB463, § 801.

38-2310 Integrated practice agreement, defined.

(1) Integrated practice agreement means a written agreement between a nurse practitioner and a collaborating physician in which the nurse practitioner and the collaborating physician provide for the delivery of health care through

an integrated practice. The integrated practice agreement shall provide that the nurse practitioner and the collaborating physician will practice collaboratively within the framework of their respective scopes of practice. Each provider shall be responsible for his or her individual decisions in managing the health care of patients. Integrated practice includes consultation, collaboration, and referral.

(2) The nurse practitioner and the collaborating physician shall have joint responsibility for patient care, based upon the scope of practice of each practitioner. The collaborating physician shall be responsible for supervision of the nurse practitioner to ensure the quality of health care provided to patients.

(3) For purposes of this section:

(a) Collaborating physician means a physician or osteopathic physician licensed in Nebraska and practicing in the same geographic area and practice specialty, related specialty, or field of practice as the nurse practitioner; and

(b) Supervision means the ready availability of the collaborating physician for consultation and direction of the activities of the nurse practitioner within the nurse practitioner's defined scope of practice.

Source: Laws 1984, LB 724, § 9; Laws 1996, LB 414, § 21; Laws 2000, LB 1115, § 39; Laws 2005, LB 256, § 54; R.S.Supp.,2006, § 71-1716.03; Laws 2007, LB463, § 802.

38-2311 Licensed practitioner, defined.

Licensed practitioner means any podiatrist, dentist, physician, or osteopathic physician licensed to prescribe, diagnose, and treat as provided in the Uniform Credentialing Act.

Source: Laws 1981, LB 379, § 9; Laws 2000, LB 1115, § 34; R.S.1943, (2003), § 71-1712; Laws 2007, LB463, § 803.

38-2312 Nurse practitioner, defined.

Nurse practitioner means a registered nurse certified as described in section 38-2317 and licensed under the Advanced Practice Registered Nurse Practice Act to practice as a nurse practitioner.

Source: Laws 1981, LB 379, § 4; Laws 1984, LB 724, § 5; Laws 1996, LB 414, § 14; Laws 2000, LB 1115, § 29; Laws 2005, LB 256, § 49; R.S.Supp.,2006, § 71-1707; Laws 2007, LB185, § 5; Laws 2007, LB463, § 804.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.

38-2313 Preceptorship, defined.

Preceptorship means the clinical practice component of an educational program for the preparation of nurse practitioners.

Source: Laws 1981, LB 379, § 11; Laws 1996, LB 414, § 17; Laws 2000, LB 1115, § 35; Laws 2005, LB 256, § 51; R.S.Supp.,2006, § 71-1714; Laws 2007, LB463, § 805.

38-2314 Referral, defined.

Referral means a process whereby a nurse practitioner directs the patient to a physician or other health care practitioner for management of a particular problem or aspect of the patient's care.

Source: Laws 1996, LB 414, § 24; Laws 2000, LB 1115, § 40; Laws 2005, LB 256, § 55; R.S.Supp.,2006, § 71-1716.05; Laws 2007, LB463, § 806.

38-2315 Nurse practitioner; functions; scope.

(1) A nurse practitioner may provide health care services within specialty areas. A nurse practitioner shall function by establishing collaborative, consultative, and referral networks as appropriate with other health care professionals. Patients who require care beyond the scope of practice of a nurse practitioner shall be referred to an appropriate health care provider.

(2) Nurse practitioner practice means health promotion, health supervision, illness prevention and diagnosis, treatment, and management of common health problems and chronic conditions, including:

(a) Assessing patients, ordering diagnostic tests and therapeutic treatments, synthesizing and analyzing data, and applying advanced nursing principles;

(b) Dispensing, incident to practice only, sample medications which are provided by the manufacturer and are provided at no charge to the patient; and

(c) Prescribing therapeutic measures and medications relating to health conditions within the scope of practice. Any limitation on the prescribing authority of the nurse practitioner for controlled substances listed in Schedule II of section 28-405 shall be recorded in the integrated practice agreement established pursuant to section 38-2310.

(3) A nurse practitioner who has proof of a current certification from an approved certification program in a psychiatric or mental health specialty may manage the care of patients committed under the Nebraska Mental Health Commitment Act. Patients who require care beyond the scope of practice of a nurse practitioner who has proof of a current certification from an approved certification program in a psychiatric or mental health specialty shall be referred to an appropriate health care provider.

Source: Laws 1981, LB 379, § 18; Laws 1984, LB 724, § 14; Laws 1996, LB 414, § 25; Laws 2000, LB 1115, § 44; Laws 2005, LB 256, § 57; Laws 2006, LB 994, § 96; R.S.Supp.,2006, § 71-1721; Laws 2007, LB463, § 807.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

38-2316 Unlicensed person; acts permitted.

The Nurse Practitioner Practice Act does not prohibit the performance of activities of a nurse practitioner by an unlicensed person if performed:

(1) In an emergency situation;

(2) By a legally qualified person from another state employed by the United States Government and performing official duties in this state;

(3) By a person enrolled in an approved nurse practitioner program for the preparation of nurse practitioners as part of that approved program; and

(4) By a person holding a temporary license pursuant to section 38-2318.

Source: Laws 1984, LB 724, § 25; Laws 1996, LB 414, § 40; Laws 2000, LB 1115, § 58; Laws 2005, LB 256, § 71; R.S.Supp.,2006, § 71-1726.01; Laws 2007, LB185, § 12; Laws 2007, LB463, § 808.

38-2317 Nurse practitioner; licensure; requirements.

(1) An applicant for licensure under the Advanced Practice Registered Nurse Practice Act to practice as a nurse practitioner shall have:

(a) A license as a registered nurse in the State of Nebraska or the authority based upon the Nurse Licensure Compact to practice as a registered nurse in Nebraska;

(b) Evidence of having successfully completed a graduate-level program in the clinical specialty area of nurse practitioner practice, which program is accredited by a national accrediting body;

(c) Evidence of having successfully completed thirty contact hours of education in pharmacotherapeutics; and

(d) Proof of having passed an examination pertaining to the specific nurse practitioner role in nursing adopted or approved by the board with the approval of the department. Such examination may include any recognized national credentialing examination for nurse practitioners conducted by an approved certifying body which administers an approved certification program.

(2) If more than five years have elapsed since the completion of the nurse practitioner program or since the applicant has practiced in the specific nurse practitioner role, the applicant shall meet the requirements in subsection (1) of this section and provide evidence of continuing competency as required by the board.

Source: Laws 1981, LB 379, § 19; Laws 1984, LB 724, § 20; Laws 1986, LB 926, § 55; Laws 1993, LB 536, § 70; Laws 1996, LB 414, § 30; Laws 1997, LB 752, § 173; Laws 2000, LB 1115, § 46; Laws 2002, LB 1021, § 57; Laws 2003, LB 242, § 101; Laws 2005, LB 256, § 59; R.S.Supp.,2006, § 71-1722; Laws 2007, LB185, § 6; Laws 2007, LB463, § 809.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.

Nurse Licensure Compact, see section 71-1795.

Uniform Credentialing Act, see section 38-101.

38-2318 Nurse practitioner; temporary license; requirements.

The department may grant a temporary license to practice as a nurse practitioner for up to one hundred twenty days upon application:

(1) To graduates of an approved nurse practitioner program pending results of the first credentialing examination following graduation;

(2) To a nurse practitioner lawfully authorized to practice in another state pending completion of the application for a Nebraska license; and

(3) To applicants for purposes of a reentry program or supervised practice as part of continuing competency activities established by the board.

A temporary license issued pursuant to this section may be extended for up to one year with the approval of the board. An individual holding a temporary permit as a nurse practitioner on July 1, 2007, shall be deemed to be holding a temporary license under this section on such date. The permitholder may continue to practice under such temporary permit as a temporary license until it would have expired under its terms.

Source: Laws 1984, LB 724, § 22; Laws 1993, LB 536, § 72; Laws 1996, LB 414, § 37; Laws 2000, LB 1115, § 53; Laws 2002, LB 1021, § 59; Laws 2005, LB 256, § 66; R.S.Supp.,2006, § 71-1724.01; Laws 2007, LB185, § 11; Laws 2007, LB463, § 810.

38-2319 Nurse practitioner; license; renewal; requirements.

To renew a license to practice as a nurse practitioner, the applicant shall have:

(1) Documentation of a minimum of two thousand eighty hours of practice as a nurse practitioner within the five years immediately preceding renewal. These practice hours shall fulfill the requirements of the practice hours required for registered nurse renewal. Practice hours as an advanced practice registered nurse prior to July 1, 2007, shall be used to fulfill the requirements of this section; and

(2) Proof of current certification in the specific nurse practitioner clinical specialty area by an approved certification program.

Source: Laws 1981, LB 379, § 21; Laws 1983, LB 472, § 6; Laws 1984, LB 724, § 21; Laws 1986, LB 926, § 56; Laws 1988, LB 1100, § 105; Laws 1993, LB 536, § 71; Laws 1996, LB 414, § 36; Laws 2000, LB 1115, § 52; Laws 2002, LB 1021, § 58; Laws 2003, LB 242, § 103; Laws 2005, LB 256, § 65; R.S.Supp.,2006, § 71-1724; Laws 2007, LB185, § 10; Laws 2007, LB463, § 811.

38-2320 Nurse practitioner; liability insurance; when required.

(1) Nurse practitioners shall maintain in effect professional liability insurance with such coverage and limits as may be established by the board.

(2) If a nurse practitioner renders services in a hospital or other health care facility, he or she shall be subject to the rules and regulations of that facility. Such rules and regulations may include, but need not be limited to, reasonable requirements that the nurse practitioner and all collaborating licensed practitioners maintain professional liability insurance with such coverage and limits as may be established by the hospital or other health care facility upon the recommendation of the medical staff.

Source: Laws 1996, LB 414, § 35; Laws 2000, LB 1115, § 51; Laws 2005, LB 256, § 64; R.S.Supp.,2006, § 71-1723.04; Laws 2007, LB463, § 812.

38-2321 Nurse practitioner; right to use title or abbreviation.

A person licensed to practice as a nurse practitioner in this state may use the title nurse practitioner and the abbreviation NP.

Source: Laws 1984, LB 724, § 27; Laws 1996, LB 414, § 32; Laws 2000, LB 1115, § 48; Laws 2005, LB 256, § 61; R.S.Supp.,2006, § 71-1723.01; Laws 2007, LB185, § 8; Laws 2007, LB463, § 813.

38-2322 Nurse practitioner; commencement of practice; requirements; waiver.

(1) Prior to commencing practice as a nurse practitioner, an individual (a) who has a master's degree or doctorate degree in nursing and has completed an approved nurse practitioner program, (b) who can demonstrate separate course work in pharmacotherapeutics, advanced health assessment, and pathophysiology or psychopathology, and (c) who has completed a minimum of two thousand hours of practice under the supervision of a physician, shall submit to the department an integrated practice agreement with a collaborating physician and shall furnish proof of professional liability insurance required under section 38-2320.

(2) A nurse practitioner who needs to obtain the two thousand hours of supervised practice required under subdivision (1)(c) of this section shall (a) submit to the department one or more integrated practice agreements with a collaborating physician, (b) furnish proof of jointly approved protocols with a collaborating physician which shall guide the nurse practitioner's practice, and (c) furnish proof of professional liability insurance required under section 38-2320.

(3) If, after a diligent effort to obtain an integrated practice agreement, a nurse practitioner is unable to obtain an integrated practice agreement with one physician, the board may waive the requirement of an integrated practice agreement upon a showing that the applicant (a) meets the requirements of subsection (1) of this section, (b) has made a diligent effort to obtain an integrated practice agreement, and (c) will practice in a geographic area where there is a shortage of health care services.

Source: Laws 1996, LB 414, § 33; Laws 2000, LB 1115, § 49; Laws 2002, LB 1062, § 46; Laws 2005, LB 256, § 62; R.S.Supp.,2006, § 71-1723.02; Laws 2007, LB185, § 9; Laws 2007, LB463, § 814.

38-2323 Nurse practitioner; actions not prohibited.

Nothing in the Nurse Practitioner Practice Act shall prohibit a nurse practitioner from consulting or collaborating with and referring patients to health care providers not included in the nurse practitioner's integrated practice agreement.

Source: Laws 1996, LB 414, § 34; Laws 2000, LB 1115, § 50; Laws 2005, LB 256, § 63; R.S.Supp.,2006, § 71-1723.03; Laws 2007, LB463, § 815.

ARTICLE 24**NURSING HOME ADMINISTRATOR PRACTICE ACT****Cross References**

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Alzheimer's Special Care Disclosure Act, see section 71-516.01.
Assisted-Living Facility Act, see section 71-5901.
Certified Nurse Midwifery Practice Act, see section 38-601.
Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Child abuse, duty to report, see section 28-711.
Clinical Nurse Specialist Practice Act, see section 38-901.
Community nurses, see sections 71-1637 to 71-1639.
Conservator, prohibition on certain functions, see section 30-2639.
Division of Public Health of the Department of Health and Human Services, see section 81-3113.
Emergency Box Drug Act, see section 71-2410.

Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.
Good Samaritan provisions, see section 25-21,186.
Guardian, prohibition on certain functions, see section 30-2627.
Health and Human Services Act, see section 81-3110.
Health Care Facility Licensure Act, see section 71-401.
Health Care Professional Credentialing Verification Act, see section 44-7001.
Home health aides, see section 71-6601 et seq.
License Suspension Act, see section 43-3301.
Licensed Practical Nurse-Certified Practice Act, see section 38-1601.
Medication Aide Act, see section 71-6718.
Nebraska Center for Nursing Act, see section 71-1796.
Nebraska Hospital-Medical Liability Act, see section 44-2855.
Nebraska Nursing Home Act, see section 71-6037.
Nebraska Regulation of Health Professions Act, see section 71-6201.
Nurse Licensure Compact, see section 71-1795.
Nurse Practice Act, see section 38-2201.
Nurse Practitioner Practice Act, see section 38-2301.
Nursing assistant, see sections 71-6038 to 71-6042.
Nursing Faculty Student Loan Act, see section 71-17,108.
Nursing Home Advisory Council, see sections 71-6043 to 71-6052.
Nursing Student Loan Act, see section 71-17,101.
Paid dining assistant, see sections 71-6038 to 71-6042.
Patient Safety Improvement Act, see section 71-8701.
Rural Health Systems and Professional Incentive Act, see section 71-5650.
State Board of Health, duties, see section 71-2610 et seq.
Statewide Trauma System Act, see section 71-8201.
Uniform Controlled Substances Act, see section 28-401.01.
Ward, prohibition on certain functions, see section 30-2624.

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- 38-2401. Act, how cited.
- 38-2402. Definitions, where found.
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- 38-2404. Administrator or nursing home administrator, defined.
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- 38-2406. Board, defined.
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- 38-2410. Degree or advanced degree in health care, defined.
- 38-2411. Integrated system, defined.
- 38-2412. Internship, defined.
- 38-2413. Nursing degree, defined.
- 38-2414. Nursing home or home for the aged or infirm, defined.
- 38-2415. Previous work experience, defined.
- 38-2416. Previous work experience in health care administration, defined.
- 38-2417. Board; members; qualifications.
- 38-2418. Nursing home; operation; licensed administrator required; provisional license.
- 38-2419. Nursing home administrator; license; issuance; qualifications; duties.
- 38-2420. Administrator-in-training program; mentoring program; certified preceptor; requirements.
- 38-2421. License; reciprocity.
- 38-2422. Application for examination.
- 38-2423. Acting administrator; provisional license required; application; requirements.
- 38-2424. Providers of continuing competency activities; review and approval; fee.
- 38-2425. Fees.

38-2401 Act, how cited.

Sections 38-2401 to 38-2425 shall be known and may be cited as the Nursing Home Administrator Practice Act.

Source: Laws 2007, LB463, § 816.

38-2402 Definitions, where found.

For purposes of the Nursing Home Administrator Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2403 to 38-2416 apply.

Source: Laws 2007, LB463, § 817.

38-2403 Accredited institution, defined.

Accredited institution means a postsecondary educational institution approved by the board.

Source: Laws 2007, LB463, § 818.

38-2404 Administrator or nursing home administrator, defined.

Administrator or nursing home administrator means any individual who meets the education and training requirements of section 38-2419 and is responsible for planning, organizing, directing, and controlling the operation of a nursing home or an integrated system or who in fact performs such functions, whether or not such functions are shared by one or more other persons. Notwithstanding this section or any other provision of law, the administrator of an intermediate care facility for the mentally retarded may be either a licensed nursing home administrator or a qualified mental retardation professional.

Source: Laws 2007, LB463, § 819.

38-2405 Administrator-in-training, defined.

Administrator-in-training means a person who is undergoing training to become a nursing home administrator and is directly supervised in a nursing home by a certified preceptor.

Source: Laws 2007, LB463, § 820.

38-2406 Board, defined.

Board means the Board of Nursing Home Administration.

Source: Laws 2007, LB463, § 821.

38-2407 Certified preceptor, defined.

Certified preceptor means a person who is currently licensed by the State of Nebraska as a nursing home administrator, has three years of experience as a nursing home administrator, has practiced within the last two years in a nursing home, and is approved by the department to supervise an administrator-in-training or a person in a mentoring program.

Source: Laws 2007, LB463, § 822.

38-2408 Core educational requirements, defined.

Core educational requirements means courses necessary for licensure as a nursing home administrator and includes courses in patient care and services, social services, financial management, administration, and rules, regulations, and standards relating to the operation of a health care facility.

Source: Laws 2007, LB463, § 823.

38-2409 Degree or advanced degree, defined.

Degree or advanced degree means a baccalaureate, master's, or doctorate degree from an accredited institution and which includes studies in the core educational requirements.

Source: Laws 2007, LB463, § 824.

38-2410 Degree or advanced degree in health care, defined.

Degree or advanced degree in health care means a baccalaureate, master's, or doctorate degree from an accredited institution in health care, health care administration, or services.

Source: Laws 2007, LB463, § 825.

38-2411 Integrated system, defined.

Integrated system means a health and human services organization offering different levels of licensed care or treatment on the same premises.

Source: Laws 2007, LB463, § 826.

38-2412 Internship, defined.

Internship means that aspect of the educational program of the associate degree in long-term care administration which allows for practical experience in a nursing home and occurs under the supervision of a certified preceptor.

Source: Laws 2007, LB463, § 827.

38-2413 Nursing degree, defined.

Nursing degree means a degree or diploma in nursing from an accredited program of nursing approved by the Board of Nursing.

Source: Laws 2007, LB463, § 828.

38-2414 Nursing home or home for the aged or infirm, defined.

Nursing home or home for the aged or infirm means any institution or facility licensed as a nursing facility or a skilled nursing facility by the department pursuant to the Health Care Facility Licensure Act, whether proprietary or nonprofit, including, but not limited to, homes for the aged or infirm owned or administered by the federal or state government or an agency or political subdivision thereof.

Source: Laws 2007, LB463, § 829.

Cross References

Health Care Facility Licensure Act, see section 71-401.

38-2415 Previous work experience, defined.

Previous work experience means at least two years working full time in a nursing home or previous work experience in health care administration.

Source: Laws 2007, LB463, § 830.

38-2416 Previous work experience in health care administration, defined.

Previous work experience in health care administration means at least two years working full time as an administrator or director of nursing of a hospital

with a long-term care unit or assisted-living facility or director of nursing in a nursing home.

Source: Laws 2007, LB463, § 831.

38-2417 Board; members; qualifications.

(1) The board shall consist of seven professional members and two public members appointed pursuant to section 38-158. The members shall meet the requirements of sections 38-164 and 38-165.

(2) The professional members shall consist of: (a) Two members who hold active licenses and are currently employed in the management, operation, or ownership of proprietary homes for the aged or infirm or nursing homes that serve the aged or infirm in Nebraska; (b) two members who hold active licenses and are currently employed in the management or operation of a nonprofit home for the aged or infirm or nursing home or hospital caring for chronically ill or infirm, aged patients; (c) one member who is a member of the faculty of a college or university located in the state who is actively engaged in a teaching program relating to business administration, social work, gerontology, or some other aspect of the administration of health care facilities; (d) one member who is a licensed physician and surgeon with a demonstrated interest in long-term care; and (e) one member who is a licensed registered nurse.

Source: Laws 1972, LB 1040, § 5; Laws 1980, LB 686, § 3; Laws 1988, LB 693, § 10; Laws 1989, LB 344, § 20; R.S.Supp.,1989, § 71-2045.01; Laws 1994, LB 1223, § 76; Laws 1996, LB 1044, § 755; Laws 1999, LB 411, § 9; Laws 2002, LB 1062, § 61; R.S.1943, (2003), § 71-6065; Laws 2007, LB296, § 649; Laws 2007, LB463, § 832.

38-2418 Nursing home; operation; licensed administrator required; provisional license.

Each nursing home within the state shall be operated under the supervision of an administrator duly licensed in the manner provided in the Nursing Home Administrator Practice Act. If there is a vacancy in the position of licensed administrator of a nursing home, the owner, governing body, or other appropriate authority of the nursing home may select a person to apply for a provisional license in nursing home administration to serve as the administrator of such facility.

Source: Laws 1972, LB 1040, § 8; Laws 1980, LB 686, § 5; Laws 1988, LB 693, § 12; R.S.Supp.,1988, § 71-2045.04; R.S.1943, (2003), § 71-6062; Laws 2007, LB463, § 833.

38-2419 Nursing home administrator; license; issuance; qualifications; duties.

(1) The department shall issue a license to an applicant who submits (a) satisfactory evidence of completion of (i) an associate degree which includes the core educational requirements and an administrator-in-training program under a certified preceptor, (ii) a degree or an advanced degree and a mentoring program under a certified preceptor, (iii) a nursing degree, previous work experience in health care administration, and a mentoring program under a certified preceptor, (iv) a degree or an advanced degree in health care and previous work experience in health care administration, or (v) an associate

degree which includes the core educational requirements, previous work experience, and a mentoring program under a certified preceptor, and (b) evidence of successful passage of the National Association of Boards of Examiners for Nursing Home Administration written examination.

(2) The department shall license administrators in accordance with the Nursing Home Administrator Practice Act and standards, rules, and regulations adopted and promulgated by the department, with the recommendation of the board. The license shall not be transferable or assignable.

(3) Each administrator shall be responsible for and oversee the operation of only one licensed facility or one integrated system, except that an administrator may make application to the department for approval to be responsible for and oversee the operations of a maximum of three licensed facilities if such facilities are located within two hours' travel time of each other or to act in the dual role of administrator and department head but not in the dual role of administrator and director of nursing. In reviewing the application, the department may consider the proximity of the facilities and the number of licensed beds in each facility. An administrator responsible for and overseeing the operations of any integrated system is subject to disciplinary action against his or her license for any regulatory violations within each system.

(4)(a) Notwithstanding the provisions of the Nursing Home Administrator Practice Act, the department shall issue a license as a nursing home administrator to an applicant who will function as the administrator of a facility caring primarily for persons with head injuries and associated disorders who submits satisfactory evidence that he or she (i) has at least two years of experience working with persons with head injuries or severe physical disabilities, at least one of which was spent in an administrative capacity, (ii) is (A) a psychologist with at least a master's degree in psychology from an accredited college or university and has specialized training or one year of experience working with persons with traumatic head injury or severe physical disability, (B) a physician licensed under the Uniform Credentialing Act to practice medicine and surgery or psychiatry and has specialized training or one year of experience working with persons with traumatic head injury or severe physical disability, (C) an educator with at least a master's degree in education from an accredited college or university and has specialized training or one year of experience working with persons with traumatic head injury or severe physical disability, or (D) a certified social worker, a certified master social worker, or a licensed mental health practitioner certified or licensed under the Uniform Credentialing Act and has at least three years of social work or mental health practice experience and specialized training or one or more years of experience working with persons who have experienced traumatic head injury or are severely physically disabled, and (iii) is of good moral character. The applicant shall also provide his or her social security number.

(b) A license issued pursuant to this subsection shall be issued without examination and without the requirement of completion of an administrator-in-training or mentoring program. Such license may be renewed without the completion of any continuing competency requirements.

Source: Laws 1972, LB 1040, § 6; Laws 1980, LB 686, § 4; Laws 1988, LB 352, § 126; R.S.1943, (1986), § 71-2045.02; Laws 1988, LB 693, § 3; Laws 1989, LB 344, § 19; Laws 1989, LB 733, § 1; R.S.Supp.,1989, § 71-2041.02; Laws 1991, LB 58, § 1; Laws

1991, LB 456, § 38; Laws 1992, LB 1019, § 83; Laws 1993, LB 669, § 59; Laws 1994, LB 1223, § 74; Laws 1997, LB 608, § 23; Laws 1997, LB 752, § 193; Laws 1999, LB 411, § 2; Laws 2002, LB 1021, § 92; Laws 2002, LB 1062, § 56; Laws 2003, LB 242, § 133; Laws 2005, LB 246, § 2; R.S.Supp.,2006, § 71-6054; Laws 2007, LB463, § 834.

Cross References

Uniform Credentialing Act, see section 38-101.

38-2420 Administrator-in-training program; mentoring program; certified preceptor; requirements.

(1) Except as provided in subdivision (1)(a)(iv) and subsection (4) of section 38-2419, in order for a person to become licensed as a nursing home administrator, he or she shall complete an administrator-in-training program or a mentoring program. The administrator-in-training program shall occur in a nursing home under the direct supervision of a certified preceptor, and it may be gained as an internship which is part of an approved associate degree. A mentoring program shall occur in a nursing home under the supervision of a certified preceptor. The certified preceptor in a mentoring program need not be at such facility during the period of such supervision but shall be available to assist with questions or problems as needed. A mentoring program may be gained as an internship which is part of a degree or advanced degree. A person in a mentoring program may apply for a provisional license as provided in section 38-2423.

(2) An applicant may begin his or her administrator-in-training or mentoring program upon application to the department with the required fee, evidence that he or she has completed at least fifty percent of the core educational requirements, and evidence of an agreement between the certified preceptor and the applicant for at least six hundred forty hours of training and experience, to be gained in not less than four months. Such training shall occur in a Nebraska-licensed nursing home under a certified preceptor.

(3) The certified preceptor shall submit a report to the department by the fifth day of each month for the duration of the administrator-in-training or mentoring program, describing the nature and extent of training completed to date. At the conclusion of the program, the certified preceptor shall report to the department whether the applicant has successfully completed the board's approved course for such program. With the concurrence of the certified preceptor, the applicant may remain in such program until successfully completed or may reapply to enter another administrator-in-training or mentoring program.

(4)(a) The administrator-in-training or mentoring program shall occur under the supervision of a certified preceptor. An applicant to become a certified preceptor shall (i) be currently licensed as a nursing home administrator in the State of Nebraska, (ii) have three years of experience as a nursing home administrator in the five years immediately preceding certification, and (iii) complete a preceptor training course approved by the board.

(b) All preceptor certificates shall expire on December 31 of every fourth year beginning December 31, 2000. Before acting on an application for renewal, the board shall review the performance of the applicant. Such review may include consideration of survey and complaint information, student evaluations, and

any other related information deemed relevant by the board. The board may deny an application for renewal upon a finding that the applicant's performance has been unsatisfactory based on such review.

Source: Laws 1988, LB 693, § 4; Laws 1989, LB 733, § 2; R.S.Supp.,1989, § 71-2041.03; Laws 1991, LB 455, § 1; Laws 1992, LB 1019, § 84; Laws 1999, LB 411, § 3; Laws 2003, LB 242, § 134; R.S.1943, (2003), § 71-6055; Laws 2007, LB463, § 835.

38-2421 License; reciprocity.

The department may issue a license to any person who holds a current nursing home administrator license from another jurisdiction and is at least nineteen years old.

Source: Laws 1988, LB 693, § 5; Laws 1989, LB 733, § 3; R.S.Supp.,1989, § 71-2041.04; Laws 1991, LB 455, § 2; Laws 1992, LB 1019, § 85; Laws 1999, LB 411, § 4; Laws 2002, LB 1062, § 57; R.S.1943, (2003), § 71-6056; Laws 2007, LB463, § 836.

38-2422 Application for examination.

Any person desiring to take the examination for a nursing home administrator license may request to take the examination any time after receiving notification of registration as an administrator-in-training or a person in a mentoring program, but the license shall not be issued until the board receives documentation of completion of the administrator-in-training or mentoring program and completion of all licensure requirements.

Source: Laws 1988, LB 693, § 7; R.S.Supp.,1988, § 71-2041.06; Laws 1992, LB 1019, § 86; Laws 1999, LB 411, § 5; R.S.1943, (2003), § 71-6058; Laws 2007, LB463, § 837.

38-2423 Acting administrator; provisional license required; application; requirements.

(1) A person selected to apply for a provisional license in nursing home administration to serve as the administrator of such facility shall apply to the department. Such license, if issued, shall be valid for no more than one hundred eighty calendar days and may be issued to an individual not otherwise qualified for licensure as a nursing home administrator in order to maintain the daily operations of the facility and may not be renewed. The department may grant an extension not to exceed ninety days if the person seeking the provisional license is in a mentoring program.

(2) The department may issue a provisional license to an individual who has applied for a mentoring program. Such provisional license will allow the applicant to serve as administrator in the specified facility for one hundred eighty calendar days and may not be renewed. The board may grant an extension not to exceed ninety days if the person seeking the provisional license is in a mentoring program.

(3) An applicant for a provisional license under this section shall: (a) Be at least twenty-one years of age; (b) be employed on a full-time basis of not less than forty hours per week to perform the duties of the nursing home adminis-

trator; and (c) have no history of unprofessional conduct or denial or disciplinary action against a nursing home administrator license or a license to practice any other profession by any lawful licensing authority.

Source: Laws 1972, LB 1040, § 12; Laws 1980, LB 686, § 9; R.S.1943, (1986), § 71-2045.08; Laws 1992, LB 1019, § 89; Laws 1999, LB 411, § 8; Laws 2003, LB 242, § 137; R.S.1943, (2003), § 71-6063; Laws 2007, LB463, § 838.

38-2424 Providers of continuing competency activities; review and approval; fee.

Providers of continuing competency activities or licensees may submit courses for review and approval by the board. Each provider or licensee applying for approval of continuing competency activities shall pay an application fee for each program, seminar, or course submitted for review.

Source: Laws 1972, LB 1040, § 7; Laws 1986, LB 926, § 58; Laws 1988, LB 693, § 11; R.S.Supp.,1988, § 71-2045.03; Laws 1992, LB 1019, § 87; Laws 1999, LB 411, § 6; Laws 2002, LB 1021, § 93; Laws 2002, LB 1062, § 59; Laws 2003, LB 242, § 135; R.S. 1943, (2003), § 71-6060; Laws 2007, LB463, § 839.

38-2425 Fees.

The department shall establish and collect fees for credentialing under the Nursing Home Administrator Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 840.

ARTICLE 25

OCCUPATIONAL THERAPY PRACTICE ACT

Cross References

Access to medical records, see section 71-8401 et seq.
Child abuse, duty to report, see section 28-711.
Division of Public Health of the Department of Health and Human Services, see section 81-3113.
Good Samaritan provisions, see section 25-21,186.
Health and Human Services Act, see section 81-3110.
License Suspension Act, see section 43-3301.
Medicaid coverage, see section 68-911.
Nebraska Regulation of Health Professions Act, see section 71-6201.
Patient Safety Improvement Act, see section 71-8701.
Rural Health Systems and Professional Incentive Act, see section 71-5650.
State Board of Health, duties, see section 71-2610 et seq.

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- 38-2531. Rules and regulations.

38-2501 Act, how cited.

Sections 38-2501 to 38-2531 shall be known and may be cited as the Occupational Therapy Practice Act.

Source: Laws 1984, LB 761, § 29; Laws 2003, LB 242, § 138; Laws 2004, LB 1005, § 120; R.S.Supp.,2006, § 71-6101; Laws 2007, LB463, § 841.

38-2502 Purpose of act.

In order to (1) safeguard the public health, safety, and welfare, (2) protect the public from being misled by incompetent, unscrupulous, and unauthorized persons, (3) assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants, and (4) assure the availability of occupational therapy services of high quality to persons in need of such services, it is the purpose of the Occupational Therapy Practice Act to provide for the regulation of occupational therapists.

Source: Laws 1984, LB 761, § 30; R.S.1943, (2003) § 71-6102; Laws 2007, LB463, § 842.

38-2503 Definitions, where found.

For purposes of the Occupational Therapy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2504 to 38-2514 apply.

Source: Laws 1984, LB 761, § 31; Laws 1993, LB 121, § 451; Laws 1996, LB 1044, § 757; Laws 2001, LB 346, § 1; Laws 2002, LB 1021, § 95; Laws 2004, LB 1005, § 121; R.S.Supp.,2006, § 71-6103; Laws 2007, LB296, § 651; Laws 2007, LB463, § 843.

38-2504 Association, defined.

Association means a recognized national or state association for occupational therapy.

Source: Laws 2007, LB463, § 844.

38-2505 Board, defined.

Board means the Board of Occupational Therapy Practice.

Source: Laws 2007, LB463, § 845.

38-2506 Deep thermal agent modalities, defined.

Deep thermal agent modalities means therapeutic ultrasound and phonophoresis. Deep thermal agent modalities does not include the use of diathermy or lasers.

Source: Laws 2007, LB463, § 846.

38-2507 Electrotherapeutic agent modalities, defined.

Electrotherapeutic agent modalities means neuromuscular electrical stimulation, transcutaneous electrical nerve stimulation, and iontophoresis. Electrotherapeutic agent modalities does not include the use of ultraviolet light.

Source: Laws 2007, LB463, § 847.

38-2508 Mechanical devices, defined.

Mechanical devices means intermittent compression devices. Mechanical devices does not include devices to perform spinal traction.

Source: Laws 2007, LB463, § 848.

38-2509 Occupational therapist, defined.

Occupational therapist means a person holding a current license to practice occupational therapy.

Source: Laws 2007, LB463, § 849.

38-2510 Occupational therapy, defined.

(1) Occupational therapy means the use of purposeful activity with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, or the aging process in order to maximize independent function, prevent further disability, and achieve and maintain health and productivity.

(2) Occupational therapy encompasses evaluation, treatment, and consultation and may include (a) remediation or restoration of performance abilities that are limited due to impairment in biological, physiological, psychological, or neurological processes, (b) adaptation of task, process, or the environment, or the teaching of compensatory techniques, in order to enhance performance, (c) disability prevention methods and techniques which facilitate the development or safe application of performance skills, and (d) health promotion strategies and practices which enhance performance abilities.

Source: Laws 2007, LB463, § 850.

38-2511 Occupational therapy aide, defined.

Occupational therapy aide means a person who is not licensed under the Occupational Therapy Practice Act and who provides supportive services to occupational therapists and occupational therapy assistants.

Source: Laws 2007, LB463, § 851.

38-2512 Occupational therapy assistant, defined.

Occupational therapy assistant means a person holding a current license to assist in the practice of occupational therapy.

Source: Laws 2007, LB463, § 852.

38-2513 Physical agent modalities, defined.

Physical agent modalities means modalities that produce a biophysiological response through the use of water, temperature, sound, electricity, or mechanical devices.

Source: Laws 2007, LB463, § 853.

38-2514 Superficial thermal agent modalities, defined.

Superficial thermal agent modalities means hot packs, cold packs, ice, fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling technologies.

Source: Laws 2007, LB463, § 854.

38-2515 Board; members; qualifications.

The board shall consist of at least four members appointed pursuant to section 38-158. Three of the persons appointed shall have been engaged in rendering services to the public, teaching, or research in occupational therapy for at least five years immediately preceding their appointments. Two of the persons appointed shall be occupational therapists and one shall be either an occupational therapist or an occupational therapy assistant and all shall be holders of active licenses issued under the Occupational Therapy Practice Act during their terms. One of the persons appointed shall be a public member who meets the requirements of section 38-165.

Source: Laws 1984, LB 761, § 43; Laws 1987, LB 473, § 62; Laws 1988, LB 1100, § 178; Laws 2001, LB 346, § 3; Laws 2002, LB 1021, § 97; Laws 2004, LB 1005, § 131; R.S.Supp.,2006, § 71-6115; Laws 2007, LB463, § 855.

38-2516 Occupational therapist; therapy assistant; licensure required; activities and services not prohibited.

No person may represent himself or herself to be a licensed occupational therapist or occupational therapy assistant unless he or she is licensed in accordance with the Occupational Therapy Practice Act. Nothing in such act shall be construed to prevent:

(1) Any person licensed in this state pursuant to the Uniform Credentialing Act from engaging in the profession or occupation for which he or she is licensed;

(2) The activities and services of any person employed as an occupational therapist or occupational therapy assistant who serves in the armed forces of the United States or the United States Public Health Service or who is employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;

(3) The activities and services of any person pursuing an accredited course of study leading to a degree or certificate in occupational therapy if such activities

and services constitute a part of a supervised course of study and if such a person is designated by a title which clearly indicates his or her status as a student or trainee;

(4) The activities and services of any person fulfilling the supervised fieldwork experience requirements of sections 38-2518 and 38-2519 if such activities and services constitute a part of the experience necessary to meet the requirements of such sections; or

(5) Qualified members of other professions or occupations, including, but not limited to, recreation specialists or therapists, special education teachers, independent living specialists, work adjustment trainers, caseworkers, and persons pursuing courses of study leading to a degree or certification in such fields, from doing work similar to occupational therapy which is consistent with their training if they do not represent themselves by any title or description to be occupational therapists.

Source: Laws 1984, LB 761, § 32; Laws 1991, LB 2, § 14; Laws 2004, LB 1005, § 122; R.S.Supp.,2006, § 71-6104; Laws 2007, LB463, § 856.

38-2517 Occupational therapist; therapy assistant; temporary license.

Any person who has applied to take the examination under section 38-2518 or 38-2519 and who has completed the education and experience requirements of the Occupational Therapy Practice Act may be granted a temporary license to practice as an occupational therapist or an occupational therapy assistant. A temporary license shall allow the person to practice only in association with a licensed occupational therapist and shall be valid until the date on which the results of the next licensure examination are available to the department. The temporary license shall not be renewed if the applicant has failed the examination. The temporary license may be extended by the department, with the recommendation of the board. In no case may a temporary license be extended beyond one year.

An individual holding a temporary permit on December 1, 2008, shall be deemed to be holding a temporary license under the Occupational Therapy Practice Act on such date. The permit holder may continue to practice under such temporary permit as a temporary license until it would have expired under its terms.

Source: Laws 1984, LB 761, § 33; Laws 1988, LB 1100, § 175; R.S. 1943, (2003), § 71-6105; Laws 2007, LB463, § 857.

38-2518 Occupational therapist; license; application; requirements.

(1) An applicant applying for a license as an occupational therapist shall show to the satisfaction of the department that he or she:

(a) Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the department and accredited by a nationally recognized medical association or nationally recognized occupational therapy association;

(b) Has successfully completed a period of supervised fieldwork experience at an educational institution approved by the department and where the applicant's academic work was completed or which is part of a training program

approved by such educational institution. A minimum of six months of supervised fieldwork experience shall be required for an occupational therapist; and

(c) Has passed an examination as provided in section 38-2520.

(2) Residency in this state shall not be a requirement of licensure. A corporation, partnership, limited liability company, or association shall not be licensed as an occupational therapist pursuant to the Occupational Therapy Practice Act.

Source: Laws 1984, LB 761, § 34; Laws 1989, LB 344, § 33; Laws 1993, LB 121, § 452; Laws 1997, LB 752, § 194; Laws 2003, LB 242, § 139; R.S.1943, (2003), § 71-6106; Laws 2007, LB463, § 858.

Cross References

Uniform Credentialing Act, see section 38-101.

38-2519 Occupational therapy assistant; license; application; requirements; term.

(1) An applicant applying for a license as an occupational therapy assistant shall show to the satisfaction of the department that he or she:

(a) Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the department and accredited by a nationally recognized medical association or nationally recognized occupational therapy association;

(b) Has successfully completed a period of supervised fieldwork experience at an educational institution approved by the department and where the applicant's academic work was completed or which is part of a training program approved by such educational institution. A minimum of two months of supervised fieldwork experience shall be required for an occupational therapy assistant; and

(c) Has passed an examination as provided in section 38-2520.

(2) Residency in this state shall not be a requirement of licensure as an occupational therapy assistant. A corporation, partnership, limited liability company, or association shall not be licensed as an occupational therapy assistant pursuant to the Occupational Therapy Practice Act.

Source: Laws 1984, LB 761, § 35; Laws 1989, LB 344, § 34; Laws 1993, LB 121, § 453; Laws 2003, LB 242, § 140; R.S.1943, (2003), § 71-6107; Laws 2007, LB463, § 859.

Cross References

Uniform Credentialing Act, see section 38-101.

38-2520 Examination; requirements.

(1) Each applicant for licensure pursuant to the Occupational Therapy Practice Act shall be examined by a written examination which tests his or her knowledge of the basic and clinical sciences relating to occupational therapy and occupational therapy theory and practice including, but not limited to, professional skills and judgment in the utilization of occupational therapy techniques and methods and such other subjects as the board may deem useful to determine the applicant's fitness to practice. The board shall approve the examination and establish standards for acceptable performance. The board

may choose a nationally standardized occupational therapist and occupational therapy assistant entry-level examination.

(2) Applicants for licensure shall be examined at a time and place and under such supervision as the board may determine.

Source: Laws 1984, LB 761, § 36; Laws 1985, LB 250, § 18; Laws 1987, LB 473, § 61; R.S.1943, (2003), § 71-6108; Laws 2007, LB463, § 860.

38-2521 Continuing competency requirements; waiver.

The department, with the recommendation of the board, may waive continuing competency requirements, in part or in total, for any two-year licensing period when a licensee submits documentation that circumstances beyond his or her control prevented completion of such requirements as provided in section 38-146. In addition to circumstances determined by the department to be beyond the licensee's control pursuant to such section, such circumstances shall include situations in which:

(1) The licensee holds a Nebraska license but does not reside or practice in Nebraska;

(2) The licensee has submitted proof that he or she was suffering from a serious or disabling illness or physical disability which prevented completion of the required continuing competency activities during the twenty-four months preceding the license renewal date; and

(3) The licensee has successfully completed two or more semester hours of formal credit instruction biennially offered by an accredited school or college which contributes to meeting the requirements of an advanced degree in a postgraduate program relating to occupational therapy.

Source: Laws 1984, LB 761, § 41; Laws 1994, LB 1223, § 77; Laws 2001, LB 346, § 2; Laws 2002, LB 1021, § 96; Laws 2003, LB 242, § 142; Laws 2004, LB 1005, § 129; R.S.Supp.,2006, § 71-6113; Laws 2007, LB463, § 861.

38-2522 Applicant for licensure; continuing competency requirements.

An applicant for licensure to practice as an occupational therapist who has met the education and examination requirements in section 38-2518 or to practice as an occupational therapy assistant who has met the education and examination requirements in section 38-2519, who passed the examination more than three years prior to the time of application for licensure, and who is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 862.

38-2523 Applicant for licensure; reciprocity; continuing competency requirements.

An applicant for licensure to practice as an occupational therapist or to practice as an occupational therapy assistant who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall

present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 863.

38-2524 Fees.

The department shall establish and collect fees for credentialing activities under the Occupational Therapy Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 1984, LB 761, § 42; Laws 1986, LB 926, § 63; Laws 1988, LB 1100, § 177; Laws 1992, LB 1019, § 92; Laws 1994, LB 1223, § 78; Laws 2003, LB 242, § 143; R.S.1943, (2003), § 71-6114; Laws 2007, LB463, § 864.

38-2525 Occupational therapy aide; supervision requirements.

An occupational therapy aide shall function under the guidance and responsibility of an occupational therapist and may be supervised by an occupational therapist or an occupational therapy assistant for specifically selected routine tasks for which the aide has been trained and has demonstrated competence. The aide shall comply with supervision requirements developed by the board. The board shall develop supervision requirements for aides which are consistent with prevailing professional standards.

Source: Laws 2004, LB 1005, § 123; R.S.Supp.,2006, § 71-6117; Laws 2007, LB463, § 865.

38-2526 Occupational therapist; services authorized.

An occupational therapist may perform the following services:

- (1) Evaluate, develop, improve, sustain, or restore skills in activities of daily living, work activities, or productive activities, including instrumental activities of daily living, and play and leisure activities;
- (2) Evaluate, develop, remediate, or restore sensorimotor, cognitive, or psychosocial components of performance;
- (3) Design, fabricate, apply, or train in the use of assistive technology or orthotic devices and train in the use of prosthetic devices;
- (4) Adapt environments and processes, including the application of ergonomic principles, to enhance performance and safety in daily life roles;
- (5) If certified pursuant to section 38-2530, apply physical agent modalities as an adjunct to or in preparation for engagement in occupations when applied by a practitioner who has documented evidence of possessing the theoretical background and technical skills for safe and competent use;
- (6) Evaluate and provide intervention in collaboration with the client, family, caregiver, or others;
- (7) Educate the client, family, caregiver, or others in carrying out appropriate nonskilled interventions; and
- (8) Consult with groups, programs, organizations, or communities to provide population-based services.

Source: Laws 2004, LB 1005, § 124; R.S.Supp.,2006, § 71-6118; Laws 2007, LB463, § 866.

38-2527 Occupational therapy assistant; supervision required.

An occupational therapy assistant may deliver occupational therapy services enumerated in section 38-2526 in collaboration with and under the supervision of an occupational therapist.

Source: Laws 2004, LB 1005, § 125; R.S.Supp.,2006, § 71-6119; Laws 2007, LB463, § 867.

38-2528 Referrals.

(1) An occupational therapist may accept a referral from a licensed health care professional for the purpose of evaluation and rehabilitative treatment which may include, but not be limited to, consultation, rehabilitation, screening, prevention, and patient education services.

(2) Referrals may be for an individual case or may be for an established treatment program that includes occupational therapy services. If programmatic, the individual shall meet the criteria for admission to the program and protocol for the treatment program shall be established by the treatment team members.

(3) Referrals shall be in writing, except that oral referrals may be accepted if they are followed by a written and signed request of the person making the referral within thirty days after the day on which the patient consults with the occupational therapist.

Source: Laws 2004, LB 1005, § 126; R.S.Supp.,2006, § 71-6120; Laws 2007, LB463, § 868.

38-2529 Direct access to services.

The public may have direct access to occupational therapy services.

Source: Laws 2004, LB 1005, § 127; R.S.Supp.,2006, § 71-6121; Laws 2007, LB463, § 869.

38-2530 Physical agent modalities; certification required.

(1) In order to apply physical agent modalities, an occupational therapist shall be certified pursuant to this section. The department shall issue a certificate to an occupational therapist to administer a physical agent modality if the occupational therapist:

(a) Has successfully completed a training course approved by the board and passed an examination approved by the board on the physical agent modality;

(b) Is certified as a hand therapist by the Hand Therapy Certification Commission or other equivalent entity recognized by the board;

(c) Has a minimum of five years of experience in the use of the physical agent modality and has passed an examination approved by the board on the physical agent modality; or

(d) Has completed education during a basic educational program which included demonstration of competencies for application of the physical agent modality.

(2) The department shall issue a certificate to authorize an occupational therapy assistant to set up and implement treatment using superficial thermal agent modalities if the occupational therapy assistant has successfully completed a training course approved by the board and passed an examination

approved by the board. Such set up and implementation shall only be done under the onsite supervision of an occupational therapist certified to administer superficial thermal agent modalities.

(3) An occupational therapist shall not delegate evaluation, reevaluation, treatment planning, and treatment goals for physical agent modalities to an occupational therapy assistant.

Source: Laws 2004, LB 1005, § 128; R.S.Supp.,2006, § 71-6122; Laws 2007, LB463, § 870.

38-2531 Rules and regulations.

(1) The board shall adopt and promulgate rules and regulations regarding role delineation for occupational therapy assistants and continuing competency requirements. Continuing education is sufficient to meet continuing competency requirements. Such requirements may also include, but not be limited to, one or more of the continuing competency activities listed in section 38-145 which a licensed person may select as an alternative to continuing education.

(2) The board may adopt and promulgate rules and regulations governing the training courses for an occupational therapist to be certified to administer a physical agent modality. The board may adopt and promulgate rules and regulations governing the training course for an occupational therapy assistant to be certified to set up and implement superficial thermal agent modalities. In adopting such rules and regulations, the board shall give consideration to the levels of training and experience which are required, in the opinion of the board, to protect the public health, safety, and welfare and to insure, to the greatest extent possible, the efficient, adequate, and safe practice of occupational therapy. Such rules and regulations shall include the approval of examinations and the passing score for such examinations for certification.

Source: Laws 2004, LB 1005, § 130; Laws 2005, LB 244, § 1; R.S.Supp.,2006, § 71-6123; Laws 2007, LB463, § 871.

ARTICLE 26

OPTOMETRY PRACTICE ACT

Cross References

Access to medical records, see section 71-8401 et seq.
Child abuse, duty to report, see section 28-711.
Division of Public Health of the Department of Health and Human Services, see section 81-3113.
Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.
Good Samaritan provisions, see section 25-21,186.
Health and Human Services Act, see section 81-3110.
Insuring cost of service of optometrist, see section 44-513.
License Suspension Act, see section 43-3301.
Lien for services, see section 52-401.
Limited Liability Company Act, see section 21-2601.
Mail Order Contact Lens Act, see section 69-301.
Medicaid coverage, see section 68-911.
Nebraska Hospital-Medical Liability Act, see section 44-2855.
Nebraska Professional Corporation Act, see section 21-2201.
Nebraska Regulation of Health Professions Act, see section 71-6201.
Patient Safety Improvement Act, see section 71-8701.
Rural Health Systems and Professional Incentive Act, see section 71-5650.
State Board of Health, duties, see section 71-2610 et seq.
Statewide Trauma System Act, see section 71-8201.
Uniform Controlled Substances Act, see section 28-401.01.

Section

38-2601. Act, how cited.
 38-2602. Definitions, where found.

Section

- 38-2603. Board, defined.
- 38-2604. Pharmaceutical agents, defined.
- 38-2605. Practice of optometry, defined.
- 38-2606. Board; members; qualifications.
- 38-2607. Practice of optometry; activities not included.
- 38-2608. Optometry; license; requirements.
- 38-2609. Applicant for licensure based on license outside the state; requirements.
- 38-2610. License; renewal; statement as to use of pharmaceutical agents.
- 38-2611. Continuing competency requirements; waiver.
- 38-2612. Fees.
- 38-2613. Optometrist; diagnostic pharmaceutical agents; use; certification.
- 38-2614. Optometrist; therapeutic pharmaceutical agents; certification of courses of instruction; board approval.
- 38-2615. Optometrist; applicability of requirements.
- 38-2616. Optometry; approved schools; requirements.
- 38-2617. Use of pharmaceutical agents by licensed optometrist; standard of care.
- 38-2618. Optometric assistants; authorized.
- 38-2619. Optometry; patient's freedom of choice.
- 38-2620. Nebraska Optometry Education Assistance Contract Program; purpose.
- 38-2621. Program; Board of Regents; administer; rules and regulations; adopt; reports; conditions.
- 38-2622. Program; financial assistance; number of students.
- 38-2623. Program; financial assistance; limitation.

38-2601 Act, how cited.

Sections 38-2601 to 38-2623 shall be known and may be cited as the Optometry Practice Act.

Source: Laws 2007, LB463, § 872.

38-2602 Definitions, where found.

For purposes of the Optometry Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2603 to 38-2605 apply.

Source: Laws 2007, LB463, § 874.

38-2603 Board, defined.

Board means the Board of Optometry.

Source: Laws 2007, LB463, § 875.

38-2604 Pharmaceutical agents, defined.

(1) Pharmaceutical agents, for diagnostic purposes, means anesthetics, cycloplegics, and mydriatics.

(2) Pharmaceutical agents, for therapeutic purposes, means topical ophthalmic pharmaceutical agents which treat eye diseases, infection, inflammation, and superficial abrasions, or oral analgesics, including oral analgesics enumerated in Schedules III and IV of section 28-405 necessary to treat conditions of the eye, ocular adnexa, or visual system, or oral pharmaceutical agents for the treatment of diseases or infections of the eye, ocular adnexa, or visual system, or oral anti-inflammatory agents to treat conditions of the eye, ocular adnexa, or visual system, excluding steroids and immunosuppressive agents.

Source: Laws 1979, LB 9, § 4; Laws 1986, LB 131, § 2; Laws 1993, LB 429, § 4; Laws 1998, LB 369, § 4; R.S.1943, (2003), § 71-1,135.01; Laws 2007, LB463, § 876.

38-2605 Practice of optometry, defined.

(1) The practice of optometry means one or a combination of the following:

(a) The examination of the human eye to diagnose, treat, or refer for consultation or treatment any abnormal condition of the human eye, ocular adnexa, or visual system;

(b) The employment of instruments, devices, pharmaceutical agents, and procedures intended for the purpose of investigating, examining, diagnosing, treating, managing, or correcting visual defects or abnormal conditions of the human eye, ocular adnexa, or visual system;

(c) The prescribing and application of lenses, devices containing lenses, prisms, contact lenses, ophthalmic devices, orthoptics, vision training, pharmaceutical agents, and prosthetic devices to correct, relieve, or treat defects or abnormal conditions of the human eye, ocular adnexa, or visual system;

(d) The ordering of procedures and laboratory tests rational to the diagnosis or treatment of conditions or diseases of the human eye, ocular adnexa, or visual system; and

(e) The removal of superficial eyelid, conjunctival, and corneal foreign bodies.

(2) The practice of optometry does not include the use of surgery, laser surgery, oral therapeutic agents used in the treatment of glaucoma, oral steroids, or oral immunosuppressive agents or the treatment of infantile/congenital glaucoma, which means the condition is present at birth.

Source: Laws 1927, c. 167, § 111, p. 487; C.S.1929, § 71-1601; R.S. 1943, § 71-1,133; Laws 1979, LB 9, § 1; Laws 1986, LB 131, § 1; Laws 1987, LB 116, § 1; Laws 1993, LB 429, § 2; Laws 1998, LB 369, § 1; R.S.1943, (2003), § 71-1,133; Laws 2007, LB236, § 20; Laws 2007, LB463, § 877.

38-2606 Board; members; qualifications.

The board shall consist of four members, including three licensed optometrists and one public member.

Source: Laws 2007, LB463, § 878.

38-2607 Practice of optometry; activities not included.

The practice of optometry shall not be construed to:

(1) Include merchants or dealers who sell glasses as merchandise in an established place of business or who sell contact lenses from a prescription for contact lenses written by an optometrist or a person licensed to practice medicine and surgery and who do not profess to be optometrists or practice optometry;

(2) Restrict, expand, or otherwise alter the scope of practice governed by other statutes; or

(3) Include the performance by an optometric assistant, under the supervision of a licensed optometrist, of duties prescribed in accordance with rules

and regulations adopted and promulgated by the department, with the recommendation of the board.

Source: Laws 1927, c. 167, § 112, p. 487; C.S.1929, § 71-1602; R.S. 1943, § 71-1,134; Laws 1979, LB 9, § 2; Laws 1998, LB 369, § 2; Laws 2002, LB 1062, § 30; R.S.1943, (2003), § 71-1,134; Laws 2007, LB236, § 21; Laws 2007, LB463, § 879.

38-2608 Optometry; license; requirements.

Every applicant for a license to practice optometry shall: (1) Present proof that he or she is a graduate of an accredited school or college of optometry; and (2) pass an examination approved by the board. The examination shall cover all subject matter included in the practice of optometry.

Source: Laws 1927, c. 167, § 113, p. 487; C.S.1929, § 71-1603; R.S. 1943, § 71-1,135; Laws 1979, LB 9, § 3; Laws 1989, LB 323, § 3; Laws 1998, LB 369, § 3; Laws 1999, LB 828, § 95; R.S.1943, (2003), § 71-1,135; Laws 2007, LB236, § 22; Laws 2007, LB463, § 880.

Cross References

Uniform Credentialing Act, see section 38-101.

38-2609 Applicant for licensure based on license outside the state; requirements.

In addition to the standards set by the board pursuant to section 38-126, an applicant for licensure based on a license in another state or territory of the United States or the District of Columbia must have been actively engaged in the practice of optometry for at least two of the three years immediately preceding the application for licensure in Nebraska and must provide satisfactory evidence of being credentialed in such other jurisdiction at a level with requirements that are at least as stringent as or more stringent than the requirements for the comparable credential being applied for in this state.

Source: Laws 2007, LB463, § 881; Laws 2008, LB972, § 1.
Operative date December 1, 2008.

38-2610 License; renewal; statement as to use of pharmaceutical agents.

In issuing a license or renewal, the department, with the recommendation of the board, shall state whether such person licensed in the practice of optometry has been certified to use pharmaceutical agents pursuant to section 38-2613, 38-2614, or 38-2615 and shall determine an appropriate means to further identify those persons who are certified in the diagnostic use of such agents or the therapeutic use of such agents.

Source: Laws 1979, LB 9, § 7; Laws 1986, LB 131, § 4; Laws 1993, LB 429, § 5; Laws 1998, LB 369, § 7; Laws 1999, LB 828, § 98; R.S.1943, (2003), § 71-1,135.04; Laws 2007, LB236, § 24; Laws 2007, LB463, § 882.

38-2611 Continuing competency requirements; waiver.

The department, with the recommendation of the board, may waive continuing competency requirements, in part or in total, for any two-year licensing period when a credential holder submits documentation that circumstances

beyond his or her control prevented completion of such requirements as provided in section 38-146. In addition to circumstances determined by the department to be beyond the credential holder's control pursuant to such section, such circumstances shall include situations in which:

- (1) The credential holder has submitted proof that he or she was suffering from a serious or disabling illness or physical disability which prevented completion of the required continuing competency activities during the twenty-four months preceding the renewal date; or
- (2) The credential holder was initially licensed within the twenty-six months immediately preceding the renewal date.

Source: Laws 1965, c. 415, § 2, p. 1325; Laws 1985, LB 250, § 14; Laws 1986, LB 926, § 46; Laws 1988, LB 1100, § 42; Laws 1997, LB 307, § 123; Laws 1999, LB 828, § 99; Laws 2001, LB 209, § 10; Laws 2002, LB 1021, § 21; R.S.1943, (2003), § 71-1,136.01; Laws 2007, LB236, § 27; Laws 2007, LB463, § 883; Laws 2008, LB972, § 2.

Operative date December 1, 2008.

38-2612 Fees.

The department shall establish and collect fees for credentialing under the Optometry Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 884.

38-2613 Optometrist; diagnostic pharmaceutical agents; use; certification.

(1) An optometrist licensed in this state may use topical ocular pharmaceutical agents for diagnostic purposes authorized under subdivision (1)(b) of section 38-2605, if such person is certified by the department, with the recommendation of the board, as qualified to use topical ocular pharmaceutical agents for diagnostic purposes.

(2) Such certification shall require (a) satisfactory completion of a pharmacology course at an institution accredited by a regional or professional accrediting organization which is recognized by the United States Department of Education and approved by the board and passage of an examination approved by the board or (b) evidence provided by the optometrist of certification in another state for use of diagnostic pharmaceutical agents which is deemed by the board as satisfactory validation of such qualifications.

Source: Laws 1979, LB 9, § 5; Laws 1986, LB 131, § 3; Laws 1987, LB 116, § 2; Laws 1988, LB 1100, § 41; Laws 1994, LB 987, § 1; Laws 1996, LB 1044, § 439; Laws 1998, LB 369, § 5; Laws 1999, LB 828, § 96; Laws 2003, LB 242, § 50; R.S.1943, (2003), § 71-1,135.02; Laws 2007, LB236, § 23; Laws 2007, LB247, § 73; Laws 2007, LB296, § 341; Laws 2007, LB463, § 885.

38-2614 Optometrist; therapeutic pharmaceutical agents; certification of courses of instruction; board approval.

(1) An optometrist licensed in this state may use topical ocular pharmaceutical agents for therapeutic purposes authorized under subdivision (1)(b) or (c) of section 38-2605 if such person is certified by the department, with the recom-

mentation of the board, as qualified to use ocular pharmaceutical agents for therapeutic purposes, including the treatment of glaucoma.

(2) Such certification shall require (a) satisfactory completion of classroom education and clinical training which emphasizes the examination, diagnosis, and treatment of the eye, ocular adnexa, and visual system offered by a school or college approved by the board and passage of an examination approved by the board or (b) evidence provided by the optometrist of certification in another state for the use of therapeutic pharmaceutical agents which is deemed by the board as satisfactory validation of such qualifications.

Source: Laws 2007, LB247, § 74; Laws 2007, LB463, § 886.

38-2615 Optometrist; applicability of requirements.

After January 1, 2000, only an optometrist licensed in this state prior to April 30, 1987, may practice optometry without meeting the requirements and obtaining certification required by sections 38-2613 and 38-2614.

Source: Laws 2007, LB247, § 75; Laws 2007, LB463, § 887.

38-2616 Optometry; approved schools; requirements.

No school of optometry shall be approved by the board as an accredited school unless the school is accredited by a regional or professional accrediting organization which is recognized by the United States Department of Education.

Source: Laws 1927, c. 167, § 114, p. 488; C.S.1929, § 71-1604; R.S. 1943, § 71-1,136; Laws 1965, c. 415, § 1, p. 1325; Laws 1979, LB 9, § 8; Laws 1994, LB 987, § 3; Laws 1996, LB 1044, § 440; R.S.1943, (2003), § 71-1,136; Laws 2007, LB236, § 26; Laws 2007, LB296, § 342; Laws 2007, LB463, § 889.

38-2617 Use of pharmaceutical agents by licensed optometrist; standard of care.

A licensed optometrist who administers or prescribes pharmaceutical agents for examination or for treatment shall provide the same standard of care to patients as that provided by a physician licensed in this state to practice medicine and surgery utilizing the same pharmaceutical agents for examination or treatment.

Source: Laws 1993, LB 429, § 3; Laws 1998, LB 369, § 8; R.S.1943, (2003), § 71-1,135.06; Laws 2007, LB236, § 25; Laws 2007, LB463, § 890.

38-2618 Optometric assistants; authorized.

Any licensed optometrist may employ optometric assistants. Such assistants, under the supervision of a licensed optometrist, may perform such duties as are prescribed in accordance with rules and regulations adopted and promulgated by the department, with the recommendation of the board.

Source: Laws 2002, LB 1062, § 31; R.S.1943, (2003), § 71-1,135.07; Laws 2007, LB463, § 891.

38-2619 Optometry; patient's freedom of choice.

No agencies of the state or its subdivisions administering relief, public assistance, public welfare assistance, or other health service under the laws of this state, including the public schools, shall in the performance of their duties, interfere with any patient's freedom of choice in the selection of practitioners licensed to perform examinations and provide treatment within the field for which their respective licenses entitle them to practice.

Source: Laws 1967, c. 431, § 1, p. 1319; R.S.1943, (2003), § 71-1,136.04; Laws 2007, LB236, § 28; Laws 2007, LB463, § 892.

Cross References

Provisions for insuring cost of service of optometrist, see section 44-513.

38-2620 Nebraska Optometry Education Assistance Contract Program; purpose.

There is hereby established the Nebraska Optometry Education Assistance Contract Program for the purpose of providing opportunities for citizens of this state desiring to pursue study in the field of optometry at accredited schools and colleges outside the state.

Source: Laws 1974, LB 911, § 1; R.S.1943, (2003), § 71-1,136.05; Laws 2007, LB463, § 893.

38-2621 Program; Board of Regents; administer; rules and regulations; adopt; reports; conditions.

The program established by section 38-2620 shall be administered by the Board of Regents of the University of Nebraska. The Board of Regents shall adopt appropriate rules and regulations to carry out sections 38-2620 to 38-2623 and negotiate contract arrangements with accredited schools and colleges of optometry, as provided in section 38-2616, for the admission and education of qualified applicants who are citizens of Nebraska and who have demonstrated their interest, aptitude, and readiness for study in the field of optometry. The Board of Regents shall require reports each year from institutions receiving payments showing the progress and suitability of each student being aided and containing such other information as such board deems proper.

Source: Laws 1974, LB 911, § 2; R.S.1943, (2003), § 71-1,136.06; Laws 2007, LB463, § 894.

38-2622 Program; financial assistance; number of students.

The total number of students receiving annual financial payments made under sections 38-2620 to 38-2623 shall not exceed sixty students during any school year. No more than fifteen of these students shall be students enrolling in a college of optometry for their first year of instruction.

Source: Laws 1974, LB 911, § 3; R.S.1943, (2003), § 71-1,136.07; Laws 2007, LB463, § 895.

38-2623 Program; financial assistance; limitation.

Financial assistance under sections 38-2620 to 38-2623 shall be continued not to exceed four years until the enrolled student has received a degree in

optometry. Contracts with schools and colleges shall set forth terms and provisions for continuation of such payments.

Source: Laws 1974, LB 911, § 4; R.S.1943, (2003), § 71-1,136.08; Laws 2007, LB463, § 896.

**ARTICLE 27
PERFUSION PRACTICE ACT**

Cross References

- Child abuse, duty to report, see section 28-711.
- Division of Public Health of the Department of Health and Human Services, see section 81-3113.
- Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.
- Good Samaritan provisions, see section 25-21,186.
- Health and Human Services Act, see section 81-3110.
- License Suspension Act, see section 43-3301.
- Nebraska Regulation of Health Professions Act, see section 71-6201.
- Patient Safety Improvement Act, see section 71-8701.
- State Board of Health, duties, see section 71-2610 et seq.
- Uniform Controlled Substances Act, see section 28-401.01.

Section

- 38-2701. Act, how cited.
- 38-2702. Legislative findings and declarations.
- 38-2703. Terms, defined.
- 38-2704. License required; exceptions.
- 38-2705. License requirements.
- 38-2706. Education and examination requirements; waiver.
- 38-2707. Temporary license.
- 38-2708. Fees.
- 38-2709. Title and abbreviation; use.
- 38-2710. Rules and regulations.
- 38-2711. Code of ethics; record of licensees.
- 38-2712. Perfusionist Committee; created; membership; powers and duties; expenses.

38-2701 Act, how cited.

Sections 38-2701 to 38-2712 shall be known and may be cited as the Perfusion Practice Act.

Source: Laws 2007, LB236, § 8; R.S.Supp.,2007, § 71-1,390; Laws 2007, LB247, § 76.

38-2702 Legislative findings and declarations.

The Legislature finds and declares that the public interest requires the regulation of the practice of perfusion and the establishment of clear licensure standards for perfusionists and that the health and welfare of the residents of the State of Nebraska will be protected by identifying to the public those individuals who are qualified and legally authorized to practice perfusion.

Source: Laws 2007, LB236, § 9; R.S.Supp.,2007, § 71-1,391.

38-2703 Terms, defined.

For purposes of the Perfusion Practice Act:

- (1) Board means the Board of Medicine and Surgery;
- (2) Committee means the Perfusionist Committee created under section 38-2712;

(3) Extracorporeal circulation means the diversion of a patient's blood through a heart-lung machine or a similar device that assumes the functions of the patient's heart, lungs, kidney, liver, or other organs;

(4) Perfusion means the functions necessary for the support, treatment, measurement, or supplementation of the cardiovascular, circulatory, and respiratory systems or other organs, or a combination of such activities, and to ensure the safe management of physiologic functions by monitoring and analyzing the parameters of the systems under an order and under the supervision of a licensed physician, including:

(a) The use of extracorporeal circulation, long-term cardiopulmonary support techniques including extracorporeal carbon dioxide removal and extracorporeal membrane oxygenation, and associated therapeutic and diagnostic technologies;

(b) Counterpulsation, ventricular assistance, autotransfusion, blood conservation techniques, myocardial and organ preservation, extracorporeal life support, and isolated limb perfusion;

(c) The use of techniques involving blood management, advanced life support, and other related functions; and

(d) In the performance of the acts described in subdivisions (a) through (c) of this subdivision:

(i) The administration of:

(A) Pharmacological and therapeutic agents; and

(B) Blood products or anesthetic agents through the extracorporeal circuit or through an intravenous line as ordered by a physician;

(ii) The performance and use of:

(A) Anticoagulation monitoring and analysis;

(B) Physiologic monitoring and analysis;

(C) Blood gas and chemistry monitoring and analysis;

(D) Hematologic monitoring and analysis;

(E) Hypothermia and hyperthermia;

(F) Hemoconcentration and hemodilution; and

(G) Hemodialysis; and

(iii) The observation of signs and symptoms related to perfusion services, the determination of whether the signs and symptoms exhibit abnormal characteristics, and the implementation of appropriate reporting, clinical perfusion protocols, or changes in, or the initiation of, emergency procedures; and

(5) Perfusionist means a person who is licensed to practice perfusion pursuant to the Perfusion Practice Act.

Source: Laws 2007, LB236, § 10; R.S.Supp.,2007, § 71-1,392.

38-2704 License required; exceptions.

After September 1, 2007, no person shall practice perfusion, whether or not compensation is received or expected, unless the person holds a license to practice perfusion under the Perfusion Practice Act, except that nothing in the act shall be construed to:

(1) Prohibit any person credentialed to practice under any other law from engaging in the practice for which he or she is credentialed;

(2) Prohibit any student enrolled in a bona fide perfusion training program recognized by the board from performing those duties which are necessary for the student's course of study, if the duties are performed under the supervision and direction of a perfusionist who is on duty and immediately available in the assigned patient care area; or

(3) Prohibit any person from practicing perfusion within the scope of his or her official duties when employed by an agency, bureau, or division of the federal government, serving in the Armed Forces or the Public Health Service of the United States, or employed by the Veterans Administration.

Source: Laws 2007, LB236, § 11; R.S.Supp.,2007, § 71-1,393.

38-2705 License requirements.

To be eligible to be licensed as a perfusionist, an applicant shall fulfill the following requirements:

(1) Submit evidence of successful completion of a perfusion education program with standards established by the Accreditation Committee for Perfusion Education and approved by the Commission on Accreditation of Allied Health Education Programs or a program with substantially equivalent education standards approved by the board; and

(2) Submit evidence of successful completion of the certification examinations offered by the American Board of Cardiovascular Perfusion, or its successor, or a substantially equivalent examination approved by the board.

Source: Laws 2007, LB236, § 12; R.S.Supp.,2007, § 71-1,394; Laws 2007, LB247, § 77.

Cross References

Uniform Credentialing Act, see section 38-101.

38-2706 Education and examination requirements; waiver.

The board may waive the education and examination requirements under section 38-2705 for an applicant who:

(1) Within one hundred eighty days after September 1, 2007, submits evidence satisfactory to the board that he or she has been operating cardiopulmonary bypass systems for cardiac surgical patients as his or her primary function in a licensed health care facility for at least two of the last ten years prior to September 1, 2007;

(2) Submits evidence of holding a current certificate as a Certified Clinical Perfusionist issued by the American Board of Cardiovascular Perfusion, or its successor; or

(3) Submits evidence of holding a credential as a perfusionist issued by another state or possession of the United States or the District of Columbia which has standards substantially equivalent to those of this state.

Source: Laws 2007, LB236, § 13; R.S.Supp.,2007, § 71-1,395.

38-2707 Temporary license.

The department shall issue a temporary license to a person who has applied for licensure pursuant to the Perfusion Practice Act and who, in the judgment

of the department, with the recommendation of the board, is eligible for examination. An applicant with a temporary license may practice only under the direct supervision of a perfusionist. The board may adopt and promulgate rules and regulations governing such direct supervision which do not require the immediate physical presence of the supervising perfusionist. A temporary license shall expire one year after the date of issuance and may be renewed for a subsequent one-year period, subject to the rules and regulations adopted under the act. A temporary license shall be surrendered to the department upon its expiration.

Source: Laws 2007, LB236, § 14; R.S.Supp.,2007, § 71-1,396.

38-2708 Fees.

The department shall establish and collect fees for initial licensure and renewal under the Perfusion Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB247, § 78.

38-2709 Title and abbreviation; use.

No person shall use the title Perfusionist, the abbreviation LP, or any other title, designation, words, letters, abbreviations, or insignia indicating the practice of perfusion unless licensed to practice perfusion.

Source: Laws 2007, LB236, § 16; R.S.Supp.,2007, § 71-1,398.

38-2710 Rules and regulations.

The department, with the recommendation of the board, shall adopt and promulgate rules and regulations to carry out the Perfusion Practice Act.

Source: Laws 2007, LB236, § 17; R.S.Supp.,2007, § 71-1,399.

38-2711 Code of ethics; record of licensees.

The board shall adopt and publish a code of ethics for perfusionists and maintain a record of every perfusionist licensed in this state which includes his or her place of business, place of residence, and license date and number.

Source: Laws 2007, LB236, § 18; R.S.Supp.,2007, § 71-1,400.

38-2712 Perfusionist Committee; created; membership; powers and duties; expenses.

(1) There is created the Perfusionist Committee which shall review and make recommendations to the board regarding all matters relating to perfusionists that come before the board. Such matters shall include, but not be limited to, (a) applications for licensure, (b) perfusionist education, (c) scope of practice, (d) proceedings arising relating to disciplinary actions, (e) perfusionist licensure requirements, and (f) continuing competency. The committee shall be directly responsible to the board.

(2) The committee shall be appointed by the State Board of Health and shall be composed of two perfusionists and one physician who has clinical experience with perfusionists. The physician member may also be a member of the Board of Medicine and Surgery. The chairperson of the committee shall be elected by a majority vote of the committee members. All appointments shall be

for five-year terms, at staggered intervals. Members shall serve no more than two consecutive terms. Reappointments shall be made by the State Board of Health.

(3) The committee shall meet on a regular basis, and committee members shall, in addition to necessary traveling and lodging expenses, receive a per diem for each day actually engaged in the discharge of his or her duties, including compensation for the time spent in traveling to and from the place of conducting business. Traveling and lodging expenses shall be reimbursed on the same basis as provided in sections 81-1174 to 81-1177. The compensation shall not exceed fifty dollars per day and shall be determined by the committee with the approval of the department.

Source: Laws 2007, LB236, § 19; R.S.Supp.,2007, § 71-1,401.

ARTICLE 28

PHARMACY PRACTICE ACT

Cross References

Access to medical records, see section 71-8401 et seq.
Adulterated or misbranded drugs, regulations, see sections 71-2401 to 71-2405.
Alcoholic liquor, possession and use in practice, see section 53-168.06.
Child abuse, duty to report, see section 28-711.
Community health center, relabeling and redispensing prescription drugs, see section 71-2431.
Division of Public Health of the Department of Health and Human Services, see section 81-3113.
Emergency Box Drug Act, see section 71-2410.
Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.
Good Samaritan provisions, see section 25-21,186.
Health and Human Services Act, see section 81-3110.
Health Care Facility Licensure Act, see section 71-401.
Health Care Professional Credentialing Verification Act, see section 44-7001.
Health insurer, choice of pharmacy, see section 44-783.
Home health aides, see section 71-6601 et seq.
Immunization information, sharing authorized, see section 71-541.
License Suspension Act, see section 43-3301.
Liquor tax not applicable to medicinal preparations, see section 53-160.
Mail Service Pharmacy Licensure Act, see section 71-2406.
Mail-order pharmacies, insurance reimbursement, see section 44-513.02.
Medication Aide Act, see section 71-6718.
Nebraska Drug Product Selection Act, see section 71-5401.01.
Nebraska Liquor Control Act, see section 53-101.
Nebraska Regulation of Health Professions Act, see section 71-6201.
Patient Safety Improvement Act, see section 71-8701.
Poisons, sale of, see sections 71-2501 to 71-2512.
Prepaid Limited Health Service Organization Act, see section 44-4701.
Rural Health Systems and Professional Incentive Act, see section 71-5650.
State Board of Health, duties, see section 71-2610 et seq.
Statewide Trauma System Act, see section 71-8201.
Uniform Controlled Substances Act, see section 28-401.01.
Volunteer in free clinic or other facility, immunity from liability, see section 25-21,188.02.
Wholesale Drug Distributor Licensing Act, see section 71-7427.

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§ 38-2801

HEALTH OCCUPATIONS AND PROFESSIONS

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38-2801 Act, how cited.

Sections 38-2801 to 38-28,103 shall be known and may be cited as the Pharmacy Practice Act.

Source: Laws 2007, LB247, § 79; Laws 2007, LB463, § 897.

38-2802 Definitions, where found.

For purposes of the Pharmacy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2803 to 38-2848 apply.

Source: Laws 2007, LB463, § 898.

38-2803 Accredited hospital or clinic, defined.

Accredited hospital or clinic means a hospital or clinic approved by the board.

Source: Laws 1978, LB 675, § 4; Laws 1996, LB 1044, § 457; Laws 1999, LB 828, § 117; R.S.1943, (2003), § 71-1,147.20; Laws 2007, LB463, § 899.

38-2804 Accredited pharmacy program, defined.

An accredited pharmacy program means one approved by the board upon the recommendation of the accrediting committee of the Accreditation Council for Pharmacy Education. It shall be a pharmacy program which maintains at least a three-year course in pharmacy, consisting of not less than thirty-two weeks of instruction each school year. Such pharmacy program shall require as a condition to enrollment therein two full years of college or university credit. The combined course shall consist of five years of college or university credit each year of which shall consist of not less than thirty-two weeks of instruction.

Source: Laws 1927, c. 167, § 125, p. 492; C.S.1929, § 71-1806; Laws 1939, c. 91, § 2, p. 393; C.S.Supp.,1941, § 71-1806; Laws 1943, c. 151, § 3, p. 553; R.S.1943, § 71-1,146; Laws 1971, LB 350, § 4; Laws 1999, LB 828, § 111; Laws 2004, LB 1005, § 16; R.S.Supp.,2006, § 71-1,146; Laws 2007, LB463, § 900.

38-2805 Accredited school or college of pharmacy, defined.

Accredited school or college of pharmacy means a school or college of pharmacy or a department of pharmacy of a university approved by the board pursuant to section 38-2804.

Source: Laws 1978, LB 675, § 5; Laws 1999, LB 828, § 118; R.S.1943, (2003), § 71-1,147.21; Laws 2007, LB463, § 901.

38-2806 Administer, defined.

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.

Source: Laws 2007, LB463, § 902.

38-2807 Administration, defined.

Administration means the act of (1) administering, (2) keeping a record of such activity, and (3) observing, monitoring, reporting, and otherwise taking appropriate action regarding desired effect, side effect, interaction, and contraindication associated with administering the drug or device.

Source: Laws 2007, LB463, § 903.

38-2808 Board, defined.

Board means the Board of Pharmacy.

Source: Laws 2007, LB463, § 904.

38-2809 Caregiver, defined.

Caregiver means any person acting as an agent on behalf of a patient or any person aiding and assisting a patient.

Source: Laws 2007, LB463, § 905.

38-2810 Chart order, defined.

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.

Source: Laws 2007, LB463, § 906.

38-2811 Compounding, defined.

Compounding means the preparation of components into a drug product (1) 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 (2) for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing. Compounding includes the preparation of drugs or devices in anticipation of receiving medical orders based upon routine, regularly observed prescribing patterns.

Source: Laws 2007, LB463, § 907.

38-2812 Delegated dispensing, defined.

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 38-2872 to 38-2889 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.

Source: Laws 2007, LB463, § 908.

38-2813 Deliver or delivery, defined.

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.

Source: Laws 2007, LB463, § 909.

38-2814 Device, defined.

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.

Source: Laws 2007, LB463, § 910.

38-2815 Dialysis drug or device distributor, defined.

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.

Source: Laws 2007, LB463, § 911.

38-2816 Dialysis drug or device distributor worker, defined.

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.

Source: Laws 2007, LB463, § 912.

38-2817 Dispense or dispensing, defined.

(1) 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.

(2) 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.

Source: Laws 2007, LB463, § 913.

38-2818 Distribute, defined.

Distribute means to deliver a drug or device, other than by administering or dispensing.

Source: Laws 2007, LB463, § 914.

38-2819 Drugs, medicines, and medicinal substances, defined.

Drugs, medicines, and medicinal substances means (1) 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, (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in humans or animals, (3) articles, except food, intended to affect the structure or any function of the body of a human or an animal, (4) articles intended for use as a component of any articles specified in subdivision (1), (2), or (3) of this section, except any device or its components, parts, or accessories, and (5) prescription drugs or devices.

Source: Laws 2007, LB463, § 915.

38-2820 Electronic signature, defined.

Electronic signature has the same meaning as in section 86-621.

Source: Laws 2007, LB463, § 916.

38-2821 Electronic transmission, defined.

Electronic transmission means transmission of information in electronic form. Electronic transmission may include computer-to-computer transmission or computer-to-facsimile transmission.

Source: Laws 2007, LB463, § 917.

38-2822 Facility, defined.

Facility means a health care facility as defined in section 71-413.

Source: Laws 2007, LB463, § 918.

38-2823 Facsimile, defined.

Facsimile means a copy generated by a system that encodes a document or photograph into electrical signals, transmits those signals over telecommunications lines, and reconstructs the signals to create an exact duplicate of the original document at the receiving end.

Source: Laws 2007, LB463, § 919.

38-2824 Graduate pharmacy education or approved program, defined.

Graduate pharmacy education or approved program means a period of supervised educational training by a graduate of an accredited school or college of pharmacy, which training has been approved by the board.

Source: Laws 1978, LB 675, § 3; Laws 1996, LB 1044, § 456; Laws 1999, LB 828, § 116; R.S.1943, (2003), § 71-1,147.19; Laws 2007, LB463, § 920.

38-2825 Hospital, defined.

Hospital has the same meaning as in section 71-419.

Source: Laws 2007, LB463, § 921.

38-2826 Labeling, defined.

Labeling means the process of preparing and affixing a label to any drug container or device container, exclusive of the labeling by a manufacturer, 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.

Source: Laws 2007, LB463, § 922.

38-2827 Medical gas distributor, defined.

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.

Source: Laws 2007, LB463, § 923.

38-2828 Medical order, defined.

Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner.

Source: Laws 2007, LB463, § 924.

38-2829 Nonprescription drugs, defined.

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.

Source: Laws 2007, LB463, § 925.

38-2830 Patient counseling, defined.

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 38-2869.

Source: Laws 2007, LB463, § 926.

38-2831 Pharmaceutical care, defined.

(1) 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.

(2) 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.

Source: Laws 2007, LB463, § 927.

38-2832 Pharmacist, defined.

Pharmacist means any person who is licensed by the State of Nebraska to practice pharmacy.

Source: Laws 2007, LB463, § 928.

38-2833 Pharmacist in charge, defined.

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.

Source: Laws 2007, LB463, § 929.

38-2834 Pharmacist intern, defined.

Pharmacist intern means a person who meets the requirements of section 38-2854.

Source: Laws 2007, LB463, § 930.

38-2835 Pharmacy, defined.

Pharmacy has the same meaning as in section 71-425.

Source: Laws 2007, LB463, § 931.

38-2836 Pharmacy technician, defined.

Pharmacy technician means an individual registered under sections 38-2890 to 38-2897.

Source: Laws 2007, LB247, § 80; Laws 2007, LB463, § 932.

38-2837 Practice of pharmacy, defined.

(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.

(2) The active practice of pharmacy means the performance of the functions set out in this section by a pharmacist as his or her principal or ordinary occupation.

Source: Laws 2007, LB463, § 933.

38-2838 Practitioner, defined.

Practitioner means a certified registered nurse anesthetist, a certified nurse midwife, a dentist, an optometrist, a nurse practitioner, a physician assistant, a physician, a podiatrist, or a veterinarian.

Source: Laws 2007, LB463, § 934.

38-2839 Prescribe, defined.

Prescribe means to issue a medical order.

Source: Laws 2007, LB463, § 935.

38-2840 Prescription, defined.

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.

Source: Laws 2007, LB463, § 936.

38-2841 Prescription drug or device or legend drug or device, defined.

Prescription drug or device or legend drug or device means:

(1) 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:

- (a) Caution: Federal law prohibits dispensing without prescription;
- (b) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian; or
- (c) "Rx Only"; or

(2) 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.

Source: Laws 2007, LB463, § 937.

38-2842 Public health clinic, defined.

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.

Source: Laws 2007, LB463, § 938.

38-2843 Public health clinic worker, defined.

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.

Source: Laws 2007, LB463, § 939.

38-2844 Signature, defined.

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 86-611 or an electronic signature.

Source: Laws 2007, LB463, § 940.

38-2845 Supervision, defined.

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.

Source: Laws 2007, LB463, § 941.

38-2846 Temporary educational permit, defined.

Temporary educational permit means a permit to practice pharmacy in a supervised educational program approved by the board.

Source: Laws 1978, LB 675, § 2; Laws 1999, LB 828, § 115; R.S.1943, (2003), § 71-1,147.18; Laws 2007, LB463, § 942.

38-2847 Verification, defined.

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.

Source: Laws 2007, LB463, § 943.

38-2848 Written control procedures and guidelines, defined.

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.

Source: Laws 2007, LB463, § 944.

38-2849 Board; membership; qualifications.

The board shall be composed of five members, including four actively practicing pharmacists, at least one of whom practices within the confines of a hospital, and one public member who is interested in the health of the people of Nebraska.

Source: Laws 2007, LB463, § 945.

38-2850 Pharmacy; practice; persons excepted.

As authorized by the Uniform Credentialing Act, the practice of pharmacy may be engaged in by a pharmacist, a pharmacist intern, or a practitioner with a pharmacy license. The practice of pharmacy shall not be construed to include:

(1) Persons who sell, offer, or expose for sale completely denatured alcohol or concentrated lye, insecticides, and fungicides in original packages;

(2) Practitioners, other than veterinarians, certified nurse midwives, certified registered nurse anesthetists, and nurse practitioners, who dispense drugs or devices as an incident to the practice of their profession, except that if such practitioner regularly engages in dispensing such drugs or devices to his or her patients for which such patients are charged, such practitioner shall obtain a pharmacy license;

(3) Persons who sell, offer, or expose for sale nonprescription drugs or proprietary medicines, the sale of which is not in itself a violation of the Nebraska Liquor Control Act;

(4) Medical representatives, detail persons, or persons known by some name of like import, but only to the extent of permitting the relating of pharmaceutical information to health care professionals;

(5) Licensed veterinarians practicing within the scope of their profession;

(6) Certified nurse midwives, certified registered nurse anesthetists, and nurse practitioners who dispense sample medications which are provided by the manufacturer and are dispensed at no charge to the patient;

(7) Hospitals engaged in the compounding and dispensing of drugs and devices pursuant to chart orders for persons registered as patients and within the confines of the hospital, except that if a hospital engages in such compounding and dispensing for persons not registered as patients and within the confines of the hospital, such hospital shall obtain a pharmacy license or delegated dispensing permit;

(8) Optometrists who prescribe or dispense eyeglasses or contact lenses to their own patients;

(9) Registered nurses employed by a hospital who administer pursuant to a chart order, or procure for such purpose, single doses of drugs or devices from original drug or device containers or properly labeled prepackaged drug or device containers to persons registered as patients and within the confines of the hospital;

(10) Persons employed by a facility where dispensed drugs and devices are delivered from a pharmacy for pickup by a patient or caregiver and no dispensing or storage of drugs or devices occurs; and

(11) Persons who sell or purchase medical products, compounds, vaccines, or serums used in the prevention or cure of animal diseases and maintenance of

animal health if such medical products, compounds, vaccines, or serums are not sold or purchased under a direct, specific, written medical order of a licensed veterinarian.

Source: Laws 1927, c. 167, § 121, p. 490; C.S.1929, § 71-1802; R.S. 1943, § 71-1,143; Laws 1961, c. 339, § 2, p. 1062; Laws 1971, LB 350, § 2; Laws 1983, LB 476, § 7; Laws 1994, LB 900, § 3; Laws 1996, LB 414, § 7; Laws 1996, LB 1108, § 15; Laws 2000, LB 1115, § 18; Laws 2001, LB 398, § 29; Laws 2005, LB 256, § 30; R.S.Supp.,2006, § 71-1,143; Laws 2007, LB463, § 946.

Cross References

Nebraska Liquor Control Act, see section 53-101.

38-2851 Pharmacist; license; requirements.

(1) Every applicant for examination and licensure as a pharmacist shall be a graduate of an accredited pharmacy program, except that an applicant who is a graduate of a pharmacy program located outside of the United States and which is not accredited shall be deemed to have satisfied the requirement of being a graduate of an accredited pharmacy program upon providing evidence satisfactory to the department, with the recommendation of the board, of graduation from such foreign pharmacy program and upon successfully passing an equivalency examination approved by the board.

(2) Every applicant shall (a) file proof of sufficient internship experience in pharmacy, under the supervision of a licensed pharmacist, as may be required by the department, with the recommendation of the board, which shall comply with national requirements for internship as set forth by the National Association of Boards of Pharmacy, (b) have satisfactorily completed at least five years of college of which at least three years shall have been in an accredited pharmacy program, (c) pass an examination approved by the board, and (d) present proof satisfactory to the department, with the recommendation of the board, that he or she (i) has passed an examination approved by the board within the last three years, (ii) has been in the active practice of the profession of pharmacy in another state, territory, or the District of Columbia for one year within the three years immediately preceding the application for licensure, (iii) has become board-certified in a specialty recognized by the Board of Pharmaceutical Specialties within the seven years immediately preceding the application for licensure, or (iv) has completed continuing competency in pharmacy that is approved by the Board of Pharmacy.

(3) Proof of the qualifications for licensure prescribed in this section shall be made to the satisfaction of the department, with the recommendation of the board, substantiated by proper affidavits. In all cases the actual time of attendance in an accredited pharmacy program shall be certified by the appropriate school, college, or university authority by the issuance of the degree granted to a graduate of such school, college, or university. Service and experience in pharmacy under the supervision of a licensed pharmacist, as required in this section, shall be predominantly related to the practice of pharmacy and shall include the keeping of records and the making of reports required under state and federal statutes. The department, with the recommendation of the board, shall adopt and promulgate rules and regulations as may be required to establish standards for internship which shall comply with

national requirements to effect reciprocity with other states which have similar requirements for licensure.

Source: Laws 1927, c. 167, § 123, p. 491; C.S.1929, § 71-1804; Laws 1939, c. 91, § 1, p. 393; C.S.Supp.,1941, § 71-1804; Laws 1943, c. 151, § 2, p. 552; R.S.1943, § 71-1,145; Laws 1971, LB 350, § 3; Laws 1974, LB 811, § 14; Laws 1983, LB 476, § 14; Laws 1996, LB 1044, § 449; Laws 1999, LB 828, § 110; R.S.Supp.,2000, § 71-1,145; Laws 2001, LB 398, § 30; Laws 2003, LB 242, § 51; Laws 2003, LB 245, § 13; Laws 2004, LB 1005, § 15; R.S.Supp.,2006, § 71-1,143.01; Laws 2007, LB296, § 345; Laws 2007, LB463, § 947.

Cross References

Uniform Credentialing Act, see section 38-101.

38-2852 Examination; grade.

Every applicant for licensure as a pharmacist shall be required to attain a grade to be determined by the board in an examination in pharmacy and a grade of seventy-five in an examination in jurisprudence of pharmacy.

Source: Laws 2007, LB463, § 948.

38-2853 Pharmacy; temporary pharmacist license; renewal; fees.

A temporary pharmacist license may be granted to persons meeting all of the qualifications for a pharmacist license except the requirement that they be citizens of the United States. Such temporary license shall be issued for a period of one year from the date of issuance and may be renewed each year thereafter for four additional years, and if the person so licensed has not become a citizen of the United States within five years of the date such temporary license was issued, such license shall terminate and the person so licensed shall have no further right to practice pharmacy in this state. If a temporary pharmacist licensee becomes a citizen of the United States while a temporary pharmacist license is in force and provides evidence thereof to the department, a pharmacist license may be issued in place of such temporary license and no additional fee shall be charged unless such temporary license had already expired, in which case a renewal fee shall be charged. The applicant for a temporary pharmacist license shall submit proof of his or her eligibility and intent to become a citizen of the United States. The fees to be paid and procedures for the denial, suspension, revocation, or reinstatement of such temporary license shall be the same as for a pharmacist license.

Source: Laws 1973, LB 515, § 6; Laws 1996, LB 1044, § 450; R.S.1943, (1996), § 71-1,145.01; Laws 2001, LB 398, § 31; R.S.1943, (2003), § 71-1,143.02; Laws 2007, LB463, § 949.

38-2854 Pharmacist intern; qualifications; registration; powers.

(1) A pharmacist intern shall be (a) a student currently enrolled in an accredited pharmacy program, (b) a graduate of an accredited pharmacy program serving his or her internship, or (c) a graduate of a pharmacy program located outside the United States which is not accredited and who has successfully passed equivalency examinations approved by the board. Intern registration based on enrollment in or graduation from an accredited pharmacy

program shall expire not later than fifteen months after the date of graduation or at the time of professional licensure, whichever comes first. Intern registration based on graduation from a pharmacy program located outside of the United States which is not accredited shall expire not later than fifteen months after the date of issuance of the registration or at the time of professional licensure, whichever comes first.

(2) A 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 (a) the person to whom the pharmacy license is issued or a person in the actual employ of the pharmacy licensee or (b) the delegating pharmacist designated in a delegated dispensing agreement by a hospital with a delegated dispensing permit.

Source: Laws 2004, LB 1005, § 14; R.S.Supp.,2006, § 71-1,144; Laws 2007, LB463, § 950.

Cross References

Uniform Credentialing Act, see section 38-101.

38-2855 Pharmacy; temporary educational permits; issuance.

The department, with the recommendation of the board, shall have authority to issue temporary educational permits to qualified applicants in accordance with the Pharmacy Practice Act.

Source: Laws 1978, LB 675, § 6; Laws 1996, LB 1044, § 458; Laws 1999, LB 828, § 119; R.S.1943, (2003), § 71-1,147.22; Laws 2007, LB463, § 951.

38-2856 Temporary educational permit; practice pharmacy; conditions.

The holder of a temporary educational permit shall be entitled to practice pharmacy while serving in a supervised educational program or in an approved graduate pharmacy education program conducted by an accredited hospital or clinic in the State of Nebraska or by an accredited school or college of pharmacy in the State of Nebraska. The holder of a temporary educational permit shall not be qualified to engage in the practice of pharmacy outside of the assigned training program or outside the confines of the accredited hospital or clinic or the accredited school or college.

Source: Laws 1978, LB 675, § 7; R.S.1943, (2003), § 71-1,147.23; Laws 2007, LB463, § 952.

38-2857 Temporary educational permit; issuance; when.

Before any temporary educational permit is issued pursuant to the Pharmacy Practice Act, the department, with the recommendation of the board, shall determine that the applicant for such permit has met all of the requirements of the act relating to issuing any such permit.

Source: Laws 1978, LB 675, § 8; Laws 1996, LB 1044, § 459; Laws 1999, LB 828, § 120; R.S.1943, (2003), § 71-1,147.24; Laws 2007, LB463, § 953.

38-2858 Holder of temporary educational permit; rules and regulations; applicability.

Except as otherwise provided by law, the holder of any temporary educational permit shall be subject to all of the rules and regulations prescribed for pharmacists regularly licensed in the State of Nebraska and such other rules and regulations as may be adopted by the department, with the recommendation of the board, with respect to such permits in order to carry out the purposes of the Pharmacy Practice Act.

Source: Laws 1978, LB 675, § 9; Laws 1996, LB 1044, § 460; Laws 1999, LB 828, § 121; R.S.1943, (2003), § 71-1,147.25; Laws 2007, LB463, § 954.

38-2859 Temporary educational permit; period valid; renewal.

The duration of any temporary educational permit issued pursuant to the Pharmacy Practice Act shall be determined by the department but in no case shall it be in excess of one year. The permit may be renewed from time to time at the discretion of the department but in no case shall it be renewed for more than five one-year periods.

Source: Laws 1978, LB 675, § 10; Laws 1996, LB 1044, § 461; R.S. 1943, (2003), § 71-1,147.26; Laws 2007, LB296, § 346; Laws 2007, LB463, § 955.

38-2860 Temporary educational permit.

The department, with the recommendation of the board, may issue to all qualified graduates of accredited colleges of pharmacy, who are eligible for the examination provided for in section 38-2851, and who make application for such examination, a temporary educational permit. Such permit shall be issued only for the duration of the time between the date of the examination and the date of licensure granted as a result of such examination.

Source: Laws 1978, LB 675, § 11; Laws 2001, LB 398, § 40; R.S.1943, (2003), § 71-1,147.27; Laws 2007, LB463, § 956.

38-2861 Temporary educational permit; serve in approved program; application; contents.

Before granting any temporary educational permit, the department shall ascertain by evidence satisfactory to the department, with the recommendation of the board, that an accredited hospital or clinic or an accredited school or college of pharmacy in the State of Nebraska has requested the issuance of a temporary educational permit for an applicant to serve as a graduate student in its approved program for the period involved. Any application for the issuance of such permit shall be signed by the applicant requesting that such permit be issued to him or her and shall designate the specified approved graduate pharmacy educational program with respect to which such permit shall apply.

Source: Laws 1978, LB 675, § 12; Laws 1996, LB 1044, § 462; R.S. 1943, (2003), § 71-1,147.28; Laws 2007, LB296, § 347; Laws 2007, LB463, § 957.

38-2862 Temporary educational permit; recommendation for issuance; by whom.

The recommendation of the board to the department for the issuance of any temporary educational permits shall be made at regular meetings of the board,

but the chairperson or one other member of the board, as specifically selected by the members of the board, and its executive secretary, jointly shall have the power to recommend to the department the issuance of such permits between the meetings of the board.

Source: Laws 1978, LB 675, § 13; Laws 1999, LB 828, § 122; R.S.1943, (2003), § 71-1,147.29; Laws 2007, LB463, § 958.

38-2863 Temporary educational permit; fee.

The recipient of a temporary educational permit shall pay the required fee.

Source: Laws 1978, LB 675, § 14; Laws 1996, LB 1044, § 463; Laws 1999, LB 828, § 123; Laws 2003, LB 242, § 52; R.S.1943, (2003), § 71-1,147.30; Laws 2007, LB463, § 959.

38-2864 Temporary educational permit; disciplinary actions; appeal.

Any temporary educational permit granted under the authority of the Pharmacy Practice Act may be suspended, limited, or revoked by the department, with the recommendation of the board, at any time upon a finding that the reasons for issuing such permit no longer exist or that the person to whom such permit has been issued is no longer qualified to hold such permit or for any reason for which a pharmacist license could be suspended, limited, or revoked. A hearing on the suspension, limitation, or revocation of the temporary educational permit by the department shall be held in the same manner as for the denial of a pharmacist license. The final order of the director may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1978, LB 675, § 15; Laws 1988, LB 352, § 119; Laws 1996, LB 1044, § 464; Laws 1999, LB 828, § 124; Laws 2001, LB 398, § 41; R.S.1943, (2003), § 71-1,147.31; Laws 2007, LB296, § 348; Laws 2007, LB463, § 960.

Cross References

Administrative Procedure Act, see section 84-920.

38-2865 Holder; temporary educational permit; receive license; when.

The holder of a temporary educational permit shall not be entitled to a pharmacist license in the State of Nebraska unless and until such individual meets all of the requirements of law for issuing such pharmacist license.

Source: Laws 1978, LB 675, § 16; Laws 2001, LB 398, § 42; R.S.1943, (2003), § 71-1,147.32; Laws 2007, LB463, § 961.

38-2866 Pharmacist; powers.

Unless specifically limited by the board or the department, a pharmacist may (1) engage in the practice of pharmacy and telepharmacy as defined in section 71-2445, (2) use automation in the practice of pharmacy and telepharmacy, (3) use the abbreviation R.P. or the title licensed pharmacist, (4) enter into delegated dispensing agreements, and (5) possess, without dispensing, prescription drugs and devices, including controlled substances, for purposes of administration.

Source: Laws 2001, LB 398, § 33; R.S.1943, (2003), § 71-1,143.03; Laws 2007, LB463, § 962; Laws 2008, LB308, § 11.
Operative date December 1, 2008.

38-2867 Pharmacy; scope of practice; prohibited acts; violation; penalty.

(1) Except as provided for pharmacy technicians in sections 38-2890 to 38-2897 and for individuals authorized to dispense under a delegated dispensing permit, no person other than a licensed pharmacist, a pharmacist intern, or a practitioner with a pharmacy license shall provide pharmaceutical care, compound and dispense drugs or devices, or dispense pursuant to a medical order. Notwithstanding any other provision of law to the contrary, a pharmacist or pharmacist intern may dispense drugs or devices pursuant to a medical order of a practitioner authorized to prescribe in another state if such practitioner could be authorized to prescribe such drugs or devices in this state.

(2) Except as provided for pharmacy technicians in sections 38-2890 to 38-2897 and for individuals authorized to dispense under a delegated dispensing permit, it shall be unlawful for any person to permit or direct a person who is not a pharmacist intern, a licensed pharmacist, or a practitioner with a pharmacy license to provide pharmaceutical care, compound and dispense drugs or devices, or dispense pursuant to a medical order.

(3) It shall be unlawful for any person to coerce or attempt to coerce a pharmacist to enter into a delegated dispensing agreement or to supervise any pharmacy technician for any purpose or in any manner contrary to the professional judgment of the pharmacist. Violation of this subsection by a health care professional regulated pursuant to the Uniform Credentialing Act shall be considered an act of unprofessional conduct. A violation of this subsection by a facility shall be prima facie evidence in an action against the license of the facility pursuant to the Health Care Facility Licensure Act. Any pharmacist subjected to coercion or attempted coercion pursuant to this subsection has a cause of action against the person and may recover his or her damages and reasonable attorney's fees.

(4) Violation of this section by an unlicensed person shall be a Class III misdemeanor.

Source: Laws 1927, c. 167, § 127, p. 493; C.S.1929, § 71-1808; R.S. 1943, § 71-1,147; Laws 1961, c. 339, § 3, p. 1063; Laws 1971, LB 350, § 5; Laws 1983, LB 476, § 15; Laws 1993, LB 536, § 50; Laws 1994, LB 900, § 4; Laws 1996, LB 1108, § 16; Laws 1999, LB 594, § 44; Laws 2001, LB 398, § 34; R.S.1943, (2003), § 71-1,147; Laws 2007, LB236, § 30; Laws 2007, LB247, § 81; Laws 2007, LB463, § 963.

Cross References

Health Care Facility Licensure Act, see section 71-401.

38-2868 Pharmacist; patient information; privileged.

(1) Information with regard to a patient maintained by a pharmacist pursuant to the Pharmacy Practice Act shall be privileged and confidential and may be released only to (a) the patient or the caregiver of the patient or others authorized by the patient or his or her legal representative, (b) a physician treating the patient, (c) other physicians or pharmacists when, in the professional judgment of the pharmacist, such release is necessary to protect the patient's health or well-being, or (d) other persons or governmental agencies authorized by law to receive such information.

(2) Nothing in this section shall prohibit the release of confidential information to researchers conducting biomedical, pharmaco-epidemiologic, or pharmaco-economic research pursuant to health research approved by an institutional review board which is established in accordance with 21 C.F.R. parts 50 and 56 or 45 C.F.R. part 46, as such parts existed on April 1, 2006.

Source: Laws 1993, LB 536, § 56; Laws 1994, LB 900, § 8; Laws 2001, LB 398, § 46; R.S.1943, (2003), § 71-1,147.36; Laws 2007, LB463, § 964.

38-2869 Prospective drug utilization review; counseling; requirements.

(1)(a) Prior to the dispensing or the delivery of a drug or device pursuant to a medical order to a patient or caregiver, a pharmacist shall in all care settings conduct a prospective drug utilization review. Such prospective drug utilization review shall involve monitoring the patient-specific medical history described in subdivision (b) of this subsection and available to the pharmacist at the practice site for:

- (i) Therapeutic duplication;
- (ii) Drug-disease contraindications;
- (iii) Drug-drug interactions;
- (iv) Incorrect drug dosage or duration of drug treatment;
- (v) Drug-allergy interactions; and
- (vi) Clinical abuse or misuse.

(b) A pharmacist conducting a prospective drug utilization review shall ensure that a reasonable effort is made to obtain from the patient, his or her caregiver, or his or her practitioner and to record and maintain records of the following information to facilitate such review:

- (i) The name, address, telephone number, date of birth, and gender of the patient;
- (ii) The patient's history of significant disease, known allergies, and drug reactions and a comprehensive list of relevant drugs and devices used by the patient; and
- (iii) Any comments of the pharmacist relevant to the patient's drug therapy.

(c) The assessment of data on drug use in any prospective drug utilization review shall be based on predetermined standards, approved by the board.

(2)(a) Prior to the dispensing or delivery of a drug or device pursuant to a prescription, the pharmacist shall ensure that a verbal offer to counsel the patient or caregiver is made. The counseling of the patient or caregiver by the pharmacist shall be on elements which, in the exercise of the pharmacist's professional judgment, the pharmacist deems significant for the patient. Such elements may include, but need not be limited to, the following:

- (i) The name and description of the prescribed drug or device;
- (ii) The route of administration, dosage form, dose, and duration of therapy;
- (iii) Special directions and precautions for preparation, administration, and use by the patient or caregiver;
- (iv) Common side effects, adverse effects or interactions, and therapeutic contraindications that may be encountered, including avoidance, and the action required if such effects, interactions, or contraindications occur;

- (v) Techniques for self-monitoring drug therapy;
- (vi) Proper storage;
- (vii) Prescription refill information; and
- (viii) Action to be taken in the event of a missed dose.

(b) The patient counseling provided for in this subsection shall be provided in person whenever practical or by the utilization of telephone service which is available at no cost to the patient or caregiver.

(c) Patient counseling shall be appropriate to the individual patient and shall be provided to the patient or caregiver.

(d) Written information may be provided to the patient or caregiver to supplement the patient counseling provided for in this subsection but shall not be used as a substitute for such patient counseling.

(e) This subsection shall not be construed to require a pharmacist to provide patient counseling when:

- (i) The patient or caregiver refuses patient counseling;
- (ii) The pharmacist, in his or her professional judgment, determines that patient counseling may be detrimental to the patient's care or to the relationship between the patient and his or her practitioner;
- (iii) The patient is a patient or resident of a health care facility or health care service licensed under the Health Care Facility Licensure Act to whom prescription drugs or devices are administered by a licensed or certified staff member or consultant or a certified physician's assistant; or

(iv) The practitioner authorized to prescribe drugs or devices specifies that there shall be no patient counseling unless he or she is contacted prior to such patient counseling. The prescribing practitioner shall specify such prohibition in an oral prescription or in writing on the face of a written prescription, including any prescription which is received by facsimile or electronic transmission. The pharmacist shall note "Contact Before Counseling" on the face of the prescription if such is communicated orally by the prescribing practitioner.

Source: Laws 1993, LB 536, § 55; Laws 1998, LB 1073, § 63; Laws 2000, LB 819, § 92; Laws 2001, LB 398, § 45; Laws 2005, LB 382, § 8; R.S.Supp.,2006, § 71-1,147.35; Laws 2007, LB247, § 26; Laws 2007, LB463, § 965.

Cross References

Health Care Facility Licensure Act, see section 71-401.

38-2870 Medical order; duration; dispensing; transmission.

(1) All medical orders shall be valid for the period stated in the medical order, except that (a) if the medical order is for a controlled substance listed in section 28-405, such period shall not exceed six months from the date of issuance at which time the medical order shall expire and (b) if the medical order is for a drug or device which is not a controlled substance listed in section 28-405 or is an order issued by a practitioner for pharmaceutical care, such period shall not exceed twelve months from the date of issuance at which time the medical order shall expire.

(2) Prescription drugs or devices may only be dispensed by a pharmacist or pharmacist intern pursuant to a medical order, by an individual dispensing pursuant to a delegated dispensing permit, or as otherwise provided in section

38-2850. Notwithstanding any other provision of law to the contrary, a pharmacist or a pharmacist intern may dispense drugs or devices pursuant to a medical order or an individual dispensing pursuant to a delegated dispensing permit may dispense drugs or devices pursuant to a medical order. The Pharmacy Practice Act shall not be construed to require any pharmacist or pharmacist intern to dispense any drug or device pursuant to any medical order. A pharmacist or pharmacist intern shall retain the professional right to refuse to dispense.

(3) Except as otherwise provided in section 28-414, a practitioner or the practitioner's agent may transmit a medical order to a pharmacist or pharmacist intern by the following means: (a) In writing, (b) orally, (c) by facsimile or electronic transmission of a medical order signed by the practitioner, or (d) by facsimile or electronic transmission of a medical order which is not signed by the practitioner. Such order shall be treated the same as an oral medical order.

(4) Except as otherwise provided in section 28-414, any medical order transmitted by facsimile or electronic transmission shall (a) be transmitted by the practitioner or the practitioner's agent directly to a pharmacist or pharmacist intern in a licensed pharmacy of the patient's choice. No intervening person shall be permitted access to the medical order to alter such order or the licensed pharmacy chosen by the patient. Such medical order may be transmitted through a third-party intermediary who shall facilitate the transmission of the order from the practitioner or practitioner's agent to the pharmacy, (b) identify the transmitter's telephone number or other suitable information necessary to contact the transmitter for written or oral confirmation, the time and date of the transmission, the identity of the pharmacy intended to receive the transmission, and other information as required by law, and (c) serve as the original medical order if all other requirements of this subsection are satisfied. Medical orders transmitted by electronic transmission shall be signed by the practitioner either with an electronic signature or a digital signature.

(5) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of any medical order transmitted by facsimile or electronic transmission.

Source: Laws 2001, LB 398, § 35; Laws 2005, LB 382, § 7; R.S.Supp.,2006, § 71-1,146.01; Laws 2007, LB463, § 966.

38-2871 Prescription information; transfer; requirements.

Original prescription information for any controlled substances listed in Schedule III, IV, or V of section 28-405 and other prescription drugs or devices not listed in section 28-405 may be transferred between pharmacies for the purpose of refill dispensing on a one-time basis, except that pharmacies electronically accessing a real-time, on-line data base may transfer up to the maximum refills permitted by law and as authorized by the prescribing practitioner on the face of the prescription. Transfers are subject to the following:

(1) The transfer is communicated directly between two pharmacists or pharmacist interns except when the pharmacies can use a real-time, on-line data base;

(2) The transferring pharmacist or pharmacist intern indicates void on the record of the prescription except when a single refill is transferred for emergency or traveling purposes;

(3) The transferring pharmacist or pharmacist intern indicates on the record of the prescription the name, the address, and, if a controlled substance, the Drug Enforcement Administration number of the pharmacy to which the information was transferred, the name of the pharmacist or pharmacist intern receiving the information, the date of transfer, and the name of the transferring pharmacist or pharmacist intern;

(4) The receiving pharmacist or pharmacist intern indicates on the record of the transferred prescription that the prescription is transferred;

(5) The transferred prescription includes the following information:

(a) The date of issuance of the original prescription;

(b) The original number of refills authorized;

(c) The date of original dispensing;

(d) The number of valid refills remaining;

(e) The date and location of last refill; and

(f) The name, the address, and, if a controlled substance, the Drug Enforcement Administration number of the pharmacy from which the transfer was made, the name of the pharmacist or pharmacist intern transferring the information, the original prescription number, and the date of transfer; and

(6) Both the original and transferred prescriptions must be maintained by the transferring and receiving pharmacy for a period of five years from the date of transfer.

Source: Laws 2001, LB 398, § 36; R.S.1943, (2003), § 71-1,146.02; Laws 2007, LB463, § 967.

38-2872 Delegated dispensing agreements; authorized.

A pharmacist may delegate certain specified dispensing tasks and functions under specified conditions and limitations to another person by entering into a delegated dispensing agreement which serves as the basis for a delegated dispensing permit. A delegated dispensing agreement shall include the address of the site where the dispensing will occur, the name and license number of each pharmacist who will assume the responsibilities of the delegating pharmacist, the name and signature of any individual who will be dispensing pursuant to such agreement, the manner in which inspections must be conducted and documented by the delegating pharmacist, and any other information required by the board. A delegated dispensing agreement shall not become effective until a delegated dispensing permit based upon such agreement is issued by the department, with the recommendation of the board, pursuant to section 38-2873.

Source: Laws 2001, LB 398, § 47; R.S.1943, (2003), § 71-1,147.62; Laws 2007, LB463, § 968.

38-2873 Delegated dispensing permit; requirements.

(1) Any person who has entered into a delegated dispensing agreement pursuant to section 38-2872 may apply to the department for a delegated dispensing permit. An applicant shall apply at least thirty days prior to the anticipated date for commencing delegated dispensing activities. Each applicant shall (a) file an application as prescribed by the department and a copy of the delegated dispensing agreement and (b) pay any fees required by the

department. A hospital applying for a delegated dispensing permit shall not be required to pay an application fee if it has a pharmacy license under the Health Care Facility Licensure Act.

(2) The department shall issue or renew a delegated dispensing permit to an applicant if the department, with the recommendation of the board, determines that:

(a) The application and delegated dispensing agreement comply with the Pharmacy Practice Act;

(b) The public health and welfare is protected and public convenience and necessity is promoted by the issuance of such permit. If the applicant is a hospital, public health clinic, dialysis drug or device distributor, or medical gas distributor, the department shall find that the public health and welfare is protected and public convenience and necessity is promoted. For any other applicant, the department may, in its discretion, require the submission of documentation to demonstrate that the public health and welfare is protected and public convenience and necessity is promoted by the issuance of the delegated dispensing permit; and

(c) The applicant has complied with any inspection requirements pursuant to section 38-2874.

(3) In addition to the requirements of subsection (2) of this section, a public health clinic (a) shall apply for a separate delegated dispensing permit for each clinic maintained on separate premises even though such clinic is operated under the same management as another clinic and (b) shall not apply for a separate delegated dispensing permit to operate an ancillary facility. For purposes of this subsection, ancillary facility means a delegated dispensing site which offers intermittent services, which is staffed by personnel from a public health clinic for which a delegated dispensing permit has been issued, and at which no legend drugs or devices are stored.

(4) A delegated dispensing permit shall not be transferable. Such permit shall expire annually on July 1 unless renewed by the department. The department, with the recommendation of the board, may adopt and promulgate rules and regulations to reinstate expired permits upon payment of a late fee.

Source: Laws 2001, LB 398, § 48; R.S.1943, (2003), § 71-1,147.63; Laws 2007, LB463, § 969.

Cross References

Health Care Facility Licensure Act, see section 71-401.

38-2874 Delegated dispensing site; inspection; requirements; fees.

(1) Before a delegated dispensing permit may be issued by the department, with the recommendation of the board, a pharmacy inspector of the board shall conduct an onsite inspection of the delegated dispensing site. A hospital applying for a delegated dispensing permit shall not be subject to an initial inspection or inspection fees pursuant to this subsection if the delegated dispensing site was inspected by the department pursuant to licensure under the Health Care Facility Licensure Act.

(2) Each permittee shall have the delegated dispensing site inspected at least once on an annual basis. Such inspection may be conducted by self-inspection or other compliance assurance modalities, when approved by the board, as authorized in the rules and regulations of the department. A hospital with a

delegated dispensing permit shall not be subject to annual inspections or inspection fees pursuant to this subsection if the delegated dispensing site was inspected by the department pursuant to licensure under the Health Care Facility Licensure Act.

(3) Any applicant or permittee who fails to meet the requirements of the board or department to dispense drugs or devices pursuant to a delegated dispensing permit shall, prior to dispensing (a) have the delegated dispensing site reinspected by a pharmacy inspector of the board and (b) pay any reinspection fees.

(4) The department, with the recommendation of the board, shall set inspection fees by rule and regulation not to exceed the fees established for pharmacy inspections required to obtain a pharmacy license under the Health Care Facility Licensure Act. The department shall remit inspection fees to the State Treasurer for credit to the Professional and Occupational Credentialing Cash Fund.

Source: Laws 2001, LB 398, § 49; Laws 2003, LB 242, § 54; R.S.1943, (2003), § 71-1,147.64; Laws 2007, LB463, § 970.

Cross References

Health Care Facility Licensure Act, see section 71-401.

38-2875 Delegated dispensing permit; complaint; investigation; costs.

If a complaint is filed against a delegated dispensing permittee or any staff member, volunteer, or consultant in association with work performed under a delegated dispensing permit and if the complaint is found to be valid, the cost of investigating the complaint and any followup inspections shall be calculated by the board based upon the actual costs incurred and the cost shall be borne by the permittee being investigated. All costs collected by the department shall be remitted to the State Treasurer for credit to the Professional and Occupational Credentialing Cash Fund. If the complaint is not found to be valid, the cost of the investigation shall be paid from the fund.

Source: Laws 1994, LB 900, § 12; Laws 1998, LB 1073, § 67; Laws 2001, LB 398, § 50; Laws 2003, LB 242, § 53; R.S.1943, (2003), § 71-1,147.42; Laws 2007, LB463, § 971.

38-2876 Delegated dispensing permit; disciplinary actions.

The department, with the recommendation of the board, may deny an application for a delegated dispensing permit, revoke, limit, or suspend a delegated dispensing permit, or refuse renewal of a delegated dispensing permit for a violation of section 38-178 or 38-179 or for any violation of the Pharmacy Practice Act and any rules and regulations adopted and promulgated by the department, with the recommendation of the board, pursuant to the act.

Source: Laws 1994, LB 900, § 13; Laws 1998, LB 1073, § 68; Laws 2001, LB 398, § 51; R.S.1943, (2003), § 71-1,147.43; Laws 2007, LB463, § 972.

38-2877 Delegated dispensing permit; denial or disciplinary actions; notice; hearing; procedure.

(1) If the department, with the recommendation of the board, determines to deny an application for a delegated dispensing permit or to revoke, limit,

suspend, or refuse renewal of a delegated dispensing permit, the department shall send to the applicant or permittee, by certified mail, a notice setting forth the particular reasons for the determination. The denial, limitation, suspension, revocation, or refusal of renewal shall become final thirty days after the mailing of the notice unless the applicant or permittee, within such thirty-day period, requests a hearing in writing. The applicant or permittee shall be given a fair hearing before the department and may present such evidence as may be proper. On the basis of such evidence, the determination involved shall be affirmed or set aside, and a copy of such decision setting forth the finding of facts and the particular reasons upon which it is based shall be sent by certified mail to the applicant or permittee. The decision shall become final thirty days after a copy of such decision is mailed unless the applicant or permittee within such thirty-day period appeals the decision pursuant to section 38-2879.

(2) The procedure governing hearings authorized by this section shall be in accordance with rules and regulations adopted and promulgated by the department. A full and complete record shall be kept of all proceedings. Witnesses may be subpoenaed by either party and shall be allowed a fee at a rate prescribed by the rules and regulations adopted and promulgated by the department. The proceedings shall be summary in nature and triable as equity actions. Affidavits may be received in evidence in the discretion of the director. The department shall have the power to administer oaths, to subpoena witnesses and compel their attendance, and to issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as the district courts of the state. Depositions may be used by either party.

Source: Laws 1994, LB 900, § 14; Laws 1996, LB 1044, § 466; Laws 1998, LB 1073, § 69; Laws 2001, LB 398, § 52; R.S.1943, (2003), § 71-1,147.44; Laws 2007, LB296, § 350; Laws 2007, LB463, § 973.

38-2878 Delegated dispensing permit; orders authorized; civil penalty.

(1) Upon the completion of any hearing pursuant to section 38-2877, the director shall have the authority through entry of an order to exercise in his or her discretion any or all of the following powers:

- (a) Issue a censure against the permittee;
- (b) Place the permittee on probation;
- (c) Place a limitation or limitations on the permit and upon the right of the permittee to dispense drugs or devices to the extent, scope, or type of operation, for such time, and under such conditions as the director finds necessary and proper. The director shall consult with the board in all instances prior to issuing an order of limitation;
- (d) Impose a civil penalty not to exceed twenty thousand dollars. The amount of the civil penalty, if any, shall be based on the severity of the violation. If any violation is a repeated or continuing violation, each violation or each day a violation continues shall constitute a separate violation for the purpose of computing the applicable civil penalty, if any;
- (e) Enter an order of suspension of the permit;
- (f) Enter an order of revocation of the permit; and
- (g) Dismiss the action.

(2) The permittee shall not dispense drugs or devices after a permit is revoked or during the time for which the permit is suspended. If a permit is suspended, the suspension shall be for a definite period of time to be fixed by the director. The permit shall be automatically reinstated upon the expiration of such period if the current renewal fees have been paid. If the permit is revoked, the revocation shall be permanent, except that at any time after the expiration of two years, application may be made for reinstatement by any permittee whose permit has been revoked as provided in section 38-148.

(3) Any civil penalty assessed and unpaid under this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. The department shall remit any collected civil penalty to the State Treasurer, within thirty days after receipt, for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1994, LB 900, § 15; Laws 1998, LB 1073, § 70; Laws 1999, LB 828, § 126; Laws 2001, LB 398, § 53; R.S.1943, (2003), § 71-1,147.45; Laws 2007, LB296, § 351; Laws 2007, LB463, § 974.

38-2879 Delegated dispensing permit; revocation or suspension; procedure; appeal.

(1) A petition for the revocation or suspension of a delegated dispensing permit may be filed by the Attorney General or by the county attorney in the county in which the permittee resides or is dispensing pursuant to a delegated dispensing permit. The petition shall be filed with the board and shall be entitled In the Matter of the Revocation (or suspension) of the Permit of (name of permittee) to dispense drugs and devices. It shall state the charges against the permittee with reasonable definiteness. Upon approval of such petition by the board, it shall be forwarded to the department which shall make an order fixing a time and place for hearing thereon, which shall not be less than ten days nor more than thirty days thereafter. Notice of the filing of such petition and of the time and place of hearing shall be served upon the permittee at least ten days before such hearing.

(2) The notice of charges may be served by any sheriff or constable or by any person especially appointed by the department. The order of revocation or suspension of a permit shall be entered on record and the name of such permittee stricken from the roster of permittees, and the permittee shall not engage in the dispensing of drugs and devices after revocation of the permit or during the time for which it is suspended.

(3) Any permittee shall have the right of appeal from an order of the department denying, revoking, suspending, or refusing renewal of a delegated dispensing permit. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1994, LB 900, § 16; Laws 1998, LB 1073, § 71; Laws 2001, LB 398, § 54; R.S.1943, (2003), § 71-1,147.46; Laws 2007, LB463, § 975.

Cross References

Administrative Procedure Act, see section 84-920.

38-2880 Delegated dispensing permit; criminal charges; when.

When appropriate, the Attorney General, with the recommendation of the board, shall initiate criminal charges against pharmacists or other persons who knowingly permit individuals dispensing pursuant to a delegated dispensing permit to perform professional duties which require the expertise or professional judgment of a pharmacist.

Source: Laws 1994, LB 900, § 17; Laws 2001, LB 398, § 55; R.S.1943, (2003), § 71-1,147.47; Laws 2007, LB463, § 976.

38-2881 Delegated dispensing permit; formularies.

(1) With the recommendation of the board, the director shall approve a formulary to be used by individuals dispensing pursuant to a delegated dispensing permit. A formulary shall consist of a list of drugs or devices appropriate to delegated dispensing activities authorized by the delegated dispensing permit. Except as otherwise provided in this section, if the board finds that a formulary would be unnecessary to protect the public health and welfare and promote public convenience and necessity, the board shall recommend that no formulary be approved.

(2)(a) With the recommendation of the board, which shall be based on the recommendations of the Public Health Clinic Formulary Advisory Committee, the director shall approve the formulary to be used by public health clinics dispensing pursuant to a delegated dispensing permit.

(b) The formulary for a public health clinic shall consist of a list of drugs and devices for contraception, sexually transmitted diseases, and vaginal infections which may be dispensed and stored, patient instruction requirements which shall include directions on the use of drugs and devices, potential side effects and drug interactions, criteria for contacting the on-call pharmacist, and accompanying written patient information.

(c) In no event shall the director approve for inclusion in the formulary any drug or device not approved by the committee or exclude any of the provisions for patient instruction approved by the board.

(d) Drugs and devices with the following characteristics shall not be eligible to be included in the formulary:

- (i) Controlled substances;
- (ii) Drugs with significant dietary interactions;
- (iii) Drugs with significant drug-drug interactions; and
- (iv) Drugs or devices with complex counseling profiles.

(3)(a) With the recommendation of the board, the director shall approve a formulary to be used by dialysis drug or device distributors.

(b) The formulary for a dialysis drug or device distributor shall consist of a list of drugs, solutions, supplies, and devices for the treatment of chronic kidney failure which may be dispensed and stored.

(c) In no event shall the director approve for inclusion in the formulary any drug or device not approved by the board.

(d) Controlled substances shall not be eligible to be included in the formulary.

Source: Laws 1994, LB 900, § 18; Laws 1996, LB 1044, § 467; Laws 1998, LB 1073, § 72; Laws 2001, LB 398, § 56; R.S.1943, (2003), § 71-1,147.48; Laws 2007, LB296, § 352; Laws 2007, LB463, § 977.

38-2882 Delegated dispensing permit; delegating pharmacist; duties.

(1) Each delegated dispensing permittee shall have an actively practicing Nebraska-licensed pharmacist listed as the delegating pharmacist in the delegated dispensing agreement. The delegating pharmacist shall be responsible for all activities set forth in his or her delegated dispensing agreement. The delegating pharmacist shall approve and maintain a policy and procedure manual governing those aspects of the practice of pharmacy covered by the delegated dispensing agreement.

(2) The delegating pharmacist for a public health clinic or a dialysis drug or device distributor shall be physically in the clinic or distributor's facility at least once every thirty days. The delegating pharmacist shall conduct and document monthly inspections of all activities and responsibilities listed in subsection (3) of this section and under his or her delegated dispensing agreement.

(3) The delegating pharmacist for a public health clinic shall be responsible for the security, environment, inventory, and record keeping of all drugs and devices received, stored, or dispensed by the public health clinic. The delegating pharmacist for a dialysis drug or device distributor shall be responsible for the distribution, record keeping, labeling, and delivery of all drugs and devices dispensed by the dialysis drug or device distributor.

Source: Laws 1994, LB 900, § 20; Laws 1998, LB 1073, § 74; Laws 2001, LB 398, § 57; R.S.1943, (2003), § 71-1,147.50; Laws 2007, LB463, § 978.

38-2883 Delegated dispensing permit; liability; when.

The delegating pharmacist or the on-call pharmacist shall not be held liable for acts or omissions on the part of an individual dispensing pursuant to the delegated dispensing permit.

Source: Laws 1994, LB 900, § 22; Laws 2001, LB 398, § 58; R.S.1943, (2003), § 71-1,147.52; Laws 2007, LB463, § 979.

38-2884 Delegated dispensing permit; public health clinic; dispensing requirements.

Under a delegated dispensing permit for a public health clinic, approved formulary drugs and devices may be dispensed by a public health clinic worker or a health care professional licensed in Nebraska to practice medicine and surgery or licensed in Nebraska as a registered nurse, licensed practical nurse, or physician assistant without the onsite services of a pharmacist if:

(1) The initial dispensing of all prescriptions for approved formulary drugs and devices is conducted by a health care professional licensed in Nebraska to practice medicine and surgery or pharmacy or licensed in Nebraska as a registered nurse, licensed practical nurse, or physician assistant;

(2) The drug or device is dispensed pursuant to a prescription written onsite by a practitioner;

(3) The only prescriptions to be refilled under the delegated dispensing permit are prescriptions for oral contraceptives;

(4) Prescriptions are accompanied by patient instructions and written information approved by the director;

(5) The dispensing of authorized refills of oral contraceptives is done by a licensed health care professional listed in subdivision (1) of this section or by a public health clinic worker;

(6) All drugs or devices are prepackaged by the manufacturer or at a public health clinic by a pharmacist into the quantity to be prescribed and dispensed at the public health clinic;

(7) All drugs and devices stored, received, or dispensed under the authority of public health clinics are properly labeled at all times. For purposes of this subdivision, properly labeled means that the label affixed to the container prior to dispensing contains the following information:

(a) The name of the manufacturer;

(b) The lot number and expiration date from the manufacturer or, if prepackaged by a pharmacist, the lot number and calculated expiration date. Calculated expiration date means the expiration date on the manufacturer's container or one year from the date the drug is repackaged, whichever is earlier;

(c) Directions for patient use;

(d) The quantity of drug in the container;

(e) The name, strength, and dosage form of the drug; and

(f) Auxiliary labels as needed for proper adherence to any prescription;

(8) The following additional information is added to the label of each container when the drug or device is dispensed:

(a) The patient's name;

(b) The name of the prescribing health care professional;

(c) The prescription number;

(d) The date dispensed; and

(e) The name and address of the public health clinic;

(9) The only drugs and devices allowed to be dispensed or stored by public health clinics appear on the formulary approved pursuant to section 38-2881; and

(10) At any time that dispensing is occurring from a public health clinic, the delegating pharmacist for the public health clinic or on-call pharmacist in Nebraska is available, either in person or by telephone, to answer questions from clients, staff, public health clinic workers, or volunteers. This availability shall be confirmed and documented at the beginning of each day that dispensing will occur. The delegating pharmacist or on-call pharmacist shall inform the public health clinic if he or she will not be available during the time that his or her availability is required. If a pharmacist is unavailable, no dispensing shall occur.

Source: Laws 1994, LB 900, § 23; Laws 1996, LB 1044, § 468; Laws 1996, LB 1108, § 18; Laws 1998, LB 1073, § 76; Laws 2001,

LB 398, § 59; Laws 2002, LB 1062, § 34; R.S.1943, (2003), § 71-1,147.53; Laws 2007, LB296, § 353; Laws 2007, LB463, § 980.

38-2885 Delegated dispensing permit; worker; qualifications.

No person shall act as a public health clinic worker in a public health clinic or as a dialysis drug or device distributor worker for a dialysis drug or device distributor unless the person:

- (1) Is at least eighteen years of age;
- (2) Has earned a high school diploma or the equivalent;
- (3) Has completed approved training as provided in section 38-2886; and
- (4) Has demonstrated proficiency as provided in section 38-2887.

Source: Laws 1994, LB 900, § 24; Laws 1998, LB 1073, § 77; R.S.1943, (2003), § 71-1,147.54; Laws 2007, LB463, § 981.

38-2886 Delegated dispensing permit; workers; training; requirements; documentation.

(1) A delegating pharmacist shall conduct the training of public health clinic workers. The training shall be approved in advance by the board. The board shall base its approval upon the standards determined by the Public Health Clinic Formulary Advisory Committee.

(2) A delegating pharmacist shall conduct training of dialysis drug or device distributor workers. The training shall be based upon the standards approved by the board.

(3) The public health clinic, the dialysis drug or device distributor, and the delegating pharmacist shall be responsible to assure that approved training has occurred and is documented.

Source: Laws 1994, LB 900, § 25; Laws 1998, LB 1073, § 78; Laws 2001, LB 398, § 60; R.S.1943, (2003), § 71-1,147.55; Laws 2007, LB463, § 982.

38-2887 Delegated dispensing permit; worker; proficiency demonstration; supervision; liability.

(1) A public health clinic worker or dialysis drug or device distributor worker shall demonstrate proficiency to the delegating pharmacist, according to the standards approved by the board. The delegating pharmacist shall document proficiency for each worker. In addition, a public health clinic worker shall be supervised by a licensed health care professional specified in subdivision (1) of section 38-2884 for the first month that such worker is dispensing refills of oral contraceptives.

(2) Following initial training and proficiency demonstration, the public health clinic worker or dialysis drug or device distributor worker shall demonstrate continued proficiency at least annually. A dialysis drug or device distributor worker shall attend annual training programs taught by a pharmacist. Documentation of such training shall be maintained in the worker's employee file.

(3) The public health clinic or dialysis drug or device distributor for which a public health clinic worker or dialysis drug or device distributor worker is working shall be liable for acts or omissions on the part of such worker.

Source: Laws 1994, LB 900, § 26; Laws 1996, LB 1108, § 19; Laws 1998, LB 1073, § 79; Laws 2001, LB 398, § 61; R.S.1943, (2003), § 71-1,147.56; Laws 2007, LB463, § 983.

38-2888 Delegated dispensing permit; licensed health care professionals; training required.

A delegating pharmacist shall conduct the training of all licensed health care professionals specified in subdivision (1) of section 38-2884 and who are dispensing pursuant to the delegated dispensing permit of a public health clinic. The training shall be approved in advance by the board. The board shall base its approval upon the standards determined by the Public Health Clinic Formulary Advisory Committee.

Source: Laws 1994, LB 900, § 27; Laws 1996, LB 1108, § 20; Laws 1998, LB 1073, § 80; Laws 2000, LB 1115, § 20; Laws 2001, LB 398, § 62; R.S.1943, (2003), § 71-1,147.57; Laws 2007, LB463, § 984.

38-2889 Delegated dispensing permit; advisory committees; authorized; Public Health Clinic Formulary Advisory Committee; created; members; terms; removal.

(1) The board may appoint formulary advisory committees as deemed necessary for the determination of formularies for delegated dispensing permittees.

(2) The Public Health Clinic Formulary Advisory Committee is created. The committee shall consist of eight members as follows:

(a) Two members designated by the board;

(b) Two members who are employees of the department with knowledge of and interest in reproductive health and sexually transmitted diseases;

(c) Two members who are licensed pharmacists in this state and who are selected by the director. The Nebraska Pharmacists Association may submit to the director a list of five persons of recognized ability in the profession. If such a list is submitted, the director shall consider the names on such list and may appoint one or more of the persons so named. The director may appoint any qualified person even if such person is not named on the list submitted by the association; and

(d) Two members who are employees of public health clinics which hold or will hold a delegated dispensing permit and who are selected by the director from names recommended by such public health clinics.

(3) Designations and recommendations shall be made and submitted to the director in July prior to the third quarter meeting of the committee. Members shall serve for terms of two years each beginning with the third quarter meeting. Members may serve for consecutive terms as approved by the director. The director may remove a member of the committee for inefficiency, neglect of duty, or misconduct in office.

Source: Laws 1994, LB 900, § 29; Laws 1996, LB 1044, § 469; Laws 1998, LB 1073, § 82; Laws 2001, LB 398, § 63; R.S.1943, (2003), § 71-1,147.59; Laws 2007, LB296, § 354; Laws 2007, LB463, § 985.

38-2890 Pharmacy technicians; registration; requirements.

(1) All pharmacy technicians employed by a facility licensed under the Health Care Facility Licensure Act shall be registered with the Pharmacy Technician Registry created in section 38-2893.

(2) To register as a pharmacy technician, an individual shall (a) be at least eighteen years of age, (b) be a high school graduate or be officially recognized by the State Department of Education as possessing the equivalent degree of education, (c) have never been convicted of any nonalcohol, drug-related misdemeanor or felony, (d) file an application with the department, and (e) pay the applicable fee.

(3) A pharmacy technician shall apply for registration as provided in this section within thirty days after being hired by a pharmacy or facility. Pharmacy technicians employed in that capacity on September 1, 2007, shall apply for registration within thirty days after September 1, 2007.

Source: Laws 2007, LB236, § 31; R.S.Supp.,2007, § 71-1,147.65.

Cross References

Health Care Facility Licensure Act, see section 71-401.

Uniform Credentialing Act, see section 38-101.

38-2891 Pharmacy technicians; authorized tasks.

(1) A pharmacy technician shall only perform tasks which do not require professional judgment and which are subject to verification to assist a pharmacist in the practice of pharmacy.

(2) The functions and tasks which shall not be performed by pharmacy technicians include, but are not limited to:

- (a) Receiving oral medical orders from a practitioner or his or her agent;
- (b) Providing patient counseling;
- (c) Performing any evaluation or necessary clarification of a medical order or performing any functions other than strictly clerical functions involving a medical order;
- (d) Supervising or verifying the tasks and functions of pharmacy technicians;
- (e) Interpreting or evaluating the data contained in a patient's record maintained pursuant to section 38-2869;
- (f) Releasing any confidential information maintained by the pharmacy;
- (g) Performing any professional consultations; and
- (h) Drug product selection, with regard to an individual medical order, in accordance with the Nebraska Drug Product Selection Act.

(3) The director shall, with the recommendation of the board, waive any of the limitations in subsection (2) of this section for purposes of a scientific study of the role of pharmacy technicians approved by the board. Such study shall be based upon providing improved patient care or enhanced pharmaceutical care. Any such waiver shall state the length of the study and shall require that all study data and results be made available to the board upon the completion of the study. Nothing in this subsection requires the board to approve any study proposed under this subsection.

Source: Laws 2007, LB236, § 32; R.S.Supp.,2007, § 71-1,147.66; Laws 2007, LB247, § 82.

Cross References

Nebraska Drug Product Selection Act, see section 71-5401.01.

38-2892 Pharmacy technicians; employer responsibility.

(1) A pharmacy employing pharmacy technicians shall be responsible for the supervision and performance of the pharmacy technicians.

(2) The pharmacist in charge shall be responsible for the practice of pharmacy and the establishment of written control procedures and guidelines governing the qualifications, onsite training, functions, supervision, and verification of the performance of pharmacy technicians. The supervision of such technicians at the place of employment shall be performed by the licensed pharmacist who is on duty in the facility with the pharmacy technicians.

(3)(a) Each pharmacy shall document, in a manner and method specified in the written control procedures and guidelines, the basic competence of the pharmacy technician prior to performance of tasks and functions by such technician. Such basic competence shall include, but not be limited to:

- (i) Basic pharmaceutical nomenclature;
- (ii) Metric system measures, both liquid and solid;
- (iii) The meaning and use of Roman numerals;
- (iv) Abbreviations used for dosages and directions to patients;
- (v) Basic medical terms, including terms relating to ailments, diseases, or infirmities;
- (vi) The use and operation of automated dispensing and record-keeping systems if used by the employing pharmacy;
- (vii) Applicable statutes, rules, and regulations governing the preparation, compounding, dispensing, and distribution of drugs or devices, record keeping with regard to such functions, and the employment, use, and functions of pharmacy technicians; and
- (viii) The contents of the written control procedures and guidelines.

(b) Written control procedures and guidelines shall specify the functions that pharmacy technicians may perform in the employing pharmacy. The written control procedures and guidelines shall specify the means used by the employing pharmacy to verify that the prescribed drug or device, the dosage form, and the directions provided to the patient or caregiver conform to the medical order authorizing the drug or device to be dispensed.

(c) The written control procedures and guidelines shall specify the manner in which the verification made prior to dispensing is documented.

(4) Each pharmacy or facility shall, before using pharmacy technicians, file with the board a copy of its written control procedures and guidelines and receive approval of its written control procedures and guidelines from the board. The board shall, within ninety days after the filing of such written control procedures and guidelines, review and either approve or disapprove them. The board shall notify the pharmacy or facility of the approval or disapproval. The board or its representatives shall have access to the approved written control procedures and guidelines upon request. Any written control procedures and guidelines for supportive pharmacy personnel that were filed

by a pharmacy and approved by the board prior to September 1, 2007, shall be deemed to be approved and to apply to pharmacy technicians.

Source: Laws 2007, LB236, § 33; R.S.Supp.,2007, § 71-1,147.67.

38-2893 Pharmacy Technician Registry; created; contents.

(1) The Pharmacy Technician Registry is created. The department shall list each pharmacy technician registration in the registry. A listing in the registry shall be valid for the term of the registration and upon renewal unless such listing is refused renewal or is removed as provided in section 38-2894.

(2) The registry shall contain the following information on each individual who meets the conditions set out in section 38-2890: (a) The individual's full name; (b) information necessary to identify the individual; (c) any conviction of a nonalcohol, drug-related felony or misdemeanor reported to the department; and (d) any other information as the department may require by rule and regulation.

Source: Laws 2007, LB236, § 34; R.S.Supp.,2007, § 71-1,147.68.

38-2894 Pharmacy technician; registration; disciplinary measures; procedure; Licensee Assistance Program; participation.

(1) A registration to practice as a pharmacy technician may be denied, refused renewal, removed, or suspended or have other disciplinary measures taken against it by the department, with the recommendation of the board, for failure to meet the requirements of or for violation of sections 38-2890 to 38-2897 or the rules and regulations adopted under such sections.

(2) If the department proposes to deny, refuse renewal of, or remove or suspend a registration, it shall send the applicant or registrant a notice setting forth the action to be taken and the reasons for the determination. The denial, refusal to renew, removal, or suspension shall become final thirty days after mailing the notice unless the applicant or registrant gives written notice to the department of his or her desire for an informal conference or for a formal hearing.

(3) Notice may be served by any method specified in section 25-505.01, or the department may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01.

(4) Pharmacy technicians may participate in the Licensee Assistance Program described in section 38-175.

Source: Laws 2007, LB236, § 35; R.S.Supp.,2007, § 71-1,147.69; Laws 2007, LB247, § 83.

38-2895 Pharmacy technician; discipline against supervising pharmacist; enforcement orders.

(1) If a pharmacy technician performs functions requiring professional judgment and licensure as a pharmacist, performs functions not specified under approved written control procedures and guidelines, or performs functions without supervision and such acts are known to the pharmacist supervising the pharmacy technician or the pharmacist in charge or are of such a nature that they should have been known to a reasonable person, such acts may be considered acts of unprofessional conduct on the part of the pharmacist

supervising the pharmacy technician or the pharmacist in charge pursuant to section 38-178, and disciplinary measures may be taken against such pharmacist supervising the pharmacy technician or the pharmacist in charge pursuant to the Uniform Credentialing Act.

(2) Acts described in subsection (1) of this section may be grounds for the department, with the recommendation of the board, to apply to the district court in the judicial district in which the pharmacy is located for an order to cease and desist from the performance of any unauthorized acts. On or at any time after such application the court may, in its discretion, issue an order restraining such pharmacy or its agents or employees from the performance of unauthorized acts. After a hearing the court shall either grant or deny the application. Such order shall continue until the court, after a hearing, finds the basis for such order has been removed.

Source: Laws 2007, LB236, § 36; R.S.Supp.,2007, § 71-1,147.70; Laws 2007, LB247, § 84.

38-2896 Pharmacy technician; reapplication for registration; lifting of disciplinary sanction.

A person whose registration has been denied, refused renewal, removed, or suspended from the Pharmacy Technician Registry may reapply for registration or for lifting of the disciplinary sanction at any time in accordance with the rules and regulations adopted and promulgated by the department.

Source: Laws 2007, LB236, § 37; R.S.Supp.,2007, § 71-1,147.71.

38-2897 Pharmacy technician; duty to report impaired practitioner; immunity.

A pharmacy technician shall report first-hand knowledge of facts giving him or her reason to believe that any person in his or her profession, or any person in another profession under the regulatory provisions of the department, may be practicing while his or her ability to practice is impaired by alcohol, controlled substances, or narcotic drugs. A report made to the department under this section shall be confidential. Any person making a report to the department under this section, except for those self-reporting, shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. The immunity granted by this section shall not apply to any person causing damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission.

Source: Laws 2007, LB236, § 38; R.S.Supp.,2007, § 71-1,147.72.

38-2898 Fees.

The department shall establish and collect fees for credentialing under the Pharmacy Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 988.

38-2899 Rules and regulations.

The department, with the recommendation of the board, shall adopt and promulgate rules and regulations as deemed necessary to implement sections 71-2401 to 71-2405 and 71-2501 to 71-2512, the Mail Service Pharmacy

Licensure Act, the Nebraska Drug Product Selection Act, the Pharmacy Practice Act, and the Uniform Controlled Substances Act. The minimum standards and requirements for the practice of pharmacy, including dispensing pursuant to a delegated dispensing permit, shall be consistent with the minimum standards and requirements established by the department for pharmacy licenses under the Health Care Facility Licensure Act.

Source: Laws 2001, LB 398, § 27; Laws 2003, LB 667, § 4; Laws 2005, LB 538, § 20; R.S.Supp.,2006, § 71-1,148; Laws 2007, LB463, § 989.

Cross References

Health Care Facility Licensure Act, see section 71-401.

Mail Service Pharmacy Licensure Act, see section 71-2406.

Nebraska Drug Product Selection Act, see section 71-5401.01.

Uniform Controlled Substances Act, see section 28-401.01.

38-28,100 Department; drugs and devices; powers; appeal.

The department may place under seal all drugs or devices that are owned by or in the possession, custody, or control of a licensee or permittee under the Pharmacy Practice Act at the time his or her license or permit is suspended or revoked or at the time the board or department refuses to renew his or her license or permit. Except as otherwise provided in this section, drugs or devices so sealed shall not be disposed of until appeal rights under the Administrative Procedure Act have expired or an appeal filed pursuant to the act has been determined. The court involved in an appeal filed pursuant to the Administrative Procedure Act may order the department during the pendency of the appeal to sell sealed drugs or devices that are perishable. The proceeds of such a sale shall be deposited with the court.

Source: Laws 2001, LB 398, § 37; R.S.1943, (2003), § 71-1,149; Laws 2007, LB463, § 990.

Cross References

Administrative Procedure Act, see section 84-920.

38-28,101 Pharmacy inspector.

Only a licensed pharmacist who is or who has been engaged in the active practice of pharmacy shall be appointed by the department to serve as a pharmacy inspector with the consent and approval of the board.

Source: Laws 2007, LB463, § 991.

38-28,102 Repealed. Laws 2008, LB 308, § 17.

38-28,103 Violation; penalty.

Any person who does or commits any of the acts or things prohibited by the Pharmacy Practice Act or otherwise violates any of the provisions thereof shall be guilty of a Class II misdemeanor except as otherwise specifically provided.

Source: Laws 1961, c. 339, § 16, p. 1070; Laws 1977, LB 39, § 145; Laws 1993, LB 536, § 53; Laws 1994, LB 900, § 6; Laws 2001, LB 398, § 38; R.S.1943, (2003), § 71-1,147.13; Laws 2007, LB463, § 993.

ARTICLE 29

PHYSICAL THERAPY PRACTICE ACT

Cross References

Access to medical records, see section 71-8401 et seq.
Child abuse, duty to report, see section 28-711.
Division of Public Health of the Department of Health and Human Services, see section 81-3113.
Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.
Good Samaritan provisions, see section 25-21,186.
Health and Human Services Act, see section 81-3110.
Health Care Facility Licensure Act, see section 71-401.
Health Care Professional Credentialing Verification Act, see section 44-7001.
License Suspension Act, see section 43-3301.
Medicaid coverage, see section 68-911.
Nebraska Regulation of Health Professions Act, see section 71-6201.
Patient Safety Improvement Act, see section 71-8701.
Rural Health Systems and Professional Incentive Act, see section 71-5650.
State Board of Health, duties, see section 71-2610 et seq.
Volunteer in free clinic or other facility, immunity from liability, see section 25-21,188.02.

Section

- 38-2901. Act, how cited.
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- 38-2921. Physical therapy; license; qualifications.
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- 38-2923. Applicant; continuing competency requirements.
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- 38-2926. Approved program for education and training.
- 38-2927. Physical therapist assistant; perform physical therapy services; when; limitations; supervising physical therapist; powers and duties.
- 38-2928. Physical therapist; duties.
- 38-2929. Physical therapy aide; authorized activities.

38-2901 Act, how cited.

Sections 38-2901 to 38-2929 shall be known and may be cited as the Physical Therapy Practice Act.

Source: Laws 2006, LB 994, § 118; R.S.Supp.,2006, § 71-1,362; Laws 2007, LB463, § 994.

38-2902 Purpose of act.

The purpose of the Physical Therapy Practice Act is to update and recodify statutes relating to the practice of physical therapy. Nothing in the act shall be

construed to expand the scope of practice of physical therapy as it existed prior to July 14, 2006.

Source: Laws 2006, LB 994, § 119; R.S.Supp.,2006, § 71-1,363; Laws 2007, LB463, § 995.

38-2903 Definitions, where found.

For purposes of the Physical Therapy Practice Act, the definitions found in sections 38-2904 to 38-2918 apply.

Source: Laws 2006, LB 994, § 120; R.S.Supp.,2006, § 71-1,364; Laws 2007, LB463, § 996.

38-2904 Approved educational program, defined.

Approved educational program means a program for the education and training of physical therapists and physical therapist assistants approved by the board pursuant to section 38-2926.

Source: Laws 2006, LB 994, § 121; R.S.Supp.,2006, § 71-1,365; Laws 2007, LB463, § 997.

38-2905 Board, defined.

Board means the Board of Physical Therapy.

Source: Laws 2006, LB 994, § 122; R.S.Supp.,2006, § 71-1,366; Laws 2007, LB463, § 998.

38-2906 Direct supervision, defined.

Direct supervision means supervision in which the supervising practitioner is physically present and immediately available and does not include supervision provided by means of telecommunication.

Source: Laws 2006, LB 994, § 124; R.S.Supp.,2006, § 71-1,368; Laws 2007, LB463, § 999.

38-2907 Evaluation, defined.

Evaluation means the process of making clinical judgments based on data gathered from examination of a patient.

Source: Laws 2006, LB 994, § 125; R.S.Supp.,2006, § 71-1,369; Laws 2007, LB463, § 1000.

38-2908 General supervision, defined.

General supervision means supervision either onsite or by means of telecommunication.

Source: Laws 2006, LB 994, § 126; R.S.Supp.,2006, § 71-1,370; Laws 2007, LB463, § 1001.

38-2909 Jurisdiction of the United States, defined.

Jurisdiction of the United States means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any American territory.

Source: Laws 2006, LB 994, § 127; R.S.Supp.,2006, § 71-1,371; Laws 2007, LB463, § 1002.

38-2910 Mobilization or manual therapy, defined.

Mobilization or manual therapy means a group of techniques comprising a continuum of skilled passive movements to the joints or related soft tissues, or both, throughout the normal physiological range of motion that are applied at varying speeds and amplitudes, without limitation.

Source: Laws 2006, LB 994, § 128; R.S.Supp.,2006, § 71-1,372; Laws 2007, LB463, § 1003.

38-2911 Non-treatment-related tasks, defined.

Non-treatment-related tasks means clerical, housekeeping, facility maintenance, or patient transportation services related to the practice of physical therapy.

Source: Laws 2006, LB 994, § 129; R.S.Supp.,2006, § 71-1,373; Laws 2007, LB463, § 1004.

38-2912 Physical therapist, defined.

Physical therapist means a person licensed to practice physical therapy under the Physical Therapy Practice Act.

Source: Laws 2006, LB 994, § 130; R.S.Supp.,2006, § 71-1,374; Laws 2007, LB463, § 1005.

38-2913 Physical therapist assistant, defined.

Physical therapist assistant means a person certified as a physical therapist assistant under the Physical Therapy Practice Act.

Source: Laws 2006, LB 994, § 131; R.S.Supp.,2006, § 71-1,375; Laws 2007, LB463, § 1006.

38-2914 Physical therapy or physiotherapy, defined.

Physical therapy or physiotherapy means:

(1) Examining, evaluating, and testing individuals with mechanical, physiological, and developmental impairments, functional limitations, and disabilities or other conditions related to health and movement and, through analysis of the evaluative process, developing a plan of therapeutic intervention and prognosis while assessing the ongoing effects of the intervention;

(2) Alleviating impairment, functional limitation, or disabilities by designing, implementing, or modifying therapeutic interventions which may include any of the following: Therapeutic exercise; functional training in home, community, or work integration or reintegration related to physical movement and mobility; therapeutic massage; mobilization or manual therapy; recommendation, application, and fabrication of assistive, adaptive, protective, and supportive devices and equipment; airway clearance techniques; integumentary protection techniques; nonsurgical debridement and wound care; physical agents or modali-

ties; mechanical and electrotherapeutic modalities; and patient-related instruction; but which does not include the making of a medical diagnosis;

(3) Purchasing, storing, and administering topical and aerosol medication in compliance with applicable rules and regulations of the Board of Pharmacy regarding the storage of such medication;

(4) Reducing the risk of injury, impairment, functional limitation, or disability, including the promotion and maintenance of fitness, health, and wellness; and

(5) Engaging in administration, consultation, education, and research.

Source: Laws 2006, LB 994, § 132; R.S.Supp.,2006, § 71-1,376; Laws 2007, LB463, § 1007.

38-2915 Physical therapy aide, defined.

Physical therapy aide means a person who is trained under the direction of a physical therapist and who performs treatment-related and non-treatment-related tasks.

Source: Laws 2006, LB 994, § 133; R.S.Supp.,2006, § 71-1,377; Laws 2007, LB463, § 1008.

38-2916 Student, defined.

Student means a person enrolled in an approved educational program.

Source: Laws 2006, LB 994, § 134; R.S.Supp.,2006, § 71-1,378; Laws 2007, LB463, § 1009.

38-2917 Testing, defined.

Testing means standard methods and techniques used to gather data about a patient. Testing includes surface electromyography and, subject to approval of the board, fine wire electromyography. Testing excludes diagnostic needle electromyography.

Source: Laws 2006, LB 994, § 135; R.S.Supp.,2006, § 71-1,379; Laws 2007, LB463, § 1010.

38-2918 Treatment-related tasks, defined.

Treatment-related tasks means activities related to the practice of physical therapy that do not require the clinical decisionmaking of a physical therapist or the clinical problem solving of a physical therapist assistant.

Source: Laws 2006, LB 994, § 136; R.S.Supp.,2006, § 71-1,380; Laws 2007, LB463, § 1011.

38-2919 License or certificate required.

(1) No person may practice physical therapy, hold oneself out as a physical therapist or physiotherapist, or use the abbreviation PT in this state without being licensed by the department. No person may practice as a physical therapist assistant, hold oneself out as a physical therapist assistant, or use the abbreviation PTA in this state without being certified by the department.

(2) A physical therapist may use the title physical therapist or physiotherapist and the abbreviation PT in connection with his or her name or place of

business. A physical therapist assistant may use the title physical therapist assistant and the abbreviation PTA in connection with his or her name.

(3) No person who offers or provides services to another or bills another for services shall characterize such services as physical therapy or physiotherapy unless such services are provided by a physical therapist or a physical therapist assistant acting under the general supervision of a physical therapist.

Source: Laws 2006, LB 994, § 137; R.S.Supp.,2006, § 71-1,381; Laws 2007, LB463, § 1012.

38-2920 Exemptions.

The following classes of persons shall not be construed to be engaged in the unauthorized practice of physical therapy:

(1) A member of another profession who is credentialed by the department and who is acting within the scope of practice of his or her profession;

(2) A student in an approved educational program who is performing physical therapy or related services within the scope of such program and under the direct supervision of a physical therapist;

(3) A person practicing physical therapy or as a physical therapist assistant in this state who serves in the armed forces of the United States or the United States Public Health Service or who is employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;

(4) A person credentialed to practice physical therapy or as a physical therapist assistant in another jurisdiction of the United States or in another country who is teaching physical therapy or demonstrating or providing physical therapy or related services in connection with an educational program in this state;

(5) A person credentialed to practice physical therapy in another jurisdiction of the United States or in another country who, by contract or employment, is providing physical therapy or related services in this state to individuals affiliated with established athletic teams, athletic organizations, or performing arts companies while such teams, organizations, or companies are present and temporarily practicing, competing, or performing in this state; or

(6) A person employed by a school district, educational service unit, or other public or private educational institution or entity serving prekindergarten through twelfth grade students who is providing personal assistance services, including mobility and transfer activities, such as assisting with ambulation with and without aids; positioning in adaptive equipment; application of braces; encouraging active range-of-motion exercises; assisting with passive range-of-motion exercises; assisting with transfers with or without mechanical devices; and such other personal assistance services based on individual needs as are suitable to providing an appropriate educational program.

Source: Laws 2006, LB 994, § 138; R.S.Supp.,2006, § 71-1,382; Laws 2007, LB463, § 1013.

38-2921 Physical therapy; license; qualifications.

Every applicant for a license to practice physical therapy shall:

(1) Present proof of completion of an approved educational program;

(2) In the case of an applicant who has been trained as a physical therapist in a foreign country, (a) present documentation of completion of a course of professional instruction substantially equivalent to an approved program accredited by the Commission on Accreditation in Physical Therapy Education or by an equivalent accrediting agency as determined by the board and (b) present proof of proficiency in the English language; and

(3) Successfully complete an examination approved by the department, with the recommendation of the board.

Source: Laws 1957, c. 298, § 3, p. 1075; Laws 1988, LB 1100, § 140; Laws 1990, LB 1064, § 16; Laws 1999, LB 828, § 169; R.S. 1943, (2003), § 71-2803; Laws 2006, LB 994, § 139; R.S.Supp.,2006, § 71-1,383; Laws 2007, LB463, § 1014.

Cross References

Uniform Credentialing Act, see section 38-101.

38-2922 Physical therapist assistant; certificate; qualifications.

Every applicant for a certificate to practice as a physical therapist assistant shall:

- (1) Present proof of completion of an approved educational program; and
- (2) Successfully complete an examination approved by the department, with the recommendation of the board.

Source: Laws 2006, LB 994, § 140; R.S.Supp.,2006, § 71-1,384; Laws 2007, LB463, § 1015.

Cross References

Uniform Credentialing Act, see section 38-101.

38-2923 Applicant; continuing competency requirements.

An applicant for licensure to practice as a physical therapist who has met the education and examination requirements in section 38-2921 or to practice as a physical therapist assistant who has met the education and examination requirements in section 38-2922, who passed the examination more than three years prior to the time of application for licensure, and who is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 1016.

38-2924 Applicant; reciprocity; continuing competency requirements.

An applicant for licensure to practice as a physical therapist or to practice as a physical therapist assistant who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 1017.

38-2925 Fees.

The department shall establish and collect fees for credentialing activities as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 1018.

38-2926 Approved program for education and training.

The board may approve programs for physical therapy or physical therapist assistant education and training. Such approval may be based on the program's accreditation by the Commission on Accreditation in Physical Therapy Education or equivalent standards established by the board.

Source: Laws 1957, c. 298, § 4, p. 1076; Laws 1988, LB 1100, § 142; Laws 1999, LB 828, § 170; Laws 2001, LB 209, § 28; R.S.1943, (2003), § 71-2804; Laws 2006, LB 994, § 144; R.S.Supp.,2006, § 71-1,388; Laws 2007, LB463, § 1019.

38-2927 Physical therapist assistant; perform physical therapy services; when; limitations; supervising physical therapist; powers and duties.

(1) A physical therapist assistant may perform physical therapy services under the general supervision of a physical therapist, except that no physical therapist assistant shall perform the following:

- (a) Interpretation of physician referrals;
- (b) Development of a plan of care;
- (c) Initial evaluations or reevaluation of patients;
- (d) Readjustment of a plan of care without consultation with the supervising physical therapist; or
- (e) Discharge planning for patients.

(2) A physical therapist may provide general supervision for no more than two physical therapist assistants. A physical therapist shall not establish a satellite office at which a physical therapist assistant provides care without the general supervision of the physical therapist.

(3) A physical therapist shall reevaluate or reexamine on a regular basis each patient receiving physical therapy services from a physical therapist assistant under the general supervision of the physical therapist.

(4) A supervising physical therapist and the physical therapist assistant under general supervision shall review the plan of care on a regular basis for each patient receiving physical therapy services from the physical therapist assistant.

(5) A physical therapist assistant may document physical therapy services provided by the physical therapist assistant without the signature of the supervising physical therapist.

(6) A physical therapist assistant may act as a clinical instructor for physical therapist assistant students in an approved educational program.

Source: Laws 1979, LB 355, § 3; R.S.1943, (2003), § 71-2810; Laws 2006, LB 994, § 141; R.S.Supp.,2006, § 71-1,385; Laws 2007, LB463, § 1020.

38-2928 Physical therapist; duties.

(1) For each patient under his or her care, a physical therapist shall:

(a) Be responsible for managing all aspects of physical therapy services provided to the patient and assume legal liability for physical therapy and related services provided under his or her supervision;

(b) Provide an initial evaluation and documentation of the evaluation;

(c) Provide periodic reevaluation and documentation of the reevaluation;

(d) Provide documentation for discharge, including the patient's response to therapeutic intervention at the time of discharge; and

(e) Be responsible for accurate documentation and billing for services provided.

(2) For each patient under his or her care on each date physical therapy services are provided to such patient, a physical therapist shall:

(a) Provide all therapeutic interventions that require the expertise of a physical therapist; and

(b) Determine the appropriate use of physical therapist assistants or physical therapy aides.

Source: Laws 2006, LB 994, § 142; R.S.Supp.,2006, § 71-1,386; Laws 2007, LB463, § 1021.

38-2929 Physical therapy aide; authorized activities.

A physical therapy aide may perform treatment-related and non-treatment-related tasks under the supervision of a physical therapist or a physical therapist assistant.

Source: Laws 2006, LB 994, § 143; R.S.Supp.,2006, § 71-1,387; Laws 2007, LB463, § 1022.

ARTICLE 30

PODIATRY PRACTICE ACT

Cross References

Access to medical records, see section 71-8401 et seq.
Child abuse, duty to report, see section 28-711.
Clinical privileges, standards and procedures, see section 71-2048.01.
Diabetes, insurance coverage for podiatric appliances, requirements, see section 44-790.
Division of Public Health of the Department of Health and Human Services, see section 81-3113.
Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.
Good Samaritan provisions, see section 25-21,186.
Health and Human Services Act, see section 81-3110.
Health Care Facility Licensure Act, see section 71-401.
Health Care Professional Credentialing Verification Act, see section 44-7001.
License Suspension Act, see section 43-3301.
Medicaid coverage, see section 68-911.
Medical Radiography Practice Act, see section 38-1901.
Nebraska Regulation of Health Professions Act, see section 71-6201.
Patient Safety Improvement Act, see section 71-8701.
Radiation Control Act, see section 71-3519.
Rural Health Systems and Professional Incentive Act, see section 71-5650.
State Board of Health, duties, see section 71-2610 et seq.
Uniform Controlled Substances Act, see section 28-401.01.

Section

38-3001. Act, how cited.
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 38-3009. Fees.
 38-3010. Schools of podiatry; approval; requirements.
 38-3011. Podiatry; surgery; restrictions.
 38-3012. Employee of licensed podiatrist; radiography practices; requirements.

38-3001 Act, how cited.

Sections 38-3001 to 38-3012 shall be known and may be cited as the Podiatry Practice Act.

Source: Laws 2007, LB463, § 1023.

38-3002 Definitions, where found.

For purposes of the Podiatry Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-3003 to 38-3005 apply.

Source: Laws 2007, LB463, § 1024.

38-3003 Board, defined.

Board means the Board of Podiatry.

Source: Laws 2007, LB463, § 1025.

38-3004 Podiatrist, defined.

Podiatrist means a physician of the foot, ankle, and related governing structures.

Source: Laws 2007, LB463, § 1026.

38-3005 Practice of podiatry, defined.

Practice of podiatry means the diagnosis or medical, physical, or surgical treatment of the ailments of the human foot, ankle, and related governing structures except (1) the amputation of the forefoot, (2) the general medical treatment of any systemic disease causing manifestations in the foot, and (3) the administration of anesthetics other than local.

Source: Laws 2007, LB463, § 1027.

38-3006 Practice of podiatry.

The following persons shall be deemed to be practicing podiatry: Persons who publicly profess to be podiatrists or who publicly profess to assume the duties incident to the practice of podiatry.

Source: Laws 1927, c. 167, § 72, p. 473; C.S.1929, § 71-1001; R.S.1943, § 71-173; Laws 1947, c. 228, § 1, p. 723; Laws 1961, c. 337, § 9, p. 1055; Laws 1974, LB 778, § 1; Laws 1976, LB 25, § 1; Laws 1983, LB 541, § 1; Laws 2001, LB 25, § 2; R.S.1943, (2003), § 71-173; Laws 2007, LB463, § 1028.

38-3007 Podiatry; practice; persons excepted.

The Podiatry Practice Act shall not be construed to include (1) licensed physicians and surgeons or licensed osteopathic physicians, (2) physicians and surgeons who serve in the armed forces of the United States or the United

States Public Health Service or who are employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment, (3) students who have not graduated from a school of podiatry and are enrolled in an approved and accredited school of podiatry when the services performed are a part of the course of study and are under the direct supervision of a licensed podiatrist, or (4) graduates of a school of podiatry currently enrolled in a postgraduate residency program approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association.

Source: Laws 1927, c. 167, § 73, p. 473; C.S.1929, § 71-1002; R.S.1943, § 71-174; Laws 1989, LB 342, § 13; Laws 1990, LB 1064, § 10; Laws 1995, LB 173, § 1; R.S.1943, (2003), § 71-174; Laws 2007, LB463, § 1029.

38-3008 Podiatry; license; qualifications.

Every applicant for an initial license to practice podiatry shall (1) present proof of graduation from a school of chiropody or podiatry approved by the board, (2) present proof of completion of a minimum one-year postgraduate residency program approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association, (3) pass a written examination which consists of (a) parts I and II of the examination given by the National Board of Podiatric Medical Examiners and (b) the written examination approved by the Board of Podiatry, and (4) present proof satisfactory to the board that he or she, within two years immediately preceding the application for licensure, (a) has been in the active practice of the profession of podiatry under a license in another state or territory of the United States or the District of Columbia for a period of one year, (b) has completed at least one year of a postgraduate residency program approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association, or (c) has completed continuing competency in podiatry approved by the board.

Source: Laws 1927, c. 167, § 74, p. 473; C.S.1929, § 71-1003; R.S.1943, § 71-175; Laws 1961, c. 337, § 10, p. 1055; Laws 1967, c. 438, § 5, p. 1351; Laws 1988, LB 1100, § 28; Laws 1990, LB 1064, § 11; Laws 1995, LB 173, § 2; Laws 1999, LB 828, § 61; Laws 2003, LB 242, § 33; R.S.1943, (2003), § 71-175; Laws 2007, LB463, § 1030.

Cross References

Uniform Credentialing Act, see section 38-101.

38-3009 Fees.

The department shall establish and collect fees for credentialing under the Podiatry Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 1031.

38-3010 Schools of podiatry; approval; requirements.

No school of podiatry shall be approved by the board unless the school is accredited by the Council on Podiatric Medical Education of the American Podiatric Medical Association.

Source: Laws 1927, c. 167, § 75, p. 474; C.S.1929, § 71-1004; R.S.1943, § 71-176; Laws 1947, c. 228, § 2, p. 724; Laws 1961, c. 337,

§ 11, p. 1056; Laws 1967, c. 438, § 6, p. 1352; Laws 1973, LB 52, § 1; Laws 1995, LB 173, § 3; R.S.1943, (2003), § 71-176; Laws 2007, LB463, § 1032.

38-3011 Podiatry; surgery; restrictions.

A podiatrist shall not perform surgery on the ankle other than in a licensed hospital or ambulatory surgical center, and a podiatrist who performs surgery on the ankle in a licensed hospital or ambulatory surgical center shall have successfully completed an advanced postdoctoral surgical residency program of at least one year's duration which is recognized as suitable for that purpose by the board.

No podiatrist initially licensed in this state on or after September 1, 2001, shall perform surgery on the ankle unless such person has successfully completed an advanced postdoctoral surgical residency program of at least two years' duration which is recognized as suitable for that purpose by the board.

Source: Laws 2001, LB 25, § 3; R.S.1943, (2003), § 71-174.02; Laws 2007, LB463, § 1033.

38-3012 Employee of licensed podiatrist; radiography practices; requirements.

(1) A person employed exclusively in the office or clinic of a licensed podiatrist shall not perform any of the functions described in section 38-1916 as a part of such employment unless the person is (a) licensed as a limited radiographer under the Medical Radiography Practice Act or (b) certified as provided in this section.

(2) The department, with the recommendation of the board, may certify a person to perform medical radiography on the anatomical regions of the ankle and foot if such person (a) has completed a fifteen-hour course of instruction, approved by the board, on radiation hygiene and podiatric radiological practices, including radiation health and safety, lower extremity anatomy, physics, concepts, physiology, techniques, positioning, equipment maintenance, and minimization of radiation exposure, and (b) passed a competency examination approved by the board. A person who has not passed the competency examination after three attempts shall successfully complete a remedial course of instruction in medical radiography, approved by the board, prior to any further attempts to pass the competency examination.

Source: Laws 1995, LB 406, § 39; Laws 1999, LB 828, § 63; Laws 2003, LB 245, § 12; R.S.1943, (2003), § 71-176.01; Laws 2007, LB463, § 1034.

Cross References

Medical Radiography Practice Act, see section 38-1901.

ARTICLE 31

PSYCHOLOGY PRACTICE ACT

Cross References

Access to medical records, see section 71-8401 et seq.

Child abuse, duty to report, see section 28-711.

Clinical privileges, standards and procedures, see section 71-2048.01.

Developmental Disabilities Court-Ordered Custody Act, see section 71-1101.

Division of Public Health of the Department of Health and Human Services, see section 81-3113.

Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.
Good Samaritan provisions, see section 25-21,186.
Health and Human Services Act, see section 81-3110.
Health Care Facility Licensure Act, see section 71-401.
Health Care Professional Credentialing Verification Act, see section 44-7001.
Insurance coverage of mental health conditions, see sections 44-791 to 44-795.
License Suspension Act, see section 43-3301.
Medicaid coverage, see section 68-911.
Mental Health Practice Act, see section 38-2101.
Nebraska Behavioral Health Services Act, see section 71-801.
Nebraska Mental Health Commitment Act, see section 71-901.
Nebraska Regulation of Health Professions Act, see section 71-6201.
Patient Safety Improvement Act, see section 71-8701.
Rural Health Systems and Professional Incentive Act, see section 71-5650.
Sex Offender Commitment Act, see section 71-1201.
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- 38-3124. Provisional license; title; duties.
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- 38-3130. Representation as a psychologist; unlawful practice; violation; penalty.
- 38-3131. Confidentiality; privilege; exceptions.
- 38-3132. Duty to warn; limitation; immunity.

38-3101 Act, how cited.

Sections 38-3101 to 38-3132 shall be known and may be cited as the Psychology Practice Act.

Source: Laws 2007, LB463, § 1035.

38-3102 Definitions, where found.

For purposes of the Psychology Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-3103 to 38-3110 apply.

Source: Laws 1994, LB 1210, § 63; Laws 1999, LB 366, § 10; R.S.1943, (2003), § 71-1,206.01; Laws 2007, LB463, § 1036.

38-3103 Board, defined.

Board means the Board of Psychology.

Source: Laws 1994, LB 1210, § 64; Laws 1999, LB 828, § 136; R.S. 1943, (2003), § 71-1,206.02; Laws 2007, LB463, § 1037.

38-3104 Client or patient, defined.

Client or patient means a recipient of psychological services within the context of a professional relationship. In the case of individuals with legal guardians, including minors and incompetent adults, the legal guardian shall also be considered a client or patient for decisionmaking purposes.

Source: Laws 1994, LB 1210, § 65; R.S.1943, (2003), § 71-1,206.03; Laws 2007, LB463, § 1038.

38-3105 Code of conduct, defined.

Code of conduct means that set of regulatory rules of professional conduct which has been adopted by the board to protect the public welfare by providing rules that govern a professional's behavior in the professional relationship.

Source: Laws 1994, LB 1210, § 66; R.S.1943, (2003), § 71-1,206.04; Laws 2007, LB463, § 1039.

38-3106 Institution of higher education, defined.

Institution of higher education means a university, professional school, or other institution of higher learning that:

- (1) In the United States, is regionally accredited by a regional or professional accrediting organization recognized by the United States Department of Education;
- (2) In Canada, holds a membership in the Association of Universities and Colleges of Canada; or
- (3) In other countries, is accredited by the respective official organization having such authority.

Source: Laws 1994, LB 1210, § 68; R.S.1943, (2003), § 71-1,206.06; Laws 2007, LB463, § 1040.

38-3107 Mental and emotional disorder, defined.

Mental and emotional disorder means a clinically significant behavioral or psychological syndrome or pattern that occurs in a person and is associated with present distress or disability or with significantly increased risk of suffering death, pain, disability, or an important loss of freedom. Such disorders may take many forms and have varying causes but must be considered a manifestation of behavioral, psychological, or biological dysfunction in the person. Reasonable descriptions of the kinds and degrees of mental and emotional disorders may be found in the revisions of accepted nosologies such as the

International Classification of Diseases and the Diagnostic and Statistical Manual of Mental Disorders.

Source: Laws 1994, LB 1210, § 69; R.S.1943, (2003), § 71-1,206.07; Laws 2007, LB463, § 1041.

38-3108 Practice of psychology, defined.

(1) Practice of psychology means the observation, description, evaluation, interpretation, or modification of human behavior by the application of psychological principles, methods, or procedures for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, and mental health.

(2) The practice of psychology includes, but is not limited to, psychological testing and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and psychophysiological and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy; diagnosis and treatment of mental and emotional disorders, alcoholism and substance abuse, disorders of habit or conduct, and the psychological aspects of physical illness, accident, injury, or disability; psychoeducational evaluation, therapy, remediation, and consultation; and supervision of qualified individuals performing services specified in this section.

(3) Psychological services may be rendered to individuals, families, groups, organizations, institutions, and the public. The practice of psychology shall be construed within the meaning of this definition without regard to whether payment is received for services rendered.

Source: Laws 1994, LB 1210, § 70; R.S.1943, (2003), § 71-1,206.08; Laws 2007, LB463, § 1042.

38-3109 Psychologist, defined.

Psychologist means a person licensed to engage in the practice of psychology in this or another jurisdiction. The terms certified, registered, chartered, or any other term chosen by a jurisdiction to authorize the autonomous practice of psychology shall be considered equivalent terms.

Source: Laws 1994, LB 1210, § 71; R.S.1943, (2003), § 71-1,206.09; Laws 2007, LB463, § 1043.

38-3110 Representation as a psychologist, defined.

Representation as a psychologist means that the person uses any title or description of services which incorporates the words psychology, psychological, or psychologist or which implies that he or she possesses expert qualification in any area of psychology or that the person offers to individuals or to groups of individuals services defined as the practice of psychology.

Source: Laws 1994, LB 1210, § 72; R.S.1943, (2003), § 71-1,206.10; Laws 2007, LB463, § 1044.

38-3111 Psychology; references; how construed.

(1) Unless otherwise expressly stated, references to licensed psychologists in the Nebraska Mental Health Commitment Act, in the Psychology Practice Act,

in the Sex Offender Commitment Act, and in section 44-513 means only psychologists licensed under section 38-3114 and does not mean persons holding a special license under section 38-3116 or holding a provisional license under the Psychology Practice Act.

(2) Any reference to a person certified to practice clinical psychology under the law in effect immediately prior to September 1, 1994, and any equivalent reference under the law of another jurisdiction, including, but not limited to, certified clinical psychologist, health care practitioner in psychology, or certified health care provider, shall be construed to refer to a psychologist licensed under the Uniform Credentialing Act except for persons licensed under section 38-3116 or holding a provisional license under the Psychology Practice Act.

Source: Laws 1994, LB 1210, § 76; Laws 1999, LB 366, § 12; Laws 2006, LB 1199, § 32; R.S.Supp.,2006, § 71-1,206.14; Laws 2007, LB463, § 1045.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.
Sex Offender Commitment Act, see section 71-1201.

38-3112 Board; membership; qualifications.

The board shall consist of five professional members and two public members appointed pursuant to section 38-158. The members shall meet the requirements of sections 38-164 and 38-165, except that two of the five years of experience for professional members may have been served in teaching or research.

Source: Laws 2007, LB463, § 1046.

38-3113 Other practices and activities; act, how construed.

Nothing in the Psychology Practice Act shall be construed to prevent:

(1) The teaching of psychology, the conduct of psychological research, or the provision of psychological services or consultation to organizations or institutions if such teaching, research, or service does not involve the delivery or supervision of direct psychological services to individuals or groups of individuals who are themselves, rather than a third party, the intended beneficiaries of such services, without regard to the source or extent of payment for services rendered. Nothing in the act shall prevent the provision of expert testimony by psychologists who are otherwise exempted by the act. Persons holding a doctoral degree in psychology from an institution of higher education may use the title psychologist in conjunction with the activities permitted by this subdivision;

(2) Members of other recognized professions that are licensed, certified, or regulated under the laws of this state from rendering services consistent with their professional training and code of ethics and within the scope of practice as set out in the statutes regulating their professional practice if they do not represent themselves to be psychologists;

(3) Duly recognized members of the clergy from functioning in their ministerial capacity if they do not represent themselves to be psychologists or their services as psychological;

(4) Persons who are certified as school psychologists by the State Board of Education from using the title school psychologist and practicing psychology as

defined in the Psychology Practice Act if such practice is restricted to regular employment within a setting under the jurisdiction of the State Board of Education. Such individuals shall be employees of the educational setting and not independent contractors providing psychological services to educational settings; or

(5) Any of the following persons from engaging in activities defined as the practice of psychology if they do not represent themselves by the title psychologist, if they do not use terms other than psychological trainee, psychological intern, psychological resident, or psychological assistant to refer to themselves, and if they perform their activities under the supervision and responsibility of a psychologist in accordance with the rules and regulations adopted and promulgated under the Psychology Practice Act:

(a) A matriculated graduate student in psychology whose activities constitute a part of the course of study for a graduate degree in psychology at an institution of higher education;

(b) An individual pursuing postdoctoral training or experience in psychology, including persons seeking to fulfill the requirements for licensure under the act; or

(c) An individual with a master's degree in clinical, counseling, or educational psychology or an educational specialist degree in school psychology who administers and scores and may develop interpretations of psychological testing under the supervision of a psychologist. Such individuals shall be deemed to be conducting their duties as an extension of the legal and professional authority of the supervising psychologist and shall not independently provide interpretive information or treatment recommendations to clients or other health care professionals prior to obtaining appropriate supervision. The department, with the recommendation of the board, may adopt and promulgate rules and regulations governing the conduct and supervision of persons referred to in this subdivision, including the number of such persons that may be supervised by a licensed psychologist. Persons who have carried out the duties described in this subdivision as part of their employment in institutions accredited by the Department of Health and Human Services, the State Department of Education, or the Department of Correctional Services for a period of two years prior to September 1, 1994, may use the title psychologist associate in the context of their employment in such settings. Use of the title shall be restricted to duties described in this subdivision, and the title shall be used in its entirety. Partial or abbreviated use of the title and use of the title beyond what is specifically authorized in this subdivision shall constitute the unlicensed practice of psychology.

Source: Laws 1994, LB 1210, § 87; Laws 1996, LB 1044, § 475; Laws 1999, LB 366, § 13; R.S.1943, (2003), § 71-1,206.25; Laws 2007, LB463, § 1047.

38-3114 Applicant for license; qualifications.

An applicant for licensure as a psychologist shall:

(1) Possess a doctoral degree from a program of graduate study in professional psychology from an institution of higher education. The degree shall be obtained from a program of graduate study in psychology that meets the standards of accreditation adopted by the American Psychological Association. Any applicant from a doctoral program in psychology that does not meet such

standards shall present a certificate of retraining from a program of respecialization that does meet such standards;

(2) Prior to taking the examination, demonstrate that he or she has completed two years of supervised professional experience. One year of such experience shall be an internship meeting the standards of accreditation adopted by the American Psychological Association, and one year shall be supervised postdoctoral experience. The criteria for appropriate supervision shall be determined by the board. Postdoctoral experience shall be compatible with the knowledge and skills acquired during formal doctoral or postdoctoral education in accordance with professional requirements and relevant to the intended area of practice; and

(3) Pass an examination. The board shall approve and the board or department shall administer examinations to qualified applicants on at least an annual basis. The board shall determine the subject matter and scope of the examination and shall require a written examination, an oral examination, or both a written examination and an oral examination of each candidate for licensure. The board may approve a national standardized examination and any examination developed by the board.

Source: Laws 1994, LB 1210, § 77; R.S.1943, (2003), § 71-1,206.15; Laws 2007, LB463, § 1048.

Cross References

Uniform Credentialing Act, see section 38-101.

38-3115 Waiver of examination; when.

The department may waive all or portions of the examination required by section 38-3114 (1) if a psychologist has been licensed in another jurisdiction and if the requirements for licensure in that jurisdiction are equal to or exceed the requirements for licensure in Nebraska, (2) for psychologists meeting the requirements of section 38-3117, or (3) for an applicant who is board-certified in an area of professional psychology by the American Board of Professional Psychology.

Source: Laws 1994, LB 1210, § 78; R.S.1943, (2003), § 71-1,206.16; Laws 2007, LB463, § 1049.

38-3116 Special license; supervisory relationship; application; contents; use of title; disclosure.

(1) Any psychological practice that involves the diagnosis and treatment of major mental and emotional disorders by a person holding a special license shall be done under the supervision of a licensed psychologist as determined by the board. A psychologist holding a special license shall not supervise mental health practitioners or independently evaluate persons under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act.

(2) An application for a supervisory relationship shall be submitted to the department. The application shall contain:

(a) A general description of the supervisee's practice and the plan of supervision;

(b) A statement by the supervisor that he or she has the necessary experience and training to supervise this area of practice; and

(c) A statement by the supervisor that he or she accepts the legal and professional responsibility for the supervisee's practice with individuals having major mental and emotional disorders.

(3) Psychologists practicing with special licenses may continue to use the title licensed psychologist but shall disclose supervisory relationships to clients or patients for whom supervision is required and to third-party payors when relevant. Psychologists who wish to continue supervisory relationships existing immediately prior to September 1, 1994, with qualified physicians may do so if a letter as described in this section as it existed prior to December 1, 2008, was received by the board within three months after September 1, 1994.

Source: Laws 1994, LB 1210, § 80; Laws 1995, LB 406, § 19; Laws 1996, LB 1044, § 474; Laws 2006, LB 1199, § 33; R.S.Supp.,2006, § 71-1,206.18; Laws 2007, LB296, § 358; Laws 2007, LB463, § 1050.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

Sex Offender Commitment Act, see section 71-1201.

Uniform Credentialing Act, see section 38-101.

38-3117 Applicant with prior experience; issuance of license; conditions.

Notwithstanding section 38-3114, the department shall license an applicant who:

- (1) Has at least twenty years of licensure to practice psychology in a United States or Canadian jurisdiction when the license was based on a doctoral degree;
- (2) Has had no disciplinary sanction during the entire period of licensure; and
- (3) Has passed the Nebraska board-developed examination.

Source: Laws 1994, LB 1210, § 82; R.S.1943, (2003), § 71-1,206.20; Laws 2007, LB463, § 1051.

38-3118 Reciprocal license; conditions.

Notwithstanding section 38-3114, the department may issue a license as a psychologist to any individual who qualifies for such a license pursuant to an agreement of reciprocity entered into by the department, with the recommendation of the board, with the board or boards of another jurisdiction or multiple jurisdictions.

Source: Laws 1994, LB 1210, § 83; R.S.1943, (2003), § 71-1,206.21; Laws 2007, LB463, § 1052.

38-3119 Temporary practice permitted; when.

Nothing in the Psychology Practice Act shall be construed to prohibit the practice of psychology in this state by a person holding a doctoral degree in psychology from an institution of higher education who is licensed as a psychologist under the laws of another jurisdiction if the requirements for a license in the other jurisdiction are equal to or exceed the requirements for licensure in Nebraska and if the person provides no more than an aggregate of thirty days of professional services as a psychologist per year as defined in the rules and regulations. Psychologists practicing under this section shall notify

the department of the nature and location of their practice and provide evidence of their licensure in another jurisdiction.

Upon determination that the applicant has met the requirements of this section, the department shall issue a letter permitting the practice. An individual's permission to practice under this section may be revoked if it is determined by the department that he or she has engaged in conduct defined as illegal, unprofessional, or unethical under the statutes, rules, or regulations governing the practice of psychology in Nebraska.

Source: Laws 1994, LB 1210, § 84; R.S.1943, (2003), § 71-1,206.22; Laws 2007, LB463, § 1053.

38-3120 Temporary practice pending licensure permitted; when.

A psychologist licensed under the laws of another jurisdiction may be authorized by the department to practice psychology for a maximum of one year if the psychologist has made application to the department for licensure and has met the educational and experience requirements for licensure in Nebraska, if the requirements for licensure in the former jurisdiction are equal to or exceed the requirements for licensure in Nebraska, and if the psychologist is not the subject of a past or pending disciplinary action in another jurisdiction. Denial of licensure shall terminate this authorization.

Source: Laws 1994, LB 1210, § 85; R.S.1943, (2003), § 71-1,206.23; Laws 2007, LB463, § 1054.

38-3121 Reciprocity.

The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to practice as a psychologist to a person who meets the requirements of the Psychology Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board.

Source: Laws 2007, LB463, § 1055.

38-3122 Provisional license; requirements.

A person who needs to obtain the required one year of supervised postdoctoral experience in psychology pursuant to subdivision (2) of section 38-3114 shall obtain a provisional license to practice psychology. An applicant for a provisional license to practice psychology shall:

- (1) Have a doctoral degree from an institution of higher education in a program of graduate study in professional psychology that meets the standards of accreditation adopted by the American Psychological Association or its equivalent. If the program is not accredited by the American Psychological Association, it is the responsibility of the applicant to provide evidence of equivalence. Any applicant from a program that does not meet such standards shall present a certificate of retraining from a program of respecialization that does meet such standards;
- (2) Have completed one year of supervised professional experience in an internship as provided in subdivision (2) of section 38-3114;
- (3) Apply prior to beginning the year of registered supervised postdoctoral experience; and
- (4) Submit to the department:

- (a) An official transcript showing proof of a doctoral degree in psychology from an institution of higher education;
- (b) A certified copy of the applicant's birth certificate or other evidence of having attained the age of nineteen years; and
- (c) A registration of supervisory relationship pursuant to section 38-3116.

Source: Laws 1999, LB 366, § 1; R.S.1943, (2003), § 71-1,206.32; Laws 2007, LB463, § 1056.

38-3123 Provisional license; approve or deny application.

The department shall approve or deny a complete application for a provisional license to practice psychology within one hundred fifty days after receipt of the application.

Source: Laws 1999, LB 366, § 2; R.S.1943, (2003), § 71-1,206.33; Laws 2007, LB463, § 1057.

38-3124 Provisional license; title; duties.

A psychologist practicing with a provisional license shall use the title Provisionally Licensed Psychologist. A provisionally licensed psychologist shall disclose supervisory relationships to clients or patients for whom supervision is required and to third parties when relevant. A provisionally licensed psychologist shall not supervise other mental health professionals or independently evaluate persons under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act.

Source: Laws 1999, LB 366, § 3; Laws 2006, LB 1199, § 34; R.S.Supp.,2006, § 71-1,206.34; Laws 2007, LB463, § 1058.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.
Sex Offender Commitment Act, see section 71-1201.

38-3125 Provisional license; expiration.

A provisional license to practice psychology expires upon receipt of a license to practice psychology or two years after the date of issuance, whichever occurs first.

Source: Laws 1999, LB 366, § 4; R.S.1943, (2003), § 71-1,206.35; Laws 2007, LB463, § 1059.

38-3126 Fees.

The department shall establish and collect fees for credentialing under the Psychology Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 1060.

38-3127 Additional grounds for disciplinary action.

In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a credential subject to the Psychology Practice Act may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant or licensee fails to disclose the information required by section 38-3124.

Source: Laws 2007, LB463, § 1061.

38-3128 Limitation of practice; board; duties.

The board shall ensure through rules and regulations and enforcement that psychologists limit their practice to demonstrated areas of competence as documented by relevant professional education, training, and experience.

Source: Laws 1994, LB 1210, § 86; R.S.1943, (2003), § 71-1,206.24; Laws 2007, LB463, § 1062.

38-3129 Code of conduct.

A psychologist and anyone under his or her supervision shall conduct his or her professional activities in conformity with the code of conduct.

Source: Laws 1994, LB 1210, § 88; R.S.1943, (2003), § 71-1,206.26; Laws 2007, LB463, § 1063.

38-3130 Representation as a psychologist; unlawful practice; violation; penalty.

(1) It shall be a violation of the Psychology Practice Act for any person not licensed in accordance with the act to represent himself or herself as a psychologist. It shall be a violation of the act for any person not licensed in accordance with the act to engage in the practice of psychology whether practicing as an individual, firm, partnership, limited liability company, corporation, agency, or other entity.

(2) Any person who represents himself or herself as a psychologist in violation of the act or who engages in the practice of psychology in violation of the act shall be guilty of a Class II misdemeanor. Each day of violation shall constitute a separate offense.

(3) Any person filing or attempting to file, as his or her own, a diploma or license of another or a forged affidavit of identification shall be guilty of a Class IV felony.

Source: Laws 1994, LB 1210, § 89; Laws 1999, LB 366, § 14; R.S.1943, (2003), § 71-1,206.27; Laws 2007, LB463, § 1064.

38-3131 Confidentiality; privilege; exceptions.

(1) The confidential relations and communications between psychologists and their clients and patients shall be on the same basis as those between physicians and their clients and patients as provided in section 27-504.

(2) In judicial proceedings, whether civil, criminal, or juvenile, in legislative and administrative proceedings, and in proceedings preliminary and ancillary thereto, a client or patient, or his or her legal guardian or personal representative, may refuse to disclose or may prevent the disclosure of confidential information, including information contained in administrative records, communicated to a psychologist, or to a person reasonably believed by the client or patient to be a psychologist, or the psychologist's or person's agents, for the purpose of diagnosis, evaluation, or treatment of any mental and emotional disorder. In the absence of evidence to the contrary, the psychologist shall be presumed to be authorized to claim the privilege on the client's or patient's behalf.

(3) This privilege may not be claimed by the client or patient, or on his or her behalf by authorized persons, in the following circumstances:

- (a) When abuse or harmful neglect of children, the elderly, or disabled or incompetent individuals is known or reasonably suspected;
- (b) When the validity of a will of a former client or patient of the psychologist is contested;
- (c) When such information is necessary for the psychologist to defend against a malpractice action brought by the client or patient;
- (d) When an immediate threat of physical violence against a readily identifiable victim is disclosed to the psychologist;
- (e) When an immediate threat of self-inflicted injury is disclosed to the psychologist;
- (f) When the client or patient, by alleging mental or emotional damages in litigation, puts his or her mental state in issue;
- (g) When the client or patient is examined pursuant to court order;
- (h) When the purpose of the proceeding is to substantiate and collect on a claim for mental or emotional health services rendered to the client or patient or any other cause of action arising out of the professional relationship; or
- (i) In the context of investigations and hearings brought by the client or patient and conducted by the department, when violations of the Psychology Practice Act are at issue.

Source: Laws 1994, LB 1210, § 91; Laws 1999, LB 366, § 16; R.S.1943, (2003), § 71-1,206.29; Laws 2007, LB463, § 1065.

38-3132 Duty to warn; limitation; immunity.

- (1) No monetary liability and no cause of action shall arise against any psychologist for failing to warn of and protect from a client's or patient's threatened violent behavior or failing to predict and warn of and protect from a client's or patient's violent behavior except when the client or patient has communicated to the psychologist a serious threat of physical violence against a reasonably identifiable victim or victims.
- (2) The duty to warn of or to take reasonable precautions to provide protection from violent behavior shall arise only under the limited circumstances specified in subsection (1) of this section. The duty shall be discharged by the psychologist if reasonable efforts are made to communicate the threat to the victim or victims and to a law enforcement agency.
- (3) No monetary liability and no cause of action shall arise against any person who is a psychologist for a confidence disclosed to third parties in an effort to discharge a duty arising under subsection (1) of this section in accordance with subsection (2) of this section.

Source: Laws 1994, LB 1210, § 92; R.S.1943, (2003), § 71-1,206.30; Laws 2007, LB463, § 1066.

ARTICLE 32

RESPIRATORY CARE PRACTICE ACT

Cross References

Child abuse, duty to report, see section 28-711.
Division of Public Health of the Department of Health and Human Services, see section 81-3113.
Emergency Management Act, exemption from licensure, see section 81-829.55 et seq.
Good Samaritan provisions, see section 25-21,186.
Health and Human Services Act, see section 81-3110.

Health Care Facility Licensure Act, see section 71-401.
Health Care Professional Credentialing Verification Act, see section 44-7001.
License Suspension Act, see section 43-3301.
Nebraska Regulation of Health Professions Act, see section 71-6201.
Patient Safety Improvement Act, see section 71-8701.
State Board of Health, duties, see section 71-2610 et seq.
Uniform Controlled Substances Act, see section 28-401.01.

Section

- 38-3201. Act, how cited.
- 38-3202. Definitions, where found.
- 38-3203. Board, defined.
- 38-3204. Medical director, defined.
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- 38-3207. Board; membership; qualifications.
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- 38-3215. Practice of respiratory care; limitations.
- 38-3216. Respiratory care practitioner; subject to facility rules and regulations; when.

38-3201 Act, how cited.

Sections 38-3201 to 38-3216 shall be known and may be cited as the Respiratory Care Practice Act.

Source: Laws 2007, LB463, § 1067.

38-3202 Definitions, where found.

For purposes of the Respiratory Care Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-3203 to 38-3206 apply.

Source: Laws 2007, LB463, § 1068.

38-3203 Board, defined.

Board means the Board of Respiratory Care Practice.

Source: Laws 2007, LB463, § 1069.

38-3204 Medical director, defined.

Medical director means a licensed physician who has the qualifications as described in section 38-3214.

Source: Laws 2007, LB463, § 1070.

38-3205 Respiratory care, defined.

Respiratory care means the health specialty responsible for the treatment, management, diagnostic testing, control, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system. Respiratory care shall not be limited to a hospital setting and shall include the therapeutic and diagnostic use of medical gases, administering apparatus, humidification and aerosols, ventilatory assistance and ventilatory control, postural drainage, chest physiotherapy and breathing exercises, respiratory rehabilitation, car-

diopulmonary resuscitation, and maintenance of nasal or oral endotracheal tubes. Respiratory care shall also include the administration of aerosol and inhalant medications to the cardiorespiratory system and specific testing techniques employed in respiratory care to assist in diagnosis, monitoring, treatment, and research. Such techniques shall include, but not be limited to, measurement of ventilatory volumes, pressures, and flows, measurement of physiologic partial pressures, pulmonary function testing, and hemodynamic and other related physiological monitoring of the cardiopulmonary system.

Source: Laws 2007, LB463, § 1071.

38-3206 Respiratory care practitioner, defined.

Respiratory care practitioner means:

(1) Any person employed in the practice of respiratory care who has the knowledge and skill necessary to administer respiratory care to patients of all ages with varied cardiopulmonary diseases and to patients in need of critical care and who is capable of serving as a resource to the physician and other health professionals in relation to the technical aspects of respiratory care including effective and safe methods for administering respiratory care; and

(2) A person capable of supervising, directing, or teaching less skilled personnel in the provision of respiratory care services.

Source: Laws 1986, LB 277, § 9; Laws 1999, LB 828, § 138; Laws 2003, LB 242, § 61; R.S.1943, (2003), § 71-1,227; Laws 2007, LB463, § 1072.

38-3207 Board; membership; qualifications.

Membership on the board shall consist of two respiratory care practitioners, one physician, and one public member.

Source: Laws 2007, LB463, § 1073.

38-3208 Practices not requiring licensure.

The Respiratory Care Practice Act shall not prohibit:

(1) The practice of respiratory care which is an integral part of the program of study by students enrolled in approved respiratory care education programs;

(2) The gratuitous care, including the practice of respiratory care, of the ill by a friend or member of the family or by a person who is not licensed to practice respiratory care if such person does not represent himself or herself as a respiratory care practitioner;

(3) The practice of respiratory care by nurses, physicians, physician assistants, physical therapists, or any other professional licensed under the Uniform Credentialing Act when such practice is within the scope of practice for which that person is licensed;

(4) The practice of any respiratory care practitioner of this state or any other state or territory while employed by the federal government or any bureau or division thereof while in the discharge of his or her official duties;

(5) Techniques defined as pulmonary function testing and the administration of aerosol and inhalant medications to the cardiorespiratory system as it relates to pulmonary function technology administered by a registered pulmonary function technologist credentialed by the National Board for Respiratory Care

or a certified pulmonary function technologist credentialed by the National Board for Respiratory Care; or

(6) The performance of oxygen therapy or the initiation of noninvasive positive pressure ventilation by a registered polysomnographic technologist relating to the study of sleep disorders if such procedures are performed or initiated under the supervision of a licensed physician at a facility accredited by the American Academy of Sleep Medicine.

Source: Laws 1986, LB 277, § 17; Laws 1997, LB 622, § 83; Laws 2003, LB 242, § 64; Laws 2003, LB 667, § 5; R.S.1943, (2003), § 71-1,235; Laws 2007, LB463, § 1074.

38-3209 License; application; requirements.

(1) An applicant for a license to practice respiratory care shall submit to the department written evidence that the applicant has completed a respiratory care educational program accredited by the Commission on Accreditation of Allied Health Education Programs in collaboration with the Committee on Accreditation for Respiratory Care or its successor or by an accrediting agency approved by the board.

(2) In order to be licensed, initial applicants shall pass an examination approved by the board.

Source: Laws 1986, LB 277, § 13; Laws 2002, LB 1062, § 38; R.S.1943, (2003), § 71-1,231; Laws 2007, LB463, § 1075.

Cross References

Uniform Credentialing Act, see section 38-101.

38-3210 Practicing respiratory care practitioners; license issued; conditions.

The department, with the recommendation of the board, shall issue a license to perform respiratory care to an applicant who, on or before July 17, 1986, has passed the Certified Respiratory Therapy Technician or Registered Respiratory Therapist examination administered by the National Board for Respiratory Care or the appropriate accrediting agency acceptable to the board.

Source: Laws 1986, LB 277, § 15; Laws 1988, LB 1100, § 84; Laws 2003, LB 245, § 15; R.S.1943, (2003), § 71-1,233; Laws 2007, LB463, § 1076.

38-3211 Applicant for licensure; continuing competency requirements.

An applicant for licensure to practice respiratory care who has met the education and examination requirements in section 38-3209, who passed the examination more than three years prior to the time of application for licensure, and who is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 1077.

38-3212 Applicant for licensure; reciprocity; continuing competency requirements.

An applicant for licensure to practice respiratory care who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 1078.

38-3213 Fees.

The department shall establish and collect fees for credentialing under the Respiratory Care Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 1079.

38-3214 Respiratory care service; requirements.

Any health care facility or home care agency providing inpatient or outpatient respiratory care service shall designate a medical director, who shall be a licensed physician who has special interest and knowledge in the diagnosis and treatment of respiratory problems. Such physician shall (1) be an active medical staff member of a licensed health care facility, (2) whenever possible be qualified by special training or experience in the management of acute and chronic respiratory disorders, and (3) be competent to monitor and assess the quality, safety, and appropriateness of the respiratory care services which are being provided. The medical director shall be accessible to and assure the competency of respiratory care practitioners and shall require that respiratory care be ordered by a physician who has medical responsibility for any patient that needs such care.

Source: Laws 1986, LB 277, § 11; R.S.1943, (2003), § 71-1,229; Laws 2007, LB463, § 1080.

38-3215 Practice of respiratory care; limitations.

The practice of respiratory care shall be performed only under the direction of a medical director and upon the order of a licensed physician.

Source: Laws 1986, LB 277, § 12; R.S.1943, (2003), § 71-1,230; Laws 2007, LB463, § 1081.

38-3216 Respiratory care practitioner; subject to facility rules and regulations; when.

In the event a respiratory care practitioner renders respiratory care in a hospital or health care facility, he or she shall be subject to the rules and regulations of that facility. Such rules and regulations may include, but not be limited to, reasonable requirements that the respiratory care practitioner maintain professional liability insurance with such coverage and limits as may be established by the hospital or other health care facility upon the recommendation of the medical staff.

Source: Laws 1986, LB 277, § 18; R.S.1943, (2003), § 71-1,236; Laws 2007, LB463, § 1082.

ARTICLE 33

VETERINARY MEDICINE AND SURGERY PRACTICE ACT

Cross References

- Diseased animals, examination of, see section 54-747.
- Division of Public Health of the Department of Health and Human Services, see section 81-3113.
- Food Supply Animal Veterinary Incentive Program Act, see section 54-501.
- Health and Human Services Act, see section 81-3110.
- License Suspension Act, see section 43-3301.
- Lien for services, see section 52-701 et seq.
- Limited Liability Company Act, see section 21-2601.
- Livestock provisions, see Chapter 54.
- Nebraska Professional Corporation Act, see section 21-2201.
- Nebraska Regulation of Health Professions Act, see section 71-6201.
- Pathogenic microorganisms, requirements, see sections 71-1801 to 71-1805.
- Rabies, see section 71-4401 et seq.
- State Board of Health, duties, see section 71-2610 et seq.
- State Veterinarian, see section 81-202.01.
- Uniform Controlled Substances Act, see section 28-401.01.
- University of Nebraska, cooperative program for veterinary medicine and surgery education, see sections 85-180.13 et seq. and 85-1,104.
- Veterinary Drug Distribution Licensing Act, see section 71-8901.

Section

- 38-3301. Act, how cited.
- 38-3302. Definitions, where found.
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- 38-3326. Veterinary technicians; rules and regulations.
- 38-3327. Applicant; reciprocity; requirements.
- 38-3328. Fees.
- 38-3329. Advertising; offer of services; limitation.
- 38-3330. Disclosure of information; restrictions.

38-3301 Act, how cited.

Sections 38-3301 to 38-3330 shall be known and may be cited as the Veterinary Medicine and Surgery Practice Act.

Source: Laws 1967, c. 439, § 1, p. 1353; Laws 1988, LB 1100, § 54; Laws 2000, LB 833, § 3; R.S.1943, (2003), § 71-1,153; Laws 2007, LB463, § 1083.

38-3302 Definitions, where found.

For purposes of the Veterinary Medicine and Surgery Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-3303 to 38-3318 apply.

Source: Laws 2007, LB463, § 1084.

38-3303 Accredited school of veterinary medicine, defined.

Accredited school of veterinary medicine means:

- (1) One approved by the board;
- (2) A veterinary college or division of a university or college that offers the degree of Doctor of Veterinary Medicine or its equivalent; and
- (3) One that conforms to the standards required for accreditation by the American Veterinary Medical Association.

Source: Laws 2007, LB463, § 1085.

38-3304 Animal, defined.

Animal means any animal other than man and includes birds, fish, and reptiles, wild or domestic, living or dead, except domestic poultry.

Source: Laws 2007, LB463, § 1086.

38-3305 Approved veterinary technician program, defined.

Approved veterinary technician program means:

- (1) One approved by the board;
- (2) A school or college that offers the degree of Veterinary Technician, a degree in veterinary technology, or the equivalent; and
- (3) One that conforms to the standards required for accreditation by the American Veterinary Medical Association.

Source: Laws 2007, LB463, § 1087.

38-3306 Board, defined.

Board means the Board of Veterinary Medicine and Surgery.

Source: Laws 2007, LB463, § 1088.

38-3307 Direct supervision, defined.

Direct supervision means that the supervisor is on the premises and is available to the veterinary technician or unlicensed assistant who is treating the animal and the animal has been examined by a veterinarian at such times as acceptable veterinary practice requires consistent with the particular delegated animal health care task.

Source: Laws 2007, LB463, § 1089.

38-3308 Immediate supervision, defined.

Immediate supervision means that the supervisor is on the premises and is in direct eyesight and hearing range of the animal and the veterinary technician or unlicensed assistant who is treating the animal and the animal has been

examined by a veterinarian at such times as acceptable veterinary practice requires consistent with the particular delegated animal health care task.

Source: Laws 2007, LB463, § 1090.

38-3309 Indirect supervision, defined.

Indirect supervision means that the supervisor is not on the premises but is easily accessible and has given written or oral instructions for treatment of the animal and the animal has been examined by a veterinarian at such times as acceptable veterinary practice requires consistent with the particular delegated animal health care task.

Source: Laws 2007, LB463, § 1091.

38-3310 Licensed veterinarian, defined.

Licensed veterinarian means a person who is validly and currently licensed to practice veterinary medicine and surgery in this state.

Source: Laws 2007, LB463, § 1092.

38-3311 Licensed veterinary technician, defined.

Licensed veterinary technician means an individual who is validly and currently licensed as a veterinary technician in this state.

Source: Laws 2007, LB463, § 1093.

38-3312 Practice of veterinary medicine and surgery, defined.

Practice of veterinary medicine and surgery means:

(1) To diagnose, treat, correct, change, relieve, or prevent animal disease, deformity, defect, injury, or other physical or mental conditions, including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique, and the use of any manual or mechanical procedure for testing for pregnancy or fertility or for correcting sterility or infertility. The acts described in this subdivision shall not be done without a valid veterinarian-client-patient relationship;

(2) To render advice or recommendation with regard to any act described in subdivision (1) of this section;

(3) To represent, directly or indirectly, publicly or privately, an ability and willingness to do any act described in subdivision (1) of this section; and

(4) To use any title, words, abbreviation, or letters in a manner or under circumstances which induce the belief that the person using them is qualified to do any act described in subdivision (1) of this section.

Source: Laws 2007, LB463, § 1094.

38-3313 Supervisor, defined.

Supervisor means a licensed veterinarian or licensed veterinary technician as required by statute or rule or regulation for the particular delegated task being performed by a veterinary technician or unlicensed assistant.

Source: Laws 2007, LB463, § 1095.

38-3314 Unlicensed assistant, defined.

Unlicensed assistant means an individual who is not a licensed veterinarian or a licensed veterinary technician who is working in veterinary medicine.

Source: Laws 2007, LB463, § 1096.

38-3315 Veterinarian, defined.

Veterinarian means a person who has received a degree of Doctor of Veterinary Medicine from an accredited school of veterinary medicine or its equivalent.

Source: Laws 2007, LB463, § 1097.

38-3316 Veterinarian-client-patient relationship, defined.

Veterinarian-client-patient relationship means that:

(1) The veterinarian has assumed the responsibility for making clinical judgments regarding the health of the animal and the need for medical treatment, and the client has agreed to follow the veterinarian's instructions;

(2) The veterinarian has sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal. This means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of an examination of the animal or by medically appropriate and timely visits to the premises where the animal is kept; and

(3) The veterinarian is readily available or has arranged for emergency coverage and for followup evaluation in the event of adverse reactions or the failure of the treatment regimen.

Source: Laws 2007, LB463, § 1098.

38-3317 Veterinary medicine and surgery, defined.

Veterinary medicine and surgery includes veterinary surgery, obstetrics, dentistry, and all other branches or specialties of veterinary medicine.

Source: Laws 2007, LB463, § 1099.

38-3318 Veterinary technician, defined.

Veterinary technician means an individual who has received a degree in veterinary technology from an approved veterinary technician program or its equivalent.

Source: Laws 2007, LB463, § 1100.

38-3319 Board; membership; qualifications.

The board shall consist of five members, including three licensed veterinarians, one licensed veterinary technician, and one public member.

Source: Laws 2007, LB463, § 1101.

38-3320 Board; purpose.

The purpose of the board is to: (1) Provide for the health, safety, and welfare of the citizens; (2) insure that veterinarians and veterinary technicians serving the public meet minimum standards of proficiency and competency; (3) insure

that schools of veterinary medicine and surgery and veterinary technician programs meet the educational needs of the students and qualify students to serve the public in a safe and efficient manner; and (4) control the field of veterinary medicine and surgery in the interest of consumer protection.

Source: Laws 1979, LB 96, § 1; Laws 1999, LB 828, § 127; Laws 2000, LB 833, § 2; R.S.1943, (2003) § 71-1,152.01; Laws 2007, LB463, § 1102.

38-3321 Veterinarian; license; required; exceptions.

No person may practice veterinary medicine and surgery in the state who is not a licensed veterinarian. The Veterinary Medicine and Surgery Practice Act shall not be construed to prohibit:

(1) An employee of the federal, state, or local government from performing his or her official duties;

(2) A person who is a student in a veterinary school from performing duties or actions assigned by his or her instructors or from working under the direct supervision of a licensed veterinarian;

(3) A person who is a student in an approved veterinary technician program from performing duties or actions assigned by his or her instructors or from working under the direct supervision of a licensed veterinarian or a licensed veterinary technician;

(4) Any merchant or manufacturer from selling feed or feeds whether medicated or nonmedicated;

(5) A veterinarian regularly licensed in another state from consulting with a licensed veterinarian in this state;

(6) Any merchant or manufacturer from selling from his or her established place of business medicines, appliances, or other products used in the prevention or treatment of animal diseases or any merchant or manufacturer's representative from conducting educational meetings to explain the use of his or her products or from investigating and advising on problems developing from the use of his or her products;

(7) An owner of livestock or a bona fide farm or ranch employee from performing any act of vaccination, surgery, pregnancy testing, or the administration of drugs in the treatment of domestic animals under his or her custody or ownership nor the exchange of services between persons or bona fide employees who are principally farm or ranch operators or employees in the performance of these acts;

(8) A member of the faculty of a veterinary school or veterinary science department from performing his or her regular functions, or a person lecturing or giving instructions or demonstrations at a veterinary school or veterinary science department or in connection with a continuing competency activity;

(9) Any person from selling or applying any pesticide, insecticide, or herbicide;

(10) Any person from engaging in bona fide scientific research which reasonably requires experimentation involving animals;

(11) Any person from treating or in any manner caring for domestic chickens, turkeys, or waterfowl, which are specifically exempted from the Veterinary Medicine and Surgery Practice Act;

(12) Any person from performing dehorning or castrating livestock, not to include equidae.

For purposes of the Veterinary Medicine and Surgery Practice Act, castration shall be limited to the removal or destruction of male testes; or

(13) Any person who holds a valid credential in the State of Nebraska in a health care profession or occupation regulated under the Uniform Credentialing Act from consulting with a licensed veterinarian who has contracted with or is employed by an accredited zoological park or garden regarding an animal on behalf of such zoological park or garden or performing collaborative animal health care tasks on an animal under the care of such veterinarian for such zoological park or garden if all such tasks are performed under the immediate supervision of such veterinarian.

Source: Laws 1967, c. 439, § 3, p. 1354; Laws 1986, LB 926, § 47; Laws 1988, LB 1100, § 56; Laws 2002, LB 1021, § 23; Laws 2004, LB 1005, § 18; Laws 2005, LB 301, § 11; R.S.Supp.,2006, § 71-1,155; Laws 2007, LB463, § 1103; Laws 2008, LB928, § 13.

Operative date December 1, 2008.

Subsection (6) of this section applies to owners or bona fide farm or ranch employees who work on their own animals, not another person's animals, unless an exchange of services is involved. State ex rel. Dept. of Health v. Jeffrey, 247 Neb. 100, 525 N.W.2d 193 (1994).

38-3322 Veterinary medicine and surgery; license; application; qualifications.

Each applicant for a license to practice veterinary medicine and surgery in this state shall present to the department:

(1) Proof that the applicant is a graduate of an accredited school of veterinary medicine or holds a certificate issued by an entity that determines educational equivalence approved by the board indicating that the holder has demonstrated knowledge and skill equivalent to that possessed by a graduate of an accredited college of veterinary medicine;

(2) Proof that the applicant has passed an examination approved by the board; and

(3) Such other information and proof as the department, with the recommendation of the board, may require by rule and regulation.

Source: Laws 1967, c. 439, § 6, p. 1358; Laws 1974, LB 811, § 15; Laws 1975, LB 255, § 1; Laws 1987, LB 473, § 26; Laws 1988, LB 1100, § 58; Laws 2000, LB 833, § 8; Laws 2002, LB 1062, § 35; Laws 2003, LB 242, § 55; R.S.1943, (2003), § 71-1,158; Laws 2007, LB463, § 1104.

Cross References

Uniform Credentialing Act, see section 38-101.

38-3323 Veterinary medicine and surgery; license; validity.

Any person holding a valid license to practice veterinary medicine and surgery in this state on October 23, 1967, shall be recognized as a licensed veterinarian and shall be entitled to retain such status so long as he or she complies with the Veterinary Medicine and Surgery Practice Act and the

provisions of the Uniform Credentialing Act relating to veterinary medicine and surgery.

Source: Laws 1967, c. 439, § 5, p. 1358; Laws 1988, LB 1100, § 57; R.S.1943, (2003), § 71-1,157; Laws 2007, LB463, § 1105.

38-3324 Board; disciplinary actions; grounds.

A license to practice veterinary medicine and surgery may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant or licensee is guilty of any of the acts or offenses specified in sections 38-178 and 38-179 and for any of the following reasons:

- (1) Fraud or dishonesty in the application or reporting of any test for disease in animals;
- (2) Failure to keep veterinary premises and equipment in a clean and sanitary condition;
- (3) Failure to report, as required by law, or making false report of, any contagious or infectious disease;
- (4) Dishonesty or gross negligence in the inspection of foodstuffs or the issuance of health or inspection certificates; or
- (5) Cruelty to animals.

Source: Laws 1967, c. 439, § 11, p. 1361; Laws 1988, LB 1100, § 62; R.S.1943, (2003), § 71-1,163; Laws 2007, LB463, § 1106.

38-3325 Veterinary technician; license; requirements.

To be a licensed veterinary technician in this state, an individual shall (1) be a graduate of an approved veterinary technician program and (2) receive a passing score on a national examination approved by the board.

Source: Laws 2000, LB 833, § 6; Laws 2002, LB 1021, § 25; Laws 2003, LB 242, § 57; R.S.1943, (2003), § 71-1,165; Laws 2007, LB463, § 1107.

Cross References

Uniform Credentialing Act, see section 38-101.

38-3326 Veterinary technicians; rules and regulations.

The department, with the recommendation of the board, shall adopt and promulgate rules and regulations providing for (1) licensure of veterinary technicians meeting the requirements of section 38-3325 and (2) standards for the level of supervision required for particular delegated animal health care tasks and which determine which tasks may be performed by a licensed veterinary technician and by unlicensed assistants. The level of supervision may be immediate supervision, direct supervision, or indirect supervision as determined by the department, with the recommendation of the board, based upon the complexity and requirements of the task.

Source: Laws 2000, LB 833, § 7; Laws 2003, LB 242, § 58; Laws 2003, LB 245, § 14; R.S.1943, (2003), § 71-1,166; Laws 2007, LB463, § 1108.

38-3327 Applicant; reciprocity; requirements.

(1) An applicant for a license to practice veterinary medicine and surgery based on a license in another state or territory of the United States, the District of Columbia, or a Canadian province shall meet the standards set by the board pursuant to section 38-126 and shall have been actively engaged in the practice of such profession at least one of the three years immediately preceding the application under a license in another state or territory of the United States, the District of Columbia, or a Canadian province.

(2) An applicant for a license to practice as a licensed veterinary technician based on a license in another state or territory of the United States, the District of Columbia, or a Canadian province shall meet the standards set by the board pursuant to section 38-126 and shall have been actively engaged in the practice of such profession at least one of the three years immediately preceding the application under a license in another state or territory of the United States, the District of Columbia, or a Canadian province.

Source: Laws 2007, LB463, § 1109.

38-3328 Fees.

The department shall establish and collect fees for credentialing under the Veterinary Medicine and Surgery Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 1110.

38-3329 Advertising; offer of services; limitation.

(1) Only a licensed veterinarian may advertise or offer his or her services in a manner calculated to lead others to believe that he or she is a licensed veterinarian.

(2) Only a licensed veterinary technician may advertise or offer his or her services in a manner calculated to lead others to believe that he or she is a licensed veterinary technician.

Source: Laws 2007, LB463, § 1111.

38-3330 Disclosure of information; restrictions.

Unless required by any state or local law for contagious or infectious disease reporting or other public health and safety purpose, no veterinarian licensed under the Veterinary Medicine and Surgery Practice Act shall be required to disclose any information concerning the veterinarian's care of an animal except under a written authorization or other waiver by the veterinarian's client or pursuant to a court order or a subpoena. A veterinarian who releases information under a written authorization or other waiver by the client or pursuant to a court order or a subpoena is not liable to the client or any other person. The privilege provided by this section is waived to the extent that the veterinarian's client or the owner of the animal places the veterinarian's care and treatment of the animal or the nature and extent of injuries to the animal at issue in any civil or criminal proceeding. For purposes of this section, veterinarian includes the employees or agents of the licensed veterinarian while acting for or on behalf of such veterinarian.

Source: Laws 2000, LB 833, § 5; R.S.1943, (2003), § 71-1,164; Laws 2007, LB463, § 1112.

HIGHWAYS AND BRIDGES

CHAPTER 39 HIGHWAYS AND BRIDGES

Article.

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ARTICLE 1

GENERAL HIGHWAY PROVISIONS

Section

- 39-101. Terms, defined.
- 39-102. Rules and regulations; promulgated by Department of Roads to promote public safety.
- 39-103. Department of Roads; rules and regulations; violation; penalty.

39-101 Terms, defined.

For purposes of Chapter 39, unless the context otherwise requires:

- (1) Alley 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 means a highway with separated roadways for traffic in opposite directions;
- (3) Highway means the entire width between the boundary limits of any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel;
- (4) Intersection 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 means to deposit in the United States mail properly addressed and with postage prepaid;

(6) Maintenance 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 means every self-propelled land vehicle, not operated upon rails, except mopeds as defined in section 60-637, self-propelled chairs used by persons who are disabled, and electric personal assistive mobility devices as defined in section 60-618.02;

(8) Park or parking 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 means any person afoot;

(10) Right-of-way 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 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 refers to any such roadway separately but not to all such roadways collectively;

(12) Shoulder 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 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 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 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 used exclusively upon stationary rails or tracks, and electric personal assistive mobility devices as defined in section 60-618.02.

Source: Laws 1993, LB 370, § 16; Laws 2002, LB 1105, § 436.

The standard for determining whether a vehicle is "approaching" is whether or not the vehicle poses an immediate hazard; that is, whether the circumstances are such that there is a danger of collision if one vehicle does not grant precedence to the other. *Springer v. Bohling*, 259 Neb. 71, 607 N.W.2d 836 (2000).

The right-of-way does not include a right to encroach upon that half of the highway upon which cars coming from the opposite direction are entitled to travel. Generally, an unexcused vehicular encroachment on another's lane of traffic, such as driving to the left of the middle of a roadway, prevents

acquisition of a right-of-way and precludes the unlawful encroachment from becoming a favored position in movement of traffic. *Krul v. Harless*, 222 Neb. 313, 383 N.W.2d 744 (1986).

A hospital driveway which is privately maintained and subject to use by patients, visitors, and others having legitimate business at the hospital is not a "highway," within the meaning of this section and, therefore, the rules of the road as set forth in sections 39-601 to 39-6,122 (now sections 60-601 to 60-6,377) do not apply to its use. However, common law applicable to users of public ways does apply. *Bassinger v. Agnew*, 206 Neb. 1, 290 N.W.2d 793 (1980).

Vehicle on the right has the favored position but does not have an absolute right to proceed regardless of the circumstances. *Crink v. Northern Nat. Gas Co.*, 200 Neb. 460, 263 N.W.2d 857 (1978).

Intersection right-of-way is a qualified, not absolute, right to proceed, exercising due care, in a lawful manner in preference to an opposing vehicle. *Reese v. Mayer*, 198 Neb. 499, 253 N.W.2d 317 (1977).

Sidewalk is portion of street between curb lines, or lateral lines of roadway and adjacent property lines, intended for use by pedestrians. *Therkildsen v. Gottsch*, 194 Neb. 729, 235 N.W.2d 622 (1975).

Where highway includes two roadways thirty feet apart, each crossing thereof is a separate intersection. *Therkildsen v. Gottsch*, 194 Neb. 729, 235 N.W.2d 622 (1975).

39-102 Rules and regulations; promulgated by Department of Roads to promote public safety.

In order to promote public safety, to preserve and protect state highways, and to prevent immoderate and destructive use of state highways, the Department of Roads may formulate, adopt, and promulgate rules and regulations in regard to the use of and travel upon the state highways consistent with Chapter 39 and the Nebraska Rules of the Road. Such rules and regulations may include specifications, standards, limitations, conditions, requirements, definitions, enumerations, descriptions, procedures, prohibitions, restrictions, instructions, controls, guidelines, and classifications relative to the following:

(1) The issuance or denial of special permits for the travel of vehicles or objects exceeding statutory size and weight capacities upon the highways as authorized by section 60-6,298;

(2) Qualification and prequalification of contractors, including, but not limited to, maximum and minimum qualifications, ratings, classifications, classes of contractors or classes of work, or both, and procedures to be followed;

(3) The setting of special load restrictions as provided in Chapter 39 and the Nebraska Rules of the Road;

(4) The placing, location, occupancy, erection, construction, or maintenance, upon any highway or area within the right-of-way, of any pole line, pipeline, or other utility located above, on, or under the level of the ground in such area;

(5) Protection and preservation of trees, shrubbery, plantings, buildings, structures, and all other things located upon any highway or any portion of the right-of-way of any highway by the department;

(6) Applications for the location of, and location of, private driveways, commercial approach roads, facilities, things, or appurtenances upon the right-of-way of state highways, including, but not limited to, procedures for applications for permits therefor and standards for the issuance or denial of such permits, based on highway traffic safety, and the foregoing may include reapplication for permits and applications for permits for existing facilities, and in any event, issuance of permits may also be conditioned upon approval of the design of such facilities;

(7) Outdoor advertising signs, displays, and devices in areas where the department is authorized by law to exercise such controls; and

(8) The Grade Crossing Protection Fund provided for in section 74-1317, including, but not limited to, authority for application, procedures on application, effect of application, procedures for and effect of granting such applications, and standards and specifications governing the type of control thereunder.

This section shall not amend or derogate any other grant of power or authority to the department to make or promulgate rules and regulations but shall be additional and supplementary thereto.

Source: Laws 1973, LB 45, § 99; Laws 1985, LB 395, § 1; R.S.1943, (1988), § 39-699; Laws 1993, LB 370, § 17.

Cross References

Nebraska Rules of the Road, see section 60-601.

39-103 Department of Roads; rules and regulations; violation; penalty.

Any person who operates a vehicle upon any highway in violation of the rules and regulations of the Department of Roads governing the use of state highways shall be guilty of a Class III misdemeanor.

Source: Laws 1967, c. 235, § 4, p. 633; R.R.S.1943, § 39-7,134.01; Laws 1977, LB 41, § 17; R.S.1943, (1988), § 39-699.01; Laws 1993, LB 370, § 18.

ARTICLE 2**SIGNS**

Cross References

Outdoor advertising signs:

Control, see sections 39-201.01 to 39-226 and 39-1320.

Removal, see sections 69-1701 and 69-1702.

Rules and regulations, see section 39-102.

Tourist-oriented directional sign panels, see sections 39-207 to 39-211.

Section

- 39-201. Repealed. Laws 1995, LB 264, § 37.
- 39-201.01. Terms, defined.
- 39-202. Advertising signs, displays, or devices; visible from highway; prohibited; exceptions; permitted signs enumerated.
- 39-203. Advertising sign; compensation upon removal; Department of Roads; make expenditures; when.
- 39-204. Informational signs; erection; conform with rules and regulations; minimum service requirements.
- 39-205. Informational signs; business signs; posted by department; costs and fees; disposition; notice of available space.
- 39-206. Informational signs; erection; conditions; fee.
- 39-207. Tourist-oriented directional sign panels; erection and maintenance.
- 39-208. Sign panels; erection; conditions; fee; disposition.
- 39-209. Sign panels; types; restrictions.
- 39-210. Sign panels; qualification of activities; minimum requirements; violation; effect.
- 39-211. Sign panels; rules and regulations.
- 39-212. Acquisition of interest in property; control of advertising outside of right-of-way; compensation; removal; costs; payment by department.
- 39-213. Control of advertising outside of right-of-way; agreements authorized; commercial and industrial zones; provisions.
- 39-214. Control of advertising outside of right-of-way; adoption of rules and regulations by department; minimum requirements.
- 39-215. Prohibition of advertising visible from main-traveled way; other signs permitted; where; criteria listed.
- 39-216. Control of advertising visible from main-traveled way; unlawful; when permitted; written lease and permit from Department of Roads.
- 39-217. Scenic byway designations.
- 39-218. Scenic byways; prohibition of signs visible from main-traveled way; exceptions.
- 39-219. Control of advertising outside of right-of-way; erected prior to March 27, 1972; effect.
- 39-220. Control of advertising visible from main-traveled way; permit; fee; rules and regulations; exceptions.
- 39-221. Control of advertising outside of right-of-way; compliance; damages; violations; penalty.
- 39-222. Control of advertising outside of right-of-way; eminent domain; authorized.

Section	
39-223.	Governmental or quasi-governmental agency; removal of signs, displays, or devices along Highway Beautification Control System; exemption; petition.
39-224.	Department of Roads; retention of signs, displays, or devices; request.
39-225.	Department of Roads; removal of nonconforming signs; program.
39-226.	Exemption, how construed.

39-201 Repealed. Laws 1995, LB 264, § 37.

39-201.01 Terms, defined.

For purposes of sections 39-202 to 39-226:

(1) Highway Beautification Control System means the National System of Interstate and Defense Highways, the system of federal-aid primary roads as they existed on June 1, 1991, any additional highway or road which is designated as a part of the National Highway System under the federal Intermodal Surface Transportation Efficiency Act, and scenic byways. A map of the Highway Beautification Control System shall be maintained as provided in section 39-1311;

(2) Scenic byway means a road, highway, or connecting link designated as a scenic byway pursuant to section 39-217. A map of the scenic byways shall be maintained as provided in section 39-1311; and

(3) Visible, in reference to advertising signs, displays, or devices, means the message or advertising content of such sign, display, or device is capable of being seen without visual aid by a person of normal visual acuity. A sign is considered visible even though the message or advertising content can be seen but not read.

Source: Laws 1995, LB 264, § 1.

39-202 Advertising signs, displays, or devices; visible from highway; prohibited; exceptions; permitted signs enumerated.

(1) Except as provided in sections 39-202 to 39-205, 39-215, 39-216, and 39-220, the erection or maintenance of any advertising sign, display, or device beyond six hundred sixty feet of the right-of-way of the National System of Interstate and Defense Highways and visible from the main-traveled way of such highway system is prohibited.

(2) The following signs shall be permitted:

(a) Directional and official signs to include, but not be limited to, signs and notices pertaining to natural wonders, scenic attractions, and historical attractions. Such signs shall comply with standards and criteria established by regulations of the Department of Roads as promulgated from time to time;

(b) Signs, displays, and devices advertising the sale or lease of property upon which such media are located;

(c) Signs, displays, and devices advertising activities conducted on the property on which such media are located; and

(d) Signs in existence in accordance with sections 39-212 to 39-222, to include landmark signs, signs on farm structures, markers, and plaques of historical or artistic significance.

(3) For purposes of this section, visible shall mean the message or advertising content of an advertising sign, display, or device is capable of being seen

without visual aid by a person of normal visual acuity. A sign shall be considered visible even though the message or advertising content may be seen but not read.

Source: Laws 1975, LB 213, § 1; R.S.1943, (1988), § 39-618.02; Laws 1993, LB 370, § 20; Laws 1995, LB 264, § 2.

39-203 Advertising sign; compensation upon removal; Department of Roads; make expenditures; when.

Just compensation shall be paid upon the removal of any advertising sign, display, or device lawfully erected or in existence prior to May 27, 1975, and not conforming to the provisions of sections 39-202 to 39-205, 39-215, 39-216, and 39-220 except as otherwise authorized by such sections. The Department of Roads shall not be required to expend any funds under the provisions of such sections unless and until federal-aid matching funds are made available for this purpose.

Source: Laws 1975, LB 213, § 3; R.S.1943, (1988), § 39-618.04; Laws 1993, LB 370, § 21; Laws 1995, LB 264, § 3.

39-204 Informational signs; erection; conform with rules and regulations; minimum service requirements.

(1) Signs, displays, and devices giving specific information of interest to the traveling public shall be erected by or at the direction of the Department of Roads and maintained within the right-of-way at appropriate distances from interchanges on the National System of Interstate and Defense Highways and from roads of the state primary system as shall conform with the rules and regulations adopted and promulgated by the department to carry out this section and section 39-205. Such rules and regulations shall be consistent with national standards promulgated from time to time by the appropriate authority of the federal government pursuant to 23 U.S.C. 131(f).

(2) For purposes of this section, specific information of interest to the traveling public shall mean only information about camping, lodging, food, and motor fuel and associated services, including trade names.

(3) The minimum service that is required to be available for each type of service shall include:

(a) Motor fuel services including:

(i) Vehicle services, which shall include fuel, oil, tire repair, and water;

(ii) Restroom facilities and drinking water;

(iii) Continuous operation of such services for at least sixteen hours per day, seven days per week, for freeways and expressways and continuous operation of such services for at least twelve hours per day, seven days per week, for conventional roads; and

(iv) Telephone services;

(b) Food services including:

(i) Licensing or approval of such services, when required;

(ii) Continuous operation of such services to serve three meals per day, seven days per week; and

(iii) Telephone services;

- (c) Lodging services including:
 - (i) Licensing or approval of such services, when required;
 - (ii) Adequate sleeping accommodations; and
 - (iii) Telephone services; and
- (d) Camping services including:
 - (i) Licensing or approval of such services, when required;
 - (ii) Adequate parking accommodations; and
 - (iii) Modern sanitary facilities and drinking water.

Source: Laws 1975, LB 213, § 9; Laws 1987, LB 741, § 1; R.S.1943, (1988), § 39-634.01; Laws 1993, LB 370, § 22.

39-205 Informational signs; business signs; posted by department; costs and fees; disposition; notice of available space.

(1) Applicants for business signs shall furnish business signs to the Department of Roads and shall pay to the department an annual fee for posting each business sign and the actual cost of material for, fabrication of, and erecting the specific information sign panels where specific information sign panels have not been installed.

(2) Upon receipt of the business signs and the annual fee, the department shall post or cause to be posted the business signs where specific information sign panels have been installed. The applicant shall not be required to remove any advertising device to qualify for a business sign except any advertising device which was unlawfully erected or in violation of section 39-202, 39-203, 39-204, 39-205, 39-206, 39-215, 39-216, or 39-220, any rule or regulation of the department, or any federal rule or regulation relating to informational signs. The specific information sign panels and business signs shall conform to the requirements of the Federal Beautification Act and the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118.

(3) All revenue received for the posting or erecting of business signs or specific information sign panels pursuant to this section shall be deposited in the Highway Cash Fund, except that any revenue received from the annual fee and for posting or erecting such signs in excess of the state's costs shall be deposited in the General Fund.

(4) For purposes of this section, unless the context otherwise requires:

- (a) Business sign shall mean a sign displaying a commercial brand, symbol, trademark, or name, or combination thereof, designating a motorist service. Business signs shall be mounted on a rectangular information panel; and
- (b) Specific information sign panel shall mean a rectangular sign panel with:
 - (i) The word gas, food, lodging, or camping;
 - (ii) Directional information; and
 - (iii) One or more business signs.

(5) The department shall provide notice of space available for business signs on any specific information sign panel at least ninety days prior to accepting or approving the posting of any business sign.

Source: Laws 1975, LB 213, § 10; Laws 1987, LB 741, § 2; R.S.1943, (1988), § 39-634.02; Laws 1993, LB 370, § 23; Laws 1995, LB 264, § 4.

39-206 Informational signs; erection; conditions; fee.

It is the intent of sections 39-204 and 39-205 to allow the erection of specific information sign panels on the right-of-way of the state highways under the following conditions:

- (1) No state funds shall be used for the erection, maintenance, or servicing of such signs;
- (2) Such signs shall be erected in accordance with federal standards and the rules and regulations adopted and promulgated by the Department of Roads;
- (3) Such signs may be erected by the department or by a contractor selected through the competitive bidding process; and
- (4) The department shall charge an annual fee in an amount equal to the fair market rental value of the sign site and any other cost to the state associated with the erection, maintenance, or servicing of specific information sign panels. If such sign is erected by a contractor, the annual fee shall be limited to the fair market rental value of the sign site.

Source: Laws 1987, LB 741, § 3; R.S.1943, (1988), § 39-634.03; Laws 1993, LB 370, § 24.

39-207 Tourist-oriented directional sign panels; erection and maintenance.

Tourist-oriented directional sign panels shall be erected and maintained by or at the direction of the Department of Roads within the right-of-way of rural highways which are part of the state highway system to provide tourist-oriented information to the traveling public in accordance with sections 39-207 to 39-211.

For purposes of such sections:

- (1) Rural highways means (a) all public highways and roads outside the limits of an incorporated municipality exclusive of freeways and interchanges on expressways and (b) all public highways and roads within incorporated municipalities having a population of forty thousand people or less exclusive of freeways and interchanges on expressways. Expressway, freeway, and interchange are used in this subdivision as they are defined in section 39-1302; and
- (2) Sign panel means one or more individual signs mounted as an assembly on the same supports.

Source: Laws 1993, LB 108, § 1; Laws 1995, LB 112, § 1.

39-208 Sign panels; erection; conditions; fee; disposition.

(1) The Department of Roads shall erect tourist-oriented directional sign panels on the right-of-way of the rural highways pursuant to section 39-207 under the following conditions:

- (a) No state funds shall be used for the erection, maintenance, or servicing of the sign panels;
- (b) The sign panels shall be erected in accordance with federal standards and the rules and regulations adopted and promulgated by the department;
- (c) The sign panels may be erected by the department or by a contractor selected by the department through the competitive negotiation process;
- (d) No more than three sign panels shall be installed on the approach to an intersection; and

(e) The department shall charge an annual fee in an amount equal to the fair market rental value of the sign panel site and any other cost to the state associated with the erection, maintenance, or servicing of tourist-oriented directional sign panels. If the sign panel is erected by a contractor, the annual fee to the department shall be limited to the fair market rental value of the sign panel site.

(2) All revenue received for the posting or erecting of tourist-oriented directional sign panels pursuant to this section shall be deposited in the Highway Cash Fund, except that any revenue received from the annual fee and for posting or erecting such sign panels in excess of the state's costs shall be deposited in the General Fund.

Source: Laws 1993, LB 108, § 2.

39-209 Sign panels; types; restrictions.

Tourist-oriented directional sign panels shall include, but not be limited to, sign panels giving directions to recreational, historical, cultural, educational, or entertainment activities or a unique or unusual commercial or nonprofit activity. Nationally, regionally, or locally known commercial symbols, brands, or trademarks may be used when applicable. To be a qualified activity pursuant to this section, the major portion of income derived from the activity or visitors to the activity during the normal season of the activity shall be from motorists not residing in the immediate area of the activity. The sign panels shall be rectangular in shape and have a white legend and border on a blue background.

Tourist-oriented directional sign panels shall contain no more than four individual signs, have no more than two lines of legend per individual sign, and have a separate directional arrow and the distance to each qualifying activity. The legend shall be limited to the identification of the qualifying activity and the directional information. The sign panel shall not include promotional advertising.

Source: Laws 1993, LB 108, § 3.

39-210 Sign panels; qualification of activities; minimum requirements; violation; effect.

To qualify to appear on a tourist-oriented directional sign panel, an activity shall be licensed and approved by the state and local agencies if required by law and be open to the public at least eight hours per day, five days per week, including Saturdays or Sundays, during the normal season of the activity. The activity, before qualifying to appear on a sign panel, shall provide to the Department of Roads assurance of its conformity with all applicable laws relating to discrimination based on race, creed, color, sex, national origin, ancestry, political affiliation, or religion. If the activity violates any of such laws, it shall lose its eligibility to appear on a tourist-oriented directional sign panel. In addition, the qualifying activity shall be required to remove any advertising device which was unlawfully erected or which is in violation of section 39-202, 39-203, 39-204, 39-205, 39-206, 39-215, 39-216, or 39-220, any rule or regulation of the department, or any federal rule or regulation relating to tourist-oriented directional sign panels. The tourist-oriented directional sign panels shall conform to the requirements of the Federal Beautification Act and

the Manual on Uniform Traffic Control Devices as adopted pursuant to section 60-6,118.

Source: Laws 1993, LB 108, § 4; Laws 1995, LB 264, § 5.

39-211 Sign panels; rules and regulations.

The Department of Roads shall adopt and promulgate rules and regulations deemed necessary by the department to carry out sections 39-207 to 39-211.

Source: Laws 1993, LB 108, § 5.

39-212 Acquisition of interest in property; control of advertising outside of right-of-way; compensation; removal; costs; payment by department.

(1) The Department of Roads may acquire the interest in real or personal property necessary to exercise the power authorized by subdivision (2)(m) of section 39-1320 and to pay just compensation upon removal of the following outdoor advertising signs, displays, and devices, as well as just compensation for the disconnection and removal of electrical service to the same:

(a) Those lawfully erected or in existence prior to March 27, 1972, and not conforming to the provisions of sections 39-212 to 39-222 except as otherwise authorized by such sections; and

(b) Those lawfully erected after March 27, 1972, which become nonconforming after being erected.

(2) Such compensation for removal of such signs, displays, and devices is authorized to be paid only for the following:

(a) The taking from the owner of such sign, display, or device or of all right, title, leasehold, and interest in connection with such sign, display, or device, or both; and

(b) The taking from the owner of the real property on which the sign, display, or device is located of the right to erect and maintain such signs, displays, and devices thereon.

(3) In all instances where signs, displays, or devices which are served electrically are taken under subdivision (2)(a) of this section, the department shall pay just compensation to the supplier of electricity for supportable costs of disconnection and removal of such service to the nearest distribution line or, in the event such sign, display, or device is relocated, just compensation for removal of such service to the point of relocation.

Except for expenditures for the removal of nonconforming signs erected between April 16, 1982, and May 27, 1983, the department shall not be required to expend any funds under sections 39-212 to 39-222 and 39-1320 unless and until federal-aid matching funds are made available for this purpose.

Source: Laws 1961, c. 195, § 2, p. 596; Laws 1972, LB 1181, § 4; Laws 1974, LB 490, § 1; Laws 1979, LB 322, § 12; Laws 1981, LB 545, § 7; Laws 1983, LB 120, § 3; Laws 1994, LB 848, § 1; R.S.Supp.,1994, § 39-1320.01; Laws 1995, LB 264, § 6.

An injunction may properly be entered to require compliance with the statute making it unlawful to erect or maintain advertising signs along highways prior to determination of whether there is a right to damages resulting from application of the

statute. *State v. Mayhew Products Corp.*, 204 Neb. 266, 281 N.W.2d 783 (1979).

Sections 39-1320 to 39-1320.11 constitute a reasonable and valid exercise of the police power which bears a substantial relation to the public health, safety, and general welfare, and

are constitutional. *State v. Mayhew Products Corp.*, 204 Neb. 266, 281 N.W.2d 783 (1979).

Control of advertising within six hundred sixty feet of edge of right-of-way may be acquired by eminent domain. *State v. Day*, 181 Neb. 308, 147 N.W.2d 919 (1967).

Right to control advertising outside of right-of-way of highway may be acquired by eminent domain. *Fulmer v. State*, 178 Neb. 20, 131 N.W.2d 657 (1964). (Opinion withdrawn, 178 Neb. 664, 134 N.W.2d 798 (1965).)

39-213 Control of advertising outside of right-of-way; agreements authorized; commercial and industrial zones; provisions.

(1) In order that this state may qualify for the payments authorized in 23 U.S.C. 131(c) and (e), and to comply with the provisions of 23 U.S.C. 131 as revised and amended on October 22, 1965, by Public Law 89-285, the Department of Roads, for and in the name of the State of Nebraska, is authorized to enter into an agreement, or agreements, with the Secretary of Transportation of the United States, which agreement or agreements shall include provisions for regulation and control of the erection and maintenance of advertising signs, displays, and other advertising devices and may include, among other things, provisions for preservation of natural beauty, prevention of erosion, landscaping, reforestation, development of viewpoints for scenic attractions that are accessible to the public without charge, and the erection of markers, signs, or plaques, and development of areas in appreciation of sites of historical significance.

(2) It is the intention of the Legislature that the state shall be and is hereby empowered and directed to continue to qualify for and accept bonus payments pursuant to 23 U.S.C. 131(j) and subsequent amendments as amended in the Federal Aid Highway Acts of 1968 and 1970 for controlling outdoor advertising within the area adjacent to and within six hundred sixty feet of the edge of the right-of-way of the National System of Interstate and Defense Highways constructed upon any part of the right-of-way the entire width of which is acquired subsequent to July 1, 1956, and, to this end, to continue any agreements with, and make any new agreements with the Secretary of Transportation, to accomplish the same. Such agreement or agreements shall also provide for excluding from application of the national standards segments of the National System of Interstate and Defense Highways which traverse commercial or industrial zones within the boundaries of incorporated municipalities as they existed on September 21, 1959, wherein the use of real property adjacent to the National System of Interstate and Defense Highways is subject to municipal regulation or control, or which traverse other areas where the land use, as of September 21, 1959, is clearly established by state law as industrial or commercial.

(3) It is also the intention of the Legislature that the state shall comply with 23 U.S.C. 131, as revised and amended on October 22, 1965, by Public Law 89-285, in order that the state not be penalized by the provisions of subsection (b) thereof, and that the department shall be and is hereby empowered and directed to make rules and regulations in accord with the agreement between the department and the Department of Transportation dated October 29, 1968.

Source: Laws 1961, c. 195, § 3, p. 596; Laws 1963, c. 236, § 1, p. 726; Laws 1972, LB 1058, § 11; Laws 1972, LB 1181, § 5; R.S.1943, (1993), § 39-1320.02; Laws 1995, LB 264, § 7.

An injunction may properly be entered to require compliance with the statute making it unlawful to erect or maintain advertising signs along highways prior to determination of whether there is a right to damages resulting from application of the statute. *State v. Mayhew Products Corp.*, 204 Neb. 266, 281 N.W.2d 783 (1979).

Sections 39-1320 to 39-1320.11 constitute a reasonable and valid exercise of the police power which bears a substantial relation to the public health, safety, and general welfare, and are constitutional. *State v. Mayhew Products Corp.*, 204 Neb. 266, 281 N.W.2d 783 (1979).

39-214 Control of advertising outside of right-of-way; adoption of rules and regulations by department; minimum requirements.

Whenever advertising rights are acquired by the department pursuant to subdivision (2)(m) of section 39-1320 or an agreement has been entered into as authorized by section 39-213, it shall be the duty of the Department of Roads to adopt and promulgate reasonable rules and regulations for the control of outdoor advertising within the area specified in such subdivision, which rules and regulations shall have as their minimum requirements the provisions of 23 U.S.C. 131 and regulations adopted pursuant thereto, as amended on March 27, 1972.

Source: Laws 1961, c. 195, § 4, p. 597; Laws 1972, LB 1181, § 6; R.S.1943, (1993), § 39-1320.03; Laws 1995, LB 264, § 8.

An injunction may properly be entered to require compliance with the statute making it unlawful to erect or maintain advertising signs along highways prior to determination of whether there is a right to damages resulting from application of the statute. *State v. Mayhew Products Corp.*, 204 Neb. 266, 281 N.W.2d 783 (1979).

Sections 39-1320 to 39-1320.11 constitute a reasonable and valid exercise of the police power which bears a substantial

relation to the public health, safety, and general welfare and are constitutional. *State v. Mayhew Products Corp.*, 204 Neb. 266, 281 N.W.2d 783 (1979).

Description of easement sought to be acquired was sufficient. *State v. Day*, 181 Neb. 308, 147 N.W.2d 919 (1967).

39-215 Prohibition of advertising visible from main-traveled way; other signs permitted; where; criteria listed.

(1) Except as provided in sections 39-212 to 39-222, the erection or maintenance of any advertising sign, display, or device which is visible from the main-traveled way of the Highway Beautification Control System is prohibited. On-premise signs, directional and official signs, and notices as defined and controlled in the department's rules and regulations shall be permitted.

(2) Other signs controlled in accordance with the federal-state agreement shall be permitted, if conforming to sections 39-212 to 39-222, in the following areas:

(a) All zoned commercial or industrial areas within the boundaries of incorporated municipalities, as those boundaries existed on September 21, 1959, and all other areas where the land use as of September 21, 1959, was clearly established by law or ordinance as industrial or commercial in which outdoor advertising signs, displays, and devices may be visible from the main-traveled way of the National System of Interstate and Defense Highways, except that no such signs, displays, or devices shall be permitted in areas in which advertising control easements have been acquired;

(b) All zoned and unzoned commercial and industrial areas in which outdoor advertising signs, displays, and devices may be visible from the main-traveled way of those portions of the National System of Interstate and Defense Highways constructed upon right-of-way, any part of the width of which was acquired on or before July 1, 1956, except that no such signs, displays, or devices shall be permitted in areas in which advertising control easements have been acquired;

(c) All zoned and unzoned commercial and industrial areas in which outdoor advertising signs, displays, and devices may be visible from the main-traveled way of all portions of the Highway Beautification Control System other than the National System of Interstate and Defense Highways within the State of Nebraska, except that no such signs, displays, or devices shall be permitted in areas in which advertising control easements have been acquired. No signs

shall be allowed in such areas along scenic byways except those permitted under section 39-218; and

(d) All signs, displays, or devices beyond six hundred sixty feet of the edge of the right-of-way of the Highway Beautification Control System and outside of urban areas which are visible from the main-traveled way are prohibited except those which are authorized to be erected by the Federal-Aid Highway Acts of 1965, 1970, and 1974 and those signs whose advertising message is only visible from a secondary road or street but not visible from the main-traveled way of the Highway Beautification Control System.

(3) In the areas described in subsection (2) of this section, advertising signs, displays, and devices shall be allowed to be erected in accordance with the following criteria:

(a) Whenever a bona fide state, county, or local zoning authority has made a determination of customary use, as to size, lighting, and spacing, such determination may be accepted in lieu of criteria established by regulation in the zoned commercial and industrial areas described in subsection (2) of this section within the geographical jurisdiction of such authority unless conflicting with laws not contained in this section or with the rules and regulations of the department; and

(b) In all other areas described in subsection (2) of this section, the following criteria shall apply:

(i) On-premise signs as defined and controlled in the department's rules and regulations shall be permitted;

(ii) Those signs referred to as being permitted in the October 1968 federal-state agreement shall be permitted when in conformity with the rules and regulations of the department;

(iii) Within the areas in which, according to sections 39-212 to 39-222, advertising signs will be permitted, such signs shall conform to standards and criteria as to height, width, spacing, and lighting as set forth in the rules and regulations of the department;

(iv) Nothing contained in such sections shall be construed to allow any person or persons, except the department, to erect signs within the right-of-way of any portion of the state highway system or, except the county, to erect official signs within the right-of-way of any portion of the county road system;

(v) Nothing contained in such sections shall be construed to prevent the department from acquiring easements for the control of outdoor advertising;

(vi) Nothing contained in such sections shall be construed to require the removal of signs in zoned and unzoned commercial and industrial areas, lawfully in existence on March 27, 1972, which signs may under such sections remain and continue in place even if nonconforming; and

(vii) The powers conferred by such sections are supplementary and additional powers, and nothing contained in such sections shall be deemed amendatory or in derogation of any other grant of power or authority to the department.

Source: Laws 1972, LB 1181, § 7; Laws 1975, LB 213, § 6; Laws 1983, LB 120, § 4; Laws 1994, LB 848, § 2; R.S.Supp., 1994, § 39-1320.06; Laws 1995, LB 264, § 9.

The change of the face of a sign to an electronic format did not constitute the erection of a new sign under this section. *State, Dept. of Roads v. World Diversified, Inc.*, 254 Neb. 307, 576 N.W.2d 198 (1998).

This section does not violate article III, section 18, of the Nebraska Constitution. The classification of on-premises signs and off-premises signs is a reasonable method of controlling the number of signs along the Interstate and bears a rational relationship to the goal of public health and safety, and to the legislative intent that the state comply with federal regulations concerning highway advertising. *State v. Popco, Inc.*, 247 Neb. 440, 528 N.W.2d 281 (1995).

The portion of this statute prohibiting the "erection or maintenance of any advertising sign, display, or device which is visible from the main-traveled way of the National System of Interstate and Defense Highways and the system of federal-aid primary roads of the State of Nebraska" is unconstitutionally vague. *State v. Houtwed*, 211 Neb. 681, 320 N.W.2d 97 (1982).

This section is unconstitutionally vague and therefore unenforceable in that it fails to provide any standards by which to calculate the meaning of the term "visible". Neither landowner

or lessee nor the enforcing agency of the state can act upon such wording with the certainty otherwise required by the due process notion of fair notice of conduct which is proscribed. *State v. Mayhew Products Corp.*, 211 Neb. 300, 318 N.W.2d 280 (1982).

An injunction may properly be entered to require compliance with the statute making it unlawful to erect or maintain advertising signs along highways prior to determination of whether there is a right to damages resulting from application of the statute. *State v. Mayhew Products Corp.*, 204 Neb. 266, 281 N.W.2d 783 (1979).

Sections 39-1320 to 39-1320.11 constitute a reasonable and valid exercise of the police power which bears a substantial relation to the public health, safety, and general welfare, and are constitutional. *State v. Mayhew Products Corp.*, 204 Neb. 266, 281 N.W.2d 783 (1979).

39-216 Control of advertising visible from main-traveled way; unlawful; when permitted; written lease and permit from Department of Roads.

It shall be unlawful for any person to place or cause to be placed any advertising sign, display, or device which is visible from the main-traveled way of the Highway Beautification Control System or upon land not owned by such person, without first procuring a written lease from the owner of such land and a permit from the Department of Roads authorizing such display or device to be erected as permitted by the advertising laws, rules, and regulations of this state.

Source: Laws 1972, LB 1181, § 8; Laws 1975, LB 213, § 7; R.S.1943, (1993), § 39-1320.07; Laws 1995, LB 264, § 10.

An injunction may properly be entered to require compliance with the statute making it unlawful to erect or maintain advertising signs along highways prior to determination of whether there is a right to damages resulting from application of the statute. *State v. Mayhew Products Corp.*, 204 Neb. 266, 281 N.W.2d 783 (1979).

Sections 39-1320 to 39-1320.11 constitute a reasonable and valid exercise of the police power which bears a substantial relation to the public health, safety, and general welfare, and are constitutional. *State v. Mayhew Products Corp.*, 204 Neb. 266, 281 N.W.2d 783 (1979).

39-217 Scenic byway designations.

(1) The Department of Roads may designate portions of the state highway system as a scenic byway when the highway corridor possesses unusual, exceptional, or distinctive scenic, historic, recreational, cultural, or archeological features. The department shall adopt and promulgate rules and regulations establishing the procedure and criteria to be utilized in making scenic byway designations.

(2) Any portion of a highway designated as a scenic byway which is located within the limits of any incorporated municipality shall not be designated as part of the scenic byway, except when such route possesses intrinsic scenic, historic, recreational, cultural, or archeological features which support designation of the route as a scenic byway.

Source: Laws 1995, LB 264, § 11.

39-218 Scenic byways; prohibition of signs visible from main-traveled way; exceptions.

No sign shall be erected which is visible from the main-traveled way of any scenic byway except (1) directional and official signs to include, but not be limited to, signs and notices pertaining to natural wonders, scenic attractions, and historical attractions, (2) signs, displays, and devices advertising the sale or lease of property upon which such media are located, and (3) signs, displays,

and devices advertising activities conducted on the property on which such media are located. Signs which are allowed shall comply with the standards and criteria established by rules and regulations of the Department of Roads.

Source: Laws 1995, LB 264, § 12.

39-219 Control of advertising outside of right-of-way; erected prior to March 27, 1972; effect.

Outdoor advertising signs, displays, and devices erected prior to March 27, 1972, may continue in zoned or unzoned commercial or industrial areas, notwithstanding the fact that such outdoor advertising signs, displays, and devices do not comply with standards and criteria established by sections 39-212 to 39-222 or rules and regulations of the Department of Roads.

Source: Laws 1972, LB 1181, § 9; Laws 1994, LB 848, § 3; R.S.Supp.,1994, § 39-1320.08; Laws 1995, LB 264, § 13.

An injunction may properly be entered to require compliance with the statute making it unlawful to erect or maintain advertising signs along highways prior to determination of whether there is a right to damages resulting from application of the statute. *State v. Mayhew Products Corp.*, 204 Neb. 266, 281 N.W.2d 783 (1979).

Sections 39-1320 to 39-1320.11 constitute a reasonable and valid exercise of the police power which bears a substantial relation to the public health, safety, and general welfare, and are constitutional. *State v. Mayhew Products Corp.*, 204 Neb. 266, 281 N.W.2d 783 (1979).

39-220 Control of advertising visible from main-traveled way; permit; fee; rules and regulations; exceptions.

The Department of Roads may at its discretion require permits for advertising signs, displays, or devices which are placed or allowed to exist along or upon any interstate or primary highway or at any point visible from the main-traveled way, except for signs located within an area of fifty feet of any commercial or industrial building on the premises. Such permits shall be renewed biennially. Each sign shall bear on the side facing the highway the permit number in a readily observable place for inspection purposes from the highway right-of-way. The department is authorized to charge a fee to be not less than twenty-five cents or not to exceed fifteen dollars for each permit and renewal permit for each individual sign. The department shall promulgate rules and regulations establishing, and from time to time adjusting, the annual fees for the permits to cover the costs of administering sections 39-212 to 39-226 and may by rule and regulation provide exceptions from the payment of fees for signs advertising eleemosynary or nonprofit public service activities, signs designating historical sites, and farm and ranch directional signs. The department may revoke the permit for noncompliance reasons and remove the sign if, after thirty days' notification to the sign owner, the sign remains in noncompliance. Printed sale bills not exceeding two hundred sixteen square inches in size shall not require a permit if otherwise conforming.

Source: Laws 1972, LB 1181, § 10; Laws 1974, LB 490, § 2; Laws 1975, LB 213, § 8; R.S.1943, (1993), § 39-1320.09; Laws 1995, LB 264, § 14.

An injunction may properly be entered to require compliance with the statute making it unlawful to erect or maintain advertising signs along highways prior to determination of whether there is a right to damages resulting from application of the statute. *State v. Mayhew Products Corp.*, 204 Neb. 266, 281 N.W.2d 783 (1979).

Sections 39-1320 to 39-1320.11 constitute a reasonable and valid exercise of the police power which bears a substantial relation to the public health, safety, and general welfare, and are constitutional. *State v. Mayhew Products Corp.*, 204 Neb. 266, 281 N.W.2d 783 (1979).

39-221 Control of advertising outside of right-of-way; compliance; damages; violations; penalty.

Any person, firm, company, or corporation violating any of the provisions of sections 39-212 to 39-222 shall be guilty of a Class V misdemeanor. In addition to any other available remedies, the Director-State Engineer, for the Department of Roads and in the name of the State of Nebraska, may apply to the district court having jurisdiction for an injunction to force compliance with any of the provisions of such sections or rules and regulations promulgated thereunder. When any person, firm, company, or corporation deems its property rights have been adversely affected by the application of the provisions of such sections, such person, firm, company, or corporation shall have the right to have damages ascertained and determined pursuant to Chapter 76, article 7.

Source: Laws 1972, LB 1181, § 11; Laws 1974, LB 490, § 3; Laws 1977, LB 40, § 211; Laws 1994, LB 848, § 4; R.S.Supp.,1993, § 39-1320.10; Laws 1995, LB 264, § 15.

An injunction may properly be entered to require compliance with the statute making it unlawful to erect or maintain advertising signs along highways prior to determination of whether there is a right to damages resulting from application of the statute. *State v. Mayhew Products Corp.*, 204 Neb. 266, 281 N.W.2d 783 (1979).

Sections 39-1320 to 39-1320.11 constitute a reasonable and valid exercise of the police power which bears a substantial relation to the public health, safety, and general welfare, and are constitutional. *State v. Mayhew Products Corp.*, 204 Neb. 266, 281 N.W.2d 783 (1979).

39-222 Control of advertising outside of right-of-way; eminent domain; authorized.

Sections 39-212 to 39-221 shall not be construed to prevent the Department of Roads from (1) exercising the power of eminent domain to accomplish the removal of any sign or signs or (2) acquiring any interest in real or personal property necessary to exercise the powers authorized by such sections whether within or without zoned or unzoned commercial or industrial areas.

Source: Laws 1972, LB 1181, § 12; Laws 1994, LB 848, § 5; R.S.Supp.,1994, § 39-1320.11; Laws 1995, LB 264, § 16.

An injunction may properly be entered to require compliance with the statute making it unlawful to erect or maintain advertising signs along highways prior to determination of whether there is a right to damages resulting from application of the statute. *State v. Mayhew Products Corp.*, 204 Neb. 266, 281 N.W.2d 783 (1979).

Sections 39-1320 to 39-1320.11 constitute a reasonable and valid exercise of the police power which bears a substantial relation to the public health, safety, and general welfare, and are constitutional. *State v. Mayhew Products Corp.*, 204 Neb. 266, 281 N.W.2d 783 (1979).

39-223 Governmental or quasi-governmental agency; removal of signs, displays, or devices along Highway Beautification Control System; exemption; petition.

Any community, board of county commissioners, municipality, county, city, a specific region or area of the state, or other governmental or quasi-governmental agency which is part of a specific economic area located along the Highway Beautification Control System of the State of Nebraska may petition the Department of Roads for an exemption from mandatory removal of any legal, nonconforming directional signs, displays, or devices as defined by 23 U.S.C. 131(o), which signs, displays, or devices were in existence on May 5, 1976. The petitioning agency shall supply such documents as are supportive of its petition for exemption.

The Department of Roads is hereby authorized to seek the exemptions authorized by 23 U.S.C. 131(o) in accordance with the federal regulations promulgated thereunder, 23 C.F.R., part 750, subpart E, if the petitioning agency shall supply the necessary documents to justify such exemptions.

Source: Laws 1978, LB 534, § 1; R.S.1943, (1993), § 39-1320.12; Laws 1995, LB 264, § 17.

39-224 Department of Roads; retention of signs, displays, or devices; request.

Upon receipt of such petition, the Department of Roads shall make request of the United States Department of Transportation for permission to retain the directional signs, displays, or devices which provide information for the specific economic area responsible for the petition.

Source: Laws 1978, LB 534, § 2; R.S.1943, (1993), § 39-1320.13; Laws 1995, LB 264, § 18.

39-225 Department of Roads; removal of nonconforming signs; program.

The Department of Roads shall adopt future programs to assure that removal of directional signs, displays, or devices, providing directional information about goods and services in the interest of the traveling public, not otherwise exempted by economic hardship, be deferred until all other nonconforming signs, on a statewide basis, are removed.

Source: Laws 1978, LB 534, § 3; R.S.1943, (1993), § 39-1320.14; Laws 1995, LB 264, § 19.

39-226 Exemption, how construed.

The exemption provided by sections 39-223 to 39-225 shall be in addition to the exemption provided by section 39-219.

Source: Laws 1978, LB 534, § 4; R.S.1943, (1993), § 39-1320.15; Laws 1995, LB 264, § 20.

ARTICLE 3

MISCELLANEOUS PENALTY PROVISIONS

- Section
- 39-301. Roads; injuring or obstructing; penalties; exceptions.
- 39-302. Roads; sprinkler irrigation system; restrictions; violations; penalty.
- 39-303. Sidewalks, bridges; injuring or obstructing; penalty.
- 39-304. Injuries to roads, bridges, gates, milestones; penalty.
- 39-305. Plowing up road; penalty.
- 39-306. Plowing up road; road overseer; duty to file complaint; violation; penalty.
- 39-307. Barbed wire fence along highway without guards; penalty.
- 39-308. Removal of traffic hazards; determined by Department of Roads and local authority; violation; penalty.
- 39-309. Sidewalks, trees, hedge fence bordering public roads; when lawful; removal by county board.
- 39-310. Depositing materials on roads or ditches; penalties.
- 39-311. Rubbish on highways; prohibited; signs; enforcement; violation; penalties.
- 39-312. Camping; permitted; where; violation; penalty.
- 39-313. Hunting, trapping, or molesting predatory animal on or from freeway; prohibited, exception; violation; penalty.

39-301 Roads; injuring or obstructing; penalties; exceptions.

Any person who injures or obstructs a public road by felling a tree or trees in, upon, or across the same, by placing or leaving any other obstruction thereon, by encroaching upon the same with any fence, by plowing or digging any ditch or other opening thereon, by diverting water onto or across such road so as to saturate, wash, or impair the maintenance, construction, or passability of such public road, or by allowing water to accumulate on the roadway or traveled

surface of the road or who leaves the cutting of any hedge thereupon for more than five days shall, upon conviction thereof, be guilty of a Class V misdemeanor and, in case of placing any obstruction on the road, be charged an additional sum of not exceeding three dollars per day for every day he or she allows such obstruction to remain after being ordered to remove the same by the road overseer or other officer in charge of road work in the area where such obstruction is located, complaint to be made by any person feeling aggrieved.

This section shall not apply to any person who lawfully fells any tree for use and will immediately remove the same out of the road nor to any person through whose land a public road may pass who desires to drain such land and gives due notice of such intention to the road overseer or other officer in charge of road work nor when damage has been caused by a mechanical malfunction of any irrigation equipment, when a sprinkler irrigation system had been set so that under normal weather conditions no water would have been placed upon the right-of-way of any road, when the county board grants permission for the landowner to divert water from one area to another along a county highway right-of-way, or when a municipality has granted permission along or across the right-of-way under its jurisdiction, except that if damage has been caused by a mechanical malfunction of irrigation equipment more than two times in one calendar year, the penalty provided in this section shall apply.

Any officer in charge of road work, after having given reasonable notice to the owners of the obstruction or person so obstructing or plowing or digging ditches upon such road, may remove any such fence or other obstruction, fill up any such ditch or excavation, and recover the necessary cost of such removal from such owner or other person obstructing such road, to be collected by such officer in an action in county court.

Any public roads which have not been worked and which have not been used or traveled by the public for the last fifteen years may be fenced by the owners of adjoining lands if written permission is first obtained from the county board of commissioners or supervisors and if adequate means of ingress and egress are provided by suitable gates.

Source: Laws 1879, § 69, p. 135; R.S.1913, § 3027; C.S.1922, § 2778; C.S.1929, § 39-1009; Laws 1941, c. 75, § 1, p. 311; C.S.Supp.,1941, § 39-1009; R.S.1943, § 39-703; Laws 1959, c. 181, § 6, p. 655; Laws 1972, LB 1032, § 246; Laws 1975, LB 85, § 1; Laws 1978, LB 748, § 53; Laws 1984, LB 968, § 1; R.S.1943, (1988), § 39-703; Laws 1993, LB 370, § 25.

Contractor on county highway work, who negligently leaves holes unfilled, is liable for automobilist's death, even though latter was unlicensed. Pratt v. Western Bridge & Constr. Co., 116 Neb. 553, 218 N.W. 397 (1928).

39-302 Roads; sprinkler irrigation system; restrictions; violations; penalty.

A sprinkler irrigation system which due to location or design diverts, or is capable of diverting, water onto or across a public road so as to saturate, wash, or impair the maintenance, construction, or passability of such public road or allows water to accumulate on the roadway or traveled surface of the public road shall be equipped with a device which will automatically shut off the endgun of the irrigation system causing such diversion or accumulation of water. Any person who fails to comply with this section shall, upon conviction thereof, be guilty of a Class IV misdemeanor, except that section 39-301 shall

be controlling with respect to mechanical malfunctions and normal weather conditions.

Source: Laws 1981, LB 24, § 1; R.S.1943, (1988), § 39-703.01; Laws 1993, LB 370, § 26.

39-303 Sidewalks, bridges; injuring or obstructing; penalty.

Any person who purposely destroys or injures any sidewalk, public or private bridge, culvert, or causeway, removes any of the timber or plank thereof, or obstructs the same shall be guilty of a Class V misdemeanor and shall be liable for all damages occasioned thereby and all necessary costs of rebuilding or repairing the same.

Source: Laws 1879, § 70, p. 136; R.S.1913, § 3028; C.S.1922, § 2779; C.S.1929, § 39-1010; R.S.1943, § 39-704; R.S.1943, (1988), § 39-704; Laws 1993, LB 370, § 27.

Cross References

Destruction of private, public, or toll bridge, penalty, see section 39-806.

39-304 Injuries to roads, bridges, gates, milestones; penalty.

Any person who willfully and maliciously injures any lawful public road in this state or any bridge, gate, milestone, or other fixture on any such road shall, for every such offense, be guilty of a Class V misdemeanor and be liable to any party injured in double damages.

Source: G.S.1873, c. 58, § 103, p. 744; R.S.1913, § 3041; C.S.1922, § 2792; C.S.1929, § 39-1027; R.S.1943, § 39-715; R.S.1943, (1988), § 39-715; Laws 1993, LB 370, § 28.

Cross References

Destruction of private, public, or toll bridge, penalty, see section 39-806.

39-305 Plowing up road; penalty.

Any person who plows up or upon any public highway without the consent or direction of the road overseer or the officer in charge of road work in the area where such road is located shall be guilty of a Class V misdemeanor.

Source: Laws 1899, c. 58, §§ 1, 2, p. 285; R.S.1913, § 3032; C.S.1922, § 2783; C.S.1929, § 39-1018; R.S.1943, § 39-706; Laws 1959, c. 181, § 7, p. 656; R.S.1943, (1988), § 39-706; Laws 1993, LB 370, § 29.

39-306 Plowing up road; road overseer; duty to file complaint; violation; penalty.

It is hereby made the duty of the road overseer or other officer in charge of road work in the area where such road is located to make complaint to the county attorney of any violation of section 39-305. Any willful neglect of this duty by a road overseer or other such officer shall be considered a Class V misdemeanor.

Source: Laws 1899, c. 58, § 3, p. 285; R.S.1913, § 3033; C.S.1922, § 2784; C.S.1929, § 39-1019; R.S.1943, § 39-707; Laws 1959, c. 181, § 8, p. 657; Laws 1977, LB 41, § 36; R.S.1943, (1988), § 39-707; Laws 1993, LB 370, § 30.

39-307 Barbed wire fence along highway without guards; penalty.

Any person who builds a barbed wire fence across or in any plain traveled road or track in common use, either public or private, without first putting up sufficient guards to prevent either human or beast from running into the fence shall be guilty of a Class V misdemeanor and shall be liable for all damages that may accrue to the party damaged by reason of such barbed wire fence.

Source: Laws 1885, c. 77, §§ 1, 2, p. 317; R.S.1913, § 3031; C.S.1922, § 2782; C.S.1929, § 39-1017; R.S.1943, § 39-705; R.S.1943, (1988), § 39-705; Laws 1993, LB 370, § 31.

Obstruction of road by barbed wire fence is negligence and renders person placing it there liable for injury, in absence of contributory negligence. *Vanderveer v. Moran*, 79 Neb. 431, 112 N.W. 581 (1907).

Liability for injury to stock by fence in road is discussed. *Floaten v. Ferrell*, 24 Neb. 347, 38 N.W. 732 (1888).

Information for violation of section must allege that road was in common use. *Gilbert v. State*, 78 Neb. 636, 111 N.W. 377 (1907).

39-308 Removal of traffic hazards; determined by Department of Roads and local authority; violation; penalty.

It shall be the duty of the owner of real property to remove from such property any tree, plant, shrub, or other obstruction, or part thereof, which, by obstructing the view of any driver, constitutes a traffic hazard. When the Department of Roads or any local authority determines upon the basis of engineering and traffic investigation that such a traffic hazard exists, it shall notify the owner and order that the hazard be removed within ten days. Failure of the owner to remove such traffic hazard within ten days shall constitute a Class V misdemeanor, and every day such owner fails to remove it shall be a separate offense.

Source: Laws 1973, LB 45, § 101; R.S.1943, (1988), § 39-6,101; Laws 1993, LB 370, § 32.

39-309 Sidewalks, trees, hedge fence bordering public roads; when lawful; removal by county board.

It shall be lawful for the owner or occupants of land bordering upon any public road to build sidewalks not to exceed six feet in width, to plant shade and ornamental trees along and in such road at a distance not exceeding one-tenth of the legal width of a road from its margin, and to erect and maintain a fence as long as it is actually necessary for the purpose of raising a hedge on the margin a distance of six feet from and within such marginal lines, except that when, in the opinion of the county board, the hedge fence, trees, or undergrowth on any county road interferes with the use of the right-of-way for road purposes or presents a hazard to the traveling public, the county board may, in its discretion, remove, or cause to be removed, at county expense, the hedge fence, trees, or undergrowth from the road right-of-way.

Source: Laws 1879, § 71, p. 136; R.S.1913, § 3029; C.S.1922, § 2780; C.S.1929, § 39-1011; R.S.1943, § 39-717; Laws 1953, c. 132, § 1, p. 412; R.S.1943, (1988), § 39-717; Laws 1993, LB 370, § 33.

39-310 Depositing materials on roads or ditches; penalties.

Any person who deposits any wood, stone, or other kind of material on any part of any lawful public road in this state, inside of the ditches of such road, or outside of the ditches but so near thereto as to cause the banks thereof to break into the same, causes the accumulation of rubbish, or causes any kind of obstruction, shall be guilty of (1) a Class III misdemeanor for the first offense, (2) a Class II misdemeanor for the second offense, and (3) a Class I misdemeanor for the third or subsequent offense.

Source: G.S.1873, c. 58, § 107, p. 744; R.S.1913, § 3042; Laws 1919, c. 98, § 1, p. 249; C.S.1922, § 2793; C.S.1929, § 39-1028; R.S. 1943, § 39-716; R.S.1943, (1988), § 39-6,190; Laws 1993, LB 370, § 34; Laws 1994, LB 570, § 2; Laws 1997, LB 495, § 4.

Complaint charging that defendant obstructed a public road by placing posts and logs therein stated an offense under this section. *Lydick v. State*, 61 Neb. 309, 85 N.W. 70 (1901).

39-311 Rubbish on highways; prohibited; signs; enforcement; violation; penalties.

(1) No person shall throw or deposit upon any highway:

(a) Any glass bottle, glass, nails, tacks, wire, cans, or other substance likely to injure any person or animal or damage any vehicle upon such highway; or

(b) Any burning material.

(2) Any person who deposits or permits to be deposited upon any highway any destructive or injurious material shall immediately remove such or cause it to be removed.

(3) Any person who removes a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance deposited on the highway from such vehicle.

(4) The Department of Roads or a local authority as defined in section 60-628 may procure and place at reasonable intervals on the side of highways under its respective jurisdiction appropriate signs showing the penalty for violating this section. Such signs shall be of such size and design as to be easily read by persons on such highways, but the absence of such a sign shall not excuse a violation of this section.

(5) It shall be the duty of all Nebraska State Patrol officers, conservation officers, sheriffs, deputy sheriffs, and other law enforcement officers to enforce this section and to make prompt investigation of any violations of this section reported by any person.

(6) Any person who violates any provision of this section shall be guilty of (a) a Class III misdemeanor for the first offense, (b) a Class II misdemeanor for the second offense, and (c) a Class I misdemeanor for the third or subsequent offense.

Source: Laws 1973, LB 45, § 83; Laws 1988, LB 1030, § 40; R.S.1943, (1988), § 39-683; Laws 1993, LB 370, § 35; Laws 1994, LB 570, § 3; Laws 1997, LB 495, § 5; Laws 1998, LB 922, § 403.

Cross References

Littering, penalty, see section 28-523.

39-312 Camping; permitted; where; violation; penalty.

It shall be unlawful to camp on any state or county public highway, roadside area, park, or other property acquired for highway or roadside park purposes except at such places as are designated campsites by the Department of Roads or the county or other legal entity of government owning or controlling such places. This provision shall not apply to lands originally acquired for highway purposes which have been transferred or leased to the Game and Parks Commission or a natural resources district or to other lands owned or controlled by the Game and Parks Commission where camping shall be controlled by the provisions of section 37-305 or by a natural resources district where camping shall be controlled by the provisions of section 2-3292.

For purposes of this section, camping means temporary lodging out of doors and presupposes the occupancy of a shelter designed or used for such purposes, such as a sleeping bag, tent, trailer, station wagon, pickup camper, camper-bus, or other vehicle, and the use of camping equipment and camper means an occupant of any such shelter.

Any person who camps on any state or county public highway, roadside area, park, or other property acquired for highway or roadside park purposes, which has not been properly designated as a campsite, or any person who violates any lawfully promulgated rules or regulations properly posted to regulate camping at designated campsites shall be guilty of a Class V misdemeanor and shall be ordered to pay any amount as determined by the court which may be necessary to reimburse the department or the county for the expense of repairing any damage to such campsite resulting from such violation.

Source: Laws 1969, c. 306, § 1, p. 1097; Laws 1977, LB 41, § 37; Laws 1984, LB 861, § 18; R.S.1943, (1988), § 39-712.01; Laws 1993, LB 370, § 36; Laws 1998, LB 922, § 404.

Establishment of a public road upon satisfaction of statutory requirements is a ministerial duty within the power of the county board. *Burton v. Annett*, 215 Neb. 788, 341 N.W.2d 318 (1983).

39-313 Hunting, trapping, or molesting predatory animal on or from freeway; prohibited, exception; violation; penalty.

No person shall hunt, trap, or molest any predatory animal on or upon any portion of a freeway or approach or exit thereto except at locations designated for such purpose. No person shall shoot from the roadway onto or across the land of any farmer or landowner or kill, attempt to kill, or retrieve any wildlife or game on such land prior to receiving permission from such farmer or landowner. Any person who violates this section shall be guilty of a Class V misdemeanor.

Source: Laws 1973, LB 45, § 85; Laws 1974, LB 699, § 1; R.S.1943, (1988), § 39-685; Laws 1993, LB 370, § 37.

Cross References

Shooting from highway prohibited, see section 37-513.

ARTICLE 4

ROADS IN COUNTIES UNDER TOWNSHIP ORGANIZATION

- Section 39-401. Repealed. Laws 1957, c. 155, art. VIII, § 1.
- 39-402. Repealed. Laws 1957, c. 155, art. VIII, § 1.
- 39-403. Repealed. Laws 1957, c. 155, art. VIII, § 1.

§ 39-401

HIGHWAYS AND BRIDGES

Section

- 39-404. Repealed. Laws 1957, c. 155, art. VIII, § 1.
- 39-405. Repealed. Laws 1957, c. 155, art. VIII, § 1.
- 39-406. Repealed. Laws 1957, c. 155, art. VIII, § 1.
- 39-407. Repealed. Laws 1957, c. 155, art. VIII, § 1.
- 39-408. Repealed. Laws 1957, c. 155, art. VIII, § 1.
- 39-409. Repealed. Laws 1957, c. 155, art. VIII, § 1.
- 39-409.01. Repealed. Laws 1957, c. 155, art. VIII, § 1.

39-401 Repealed. Laws 1957, c. 155, art. VIII, § 1.

39-402 Repealed. Laws 1957, c. 155, art. VIII, § 1.

39-403 Repealed. Laws 1957, c. 155, art. VIII, § 1.

39-404 Repealed. Laws 1957, c. 155, art. VIII, § 1.

39-405 Repealed. Laws 1957, c. 155, art. VIII, § 1.

39-406 Repealed. Laws 1957, c. 155, art. VIII, § 1.

39-407 Repealed. Laws 1957, c. 155, art. VIII, § 1.

39-408 Repealed. Laws 1957, c. 155, art. VIII, § 1.

39-409 Repealed. Laws 1957, c. 155, art. VIII, § 1.

39-409.01 Repealed. Laws 1957, c. 155, art. VIII, § 1.

ARTICLE 5

COUNTY HIGHWAY COMMISSIONER

Section

- 39-501. Repealed. Laws 1957, c. 155, art. VIII, § 1.
- 39-502. Repealed. Laws 1957, c. 155, art. VIII, § 1.
- 39-503. Repealed. Laws 1957, c. 155, art. VIII, § 1.
- 39-504. Repealed. Laws 1957, c. 155, art. VIII, § 1.
- 39-505. Repealed. Laws 1957, c. 155, art. VIII, § 1.
- 39-506. Repealed. Laws 1957, c. 155, art. VIII, § 1.
- 39-507. Repealed. Laws 1957, c. 155, art. VIII, § 1.
- 39-508. Repealed. Laws 1957, c. 155, art. VIII, § 1.
- 39-509. Repealed. Laws 1957, c. 155, art. VIII, § 1.
- 39-510. Repealed. Laws 1957, c. 155, art. VIII, § 1.
- 39-511. Repealed. Laws 1957, c. 155, art. VIII, § 1.
- 39-512. Repealed. Laws 1957, c. 155, art. VIII, § 1.
- 39-513. Repealed. Laws 1957, c. 155, art. VIII, § 1.
- 39-514. Repealed. Laws 1957, c. 155, art. VIII, § 1.
- 39-515. Repealed. Laws 1957, c. 155, art. VIII, § 1.

39-501 Repealed. Laws 1957, c. 155, art. VIII, § 1.

39-502 Repealed. Laws 1957, c. 155, art. VIII, § 1.

39-503 Repealed. Laws 1957, c. 155, art. VIII, § 1.

39-504 Repealed. Laws 1957, c. 155, art. VIII, § 1.

39-505 Repealed. Laws 1957, c. 155, art. VIII, § 1.

39-506 Repealed. Laws 1957, c. 155, art. VIII, § 1.

- 39-507 Repealed. Laws 1957, c. 155, art. VIII, § 1.**
- 39-508 Repealed. Laws 1957, c. 155, art. VIII, § 1.**
- 39-509 Repealed. Laws 1957, c. 155, art. VIII, § 1.**
- 39-510 Repealed. Laws 1957, c. 155, art. VIII, § 1.**
- 39-511 Repealed. Laws 1957, c. 155, art. VIII, § 1.**
- 39-512 Repealed. Laws 1957, c. 155, art. VIII, § 1.**
- 39-513 Repealed. Laws 1957, c. 155, art. VIII, § 1.**
- 39-514 Repealed. Laws 1957, c. 155, art. VIII, § 1.**
- 39-515 Repealed. Laws 1957, c. 155, art. VIII, § 1.**

ARTICLE 6

NEBRASKA RULES OF THE ROAD

(a) RULES OF THE ROAD; GENERAL OPERATING RULES

- | | |
|------------|-------------------------------------|
| Section | |
| 39-601. | Transferred to section 60-602. |
| 39-602. | Repealed. Laws 1993, LB 370, § 495. |
| 39-603. | Transferred to section 60-6,108. |
| 39-604. | Transferred to section 60-6,110. |
| 39-605. | Transferred to section 60-6,111. |
| 39-606. | Transferred to section 60-6,112. |
| 39-607. | Transferred to section 60-6,113. |
| 39-608. | Transferred to section 60-6,114. |
| 39-609. | Transferred to section 60-6,119. |
| 39-610. | Transferred to section 60-6,120. |
| 39-611. | Transferred to section 60-6,121. |
| 39-612. | Transferred to section 60-677. |
| 39-613. | Transferred to section 60-6,122. |
| 39-614. | Transferred to section 60-6,123. |
| 39-615. | Transferred to section 60-6,124. |
| 39-616. | Transferred to section 60-6,125. |
| 39-617. | Transferred to section 60-6,126. |
| 39-618. | Transferred to section 60-6,127. |
| 39-618.01. | Transferred to section 60-6,128. |
| 39-618.02. | Transferred to section 39-202. |
| 39-618.03. | Repealed. Laws 1978, LB 534, § 5. |
| 39-618.04. | Transferred to section 39-203. |
| 39-619. | Transferred to section 60-6,129. |
| 39-619.01. | Transferred to section 60-6,130. |
| 39-620. | Transferred to section 60-6,131. |
| 39-621. | Transferred to section 60-6,132. |
| 39-622. | Transferred to section 60-6,133. |
| 39-623. | Transferred to section 60-6,134. |
| 39-624. | Transferred to section 60-6,135. |
| 39-625. | Transferred to section 60-6,136. |
| 39-626. | Transferred to section 60-6,137. |
| 39-627. | Transferred to section 60-6,138. |
| 39-628. | Transferred to section 60-6,139. |
| 39-628.01. | Transferred to section 60-6,224. |
| 39-629. | Transferred to section 60-6,140. |
| 39-630. | Transferred to section 60-6,141. |
| 39-631. | Transferred to section 60-6,142. |

HIGHWAYS AND BRIDGES

Section	
39-632.	Transferred to section 60-6,143.
39-633.	Transferred to section 60-6,144.
39-634.	Transferred to section 60-6,145.
39-634.01.	Transferred to section 39-204.
39-634.02.	Transferred to section 39-205.
39-634.03.	Transferred to section 39-206.
39-635.	Transferred to section 60-6,146.
39-636.	Transferred to section 60-6,147.
39-637.	Transferred to section 60-6,148.
39-638.	Transferred to section 60-6,149.
39-639.	Transferred to section 60-6,150.
39-640.	Transferred to section 60-6,151.
39-641.	Transferred to section 60-6,152.
39-642.	Transferred to section 60-6,153.
39-643.	Transferred to section 60-6,154.
39-644.	Transferred to section 60-6,109.
39-645.	Transferred to section 60-6,155.
39-646.	Transferred to section 60-6,156.
39-647.	Transferred to section 60-6,157.
39-648.	Transferred to section 60-6,158.
39-649.	Repealed. Laws 1993, LB 370, § 495.
39-650.	Transferred to section 60-6,159.
39-651.	Transferred to section 60-6,160.
39-652.	Transferred to section 60-6,161.
39-653.	Transferred to section 60-6,162.
39-654.	Transferred to section 60-6,163.
39-655.	Transferred to section 60-6,170.
39-656.	Transferred to section 60-6,171.
39-657.	Transferred to section 60-6,172.
39-658.	Transferred to section 60-6,173.
39-659.	Transferred to section 60-6,174.
39-660.	Transferred to section 60-6,175.
39-660.01.	Transferred to section 60-6,176.
39-661.	Transferred to section 60-6,177.
39-662.	Transferred to section 60-6,186.
39-662.01.	Repealed. Laws 1975, LB 381, § 7.
39-662.02.	Repealed. Laws 1987, LB 430, § 4.
39-662.03.	Repealed. Laws 1976, LB 202, § 1; Laws 1977, LB 256, § 3.
39-663.	Transferred to section 60-6,190.
39-664.	Transferred to section 60-6,192.
39-665.	Transferred to section 60-6,193.
39-666.	Transferred to section 60-6,187.
39-667.	Transferred to section 60-6,194.

(b) SPECIFIC TRAFFIC OFFENSES

39-668.	Transferred to section 60-6,195.
39-669.	Transferred to section 60-6,212.
39-669.01.	Transferred to section 60-6,213.
39-669.02.	Transferred to section 60-6,215.
39-669.03.	Transferred to section 60-6,214.
39-669.04.	Transferred to section 60-6,216.
39-669.05.	Transferred to section 60-6,217.
39-669.06.	Transferred to section 60-6,218.
39-669.07.	Transferred to section 60-6,196.
39-669.08.	Transferred to section 60-6,197.
39-669.09.	Transferred to section 60-6,199.
39-669.10.	Transferred to section 60-6,200.
39-669.11.	Transferred to section 60-6,201.
39-669.12.	Transferred to section 60-6,202.
39-669.13.	Transferred to section 60-6,203.
39-669.14.	Transferred to section 60-6,204.

NEBRASKA RULES OF THE ROAD

Section	
39-669.15.	Transferred to section 60-6,205.
39-669.16.	Transferred to section 60-6,206.
39-669.17.	Transferred to section 60-6,207.
39-669.18.	Transferred to section 60-6,208.
39-669.19.	Transferred to section 60-6,209.
39-669.20.	Transferred to section 60-6,210.
39-669.21.	Transferred to section 60-6,222.
39-669.22.	Transferred to section 60-497.01.
39-669.23.	Transferred to section 60-497.02.
39-669.24.	Transferred to section 60-497.03.
39-669.25.	Transferred to section 60-497.04.
39-669.26.	Transferred to section 60-4,182.
39-669.27.	Transferred to section 60-4,183.
39-669.28.	Transferred to section 60-4,184.
39-669.29.	Transferred to section 60-4,185.
39-669.30.	Transferred to section 60-4,186.
39-669.31.	Repealed. Laws 1982, LB 568, § 10.
39-669.32.	Repealed. Laws 1982, LB 568, § 10.
39-669.33.	Transferred to section 60-4,187.
39-669.34.	Transferred to section 60-4,129.
39-669.35.	Transferred to section 60-4,130.
39-669.36.	Repealed. Laws 1993, LB 370, § 495.
39-669.37.	Transferred to section 60-4,188.
39-669.38.	Transferred to section 60-6,211.
39-669.39.	Transferred to section 60-6,198.

(c) MISCELLANEOUS RULES

39-670.	Transferred to section 60-6,164.
39-670.01.	Transferred to section 60-6,220.
39-671.	Transferred to section 60-6,165.
39-672.	Transferred to section 60-6,166.
39-673.	Transferred to section 60-6,167.
39-674.	Transferred to section 60-6,168.
39-675.	Transferred to section 60-6,169.
39-676.	Transferred to section 60-6,178.
39-677.	Transferred to section 60-6,179.
39-678.	Transferred to section 60-6,180.
39-679.	Transferred to section 60-6,181.
39-680.	Transferred to section 60-6,182.
39-681.	Transferred to section 60-6,183.
39-682.	Transferred to section 60-6,184.
39-683.	Transferred to section 39-311.
39-684.	Transferred to section 60-679.
39-685.	Transferred to section 39-313.
39-686.	Transferred to section 60-6,314.
39-687.	Transferred to section 60-6,117.
39-688.	Transferred to section 60-6,315.
39-689.	Transferred to section 60-6,316.
39-690.	Transferred to section 60-6,317.
39-691.	Transferred to section 60-6,318.
39-692.	Transferred to section 60-6,306.
39-693.	Transferred to section 60-6,307.
39-694.	Transferred to section 60-6,308.
39-695.	Repealed. Laws 1993, LB 370, § 495.
39-696.	Repealed. Laws 1993, LB 370, § 495.
39-697.	Transferred to section 60-680.
39-698.	Transferred to section 60-6,118.
39-699.	Transferred to section 39-102.
39-699.01.	Transferred to section 39-103.
39-6,100.	Transferred to section 60-6,305.
39-6,101.	Transferred to section 39-308.

HIGHWAYS AND BRIDGES

Section

- 39-6,102. Transferred to section 60-682.
- 39-6,103. Repealed. Laws 1974, LB 829, § 14.
- 39-6,103.01. Transferred to section 60-6,267.
- 39-6,103.02. Transferred to section 60-6,268.
- 39-6,103.03. Transferred to section 60-6,269.
- 39-6,103.04. Repealed. Referendum 1986, No. 401.
- 39-6,103.05. Transferred to section 60-6,271.
- 39-6,103.06. Transferred to section 60-6,272.
- 39-6,103.07. Transferred to section 60-6,270.
- 39-6,103.08. Transferred to section 60-6,273.

(d) ACCIDENTS AND ACCIDENT REPORTS

- 39-6,104. Transferred to section 60-695.
- 39-6,104.01. Transferred to section 60-697.
- 39-6,104.02. Transferred to section 60-696.
- 39-6,104.03. Transferred to section 60-698.
- 39-6,104.04. Transferred to section 60-699.
- 39-6,104.05. Transferred to section 60-6,100.
- 39-6,104.06. Transferred to section 60-6,101.
- 39-6,104.07. Transferred to section 60-6,102.
- 39-6,104.08. Transferred to section 60-6,103.
- 39-6,104.09. Transferred to section 60-6,104.
- 39-6,104.10. Transferred to section 60-6,105.
- 39-6,104.11. Transferred to section 60-6,106.
- 39-6,104.12. Transferred to section 60-6,107.

(e) GENERAL PENALTY PROVISIONS AND POSTCONVICTION REMEDIES

- 39-6,105. Transferred to section 60-684.
- 39-6,106. Repealed. Laws 1974, LB 829, § 14.
- 39-6,106.01. Repealed. Laws 1993, LB 370, § 495.
- 39-6,107. Transferred to section 60-685.
- 39-6,108. Transferred to section 60-686.
- 39-6,109. Transferred to section 60-687.
- 39-6,110. Transferred to section 60-692.
- 39-6,111. Transferred to section 60-688.
- 39-6,112. Transferred to section 60-689.
- 39-6,112.01. Repealed. Laws 1993, LB 370, § 495.
- 39-6,113. Repealed. Laws 1989, LB 285, § 145.
- 39-6,114. Repealed. Laws 1993, LB 370, § 495.
- 39-6,114.01. Transferred to section 60-691.
- 39-6,115. Transferred to section 60-690.
- 39-6,116. Transferred to section 60-6,116.
- 39-6,117. Repealed. Laws 1993, LB 370, § 495.
- 39-6,118. Transferred to section 60-693.
- 39-6,119. Transferred to section 60-694.
- 39-6,120. Transferred to section 60-603.
- 39-6,121. Transferred to section 60-604.
- 39-6,122. Transferred to section 60-601.

(f) EQUIPMENT OF VEHICLES

- 39-6,123. Transferred to section 60-6,253.
- 39-6,124. Transferred to section 60-6,254.
- 39-6,125. Transferred to section 60-6,241.
- 39-6,126. Transferred to section 60-6,242.
- 39-6,127. Transferred to section 60-6,235.
- 39-6,128. Transferred to section 60-6,283.
- 39-6,129. Transferred to section 60-6,304.
- 39-6,130. Transferred to section 60-6,243.
- 39-6,130.01. Transferred to section 60-6,293.
- 39-6,130.02. Repealed. Laws 1993, LB 370, § 495.
- 39-6,131. Transferred to section 60-6,250.

NEBRASKA RULES OF THE ROAD

- Section
- 39-6,131.01. Repealed. Laws 1983, LB 50, § 2.
 - 39-6,131.02. Repealed. Laws 1983, LB 50, § 2.
 - 39-6,131.03. Repealed. Laws 1983, LB 50, § 2.
 - 39-6,131.04. Repealed. Laws 1983, LB 50, § 2.
 - 39-6,131.05. Repealed. Laws 1983, LB 50, § 2.
 - 39-6,131.06. Repealed. Laws 1983, LB 50, § 2.
 - 39-6,131.07. Repealed. Laws 1983, LB 50, § 2.
 - 39-6,131.08. Transferred to section 60-6,251.
 - 39-6,131.09. Transferred to section 60-6,252.
 - 39-6,131.10. Repealed. Laws 1993, LB 370, § 495.
 - 39-6,132. Transferred to section 60-6,284.
 - 39-6,133. Transferred to section 60-6,244.
 - 39-6,134. Transferred to section 60-6,246.
 - 39-6,135. Transferred to section 60-6,285.
 - 39-6,136. Transferred to section 60-6,255.
 - 39-6,136.01. Transferred to section 60-6,257.
 - 39-6,136.02. Transferred to section 60-6,258.
 - 39-6,136.03. Transferred to section 60-6,259.
 - 39-6,136.04. Transferred to section 60-6,260.
 - 39-6,136.05. Transferred to section 60-6,261.
 - 39-6,137. Transferred to section 60-6,286.
 - 39-6,138. Transferred to section 60-6,219.
 - 39-6,138.01. Transferred to section 60-6,319.
 - 39-6,138.02. Repealed. Laws 1993, LB 370, § 495.
 - 39-6,139. Transferred to section 60-6,225.
 - 39-6,140. Transferred to section 60-6,221.
 - 39-6,141. Transferred to section 60-6,227.
 - 39-6,142. Transferred to section 60-6,223.
 - 39-6,143. Repealed. Laws 1987, LB 224, § 31.
 - 39-6,144. Repealed. Laws 1987, LB 224, § 31.
 - 39-6,145. Repealed. Laws 1987, LB 224, § 31.
 - 39-6,146. Repealed. Laws 1987, LB 224, § 31.
 - 39-6,147. Transferred to section 60-6,229.
 - 39-6,148. Transferred to section 60-6,230.
 - 39-6,149. Transferred to section 60-6,231.
 - 39-6,150. Transferred to section 60-6,232.
 - 39-6,151. Transferred to section 60-6,233.
 - 39-6,152. Transferred to section 60-6,234.
 - 39-6,153. Repealed. Laws 1993, LB 370, § 495.
 - 39-6,154. Transferred to section 60-6,228.
 - 39-6,155. Transferred to section 60-6,263.
 - 39-6,156. Transferred to section 60-6,262.
 - 39-6,157. Repealed. Laws 1987, LB 224, § 31.
 - 39-6,158. Repealed. Laws 1987, LB 224, § 31.
 - 39-6,159. Repealed. Laws 1993, LB 370, § 495.
 - 39-6,160. Transferred to section 60-6,264.
 - 39-6,161. Transferred to section 60-6,247.
 - 39-6,162. Transferred to section 60-6,236.
 - 39-6,163. Transferred to section 60-6,237.
 - 39-6,164. Transferred to section 60-6,238.
 - 39-6,165. Transferred to section 60-6,239.
 - 39-6,166. Transferred to section 60-6,240.
 - 39-6,167. Repealed. Laws 1987, LB 224, § 31.
 - 39-6,168. Repealed. Laws 1987, LB 224, § 31.
 - 39-6,169. Transferred to section 60-6,287.
 - 39-6,170. Transferred to section 60-6,256.
 - 39-6,171. Transferred to section 60-6,266.
 - 39-6,172. Transferred to section 60-6,248.
 - 39-6,173. Repealed. Laws 1980, LB 633, § 10.
 - 39-6,174. Repealed. Laws 1980, LB 633, § 10.
 - 39-6,175. Repealed. Laws 1980, LB 633, § 10.

HIGHWAYS AND BRIDGES

- Section
39-6,176. Repealed. Laws 1993, LB 370, § 495.
- (g) SIZE, WEIGHT, AND LOAD
- 39-6,177. Transferred to section 60-6,288.
39-6,178. Transferred to section 60-6,289.
39-6,179. Transferred to section 60-6,290.
39-6,179.01. Transferred to section 60-6,292.
39-6,179.02. Repealed. Laws 1993, LB 370, § 495.
39-6,180. Transferred to section 60-6,294.
39-6,180.01. Transferred to section 60-6,295.
39-6,180.02. Transferred to section 60-6,297.
39-6,181. Transferred to section 60-6,298.
39-6,181.01. Transferred to section 60-6,299.
39-6,181.02. Repealed. Laws 1993, LB 370, § 495.
39-6,182. Transferred to section 60-6,300.
39-6,183. Transferred to section 60-6,191.
39-6,184. Transferred to section 60-6,296.
39-6,185. Transferred to section 60-6,301.
39-6,185.01. Transferred to section 60-6,302.
39-6,186. Transferred to section 60-6,303.
39-6,187. Repealed. Laws 1993, LB 370, § 495.
39-6,188. Transferred to section 60-6,291.
39-6,189. Transferred to section 60-681.
- (h) GENERAL PENALTY PROVISIONS
- 39-6,190. Transferred to section 39-310.
39-6,191. Transferred to section 25-21,237.
39-6,191.01. Transferred to section 25-21,238.
- (i) ENFORCEMENT
- 39-6,192. Transferred to section 60-683.
- (j) LIABILITY OF OWNER OF LEASED TRUCKS
- 39-6,193. Transferred to section 25-21,239.
- (k) GRADE CROSSING PROTECTION FUND
- 39-6,194. Transferred to section 74-1317.
39-6,195. Transferred to section 74-1318.
- (l) MOPEDS
- 39-6,196. Transferred to section 60-6,309.
39-6,197. Transferred to section 60-6,310.
39-6,198. Transferred to section 60-6,311.
39-6,199. Transferred to section 60-6,312.
39-6,200. Transferred to section 60-6,313.
39-6,201. Repealed. Laws 1993, LB 370, § 495.
39-6,202. Repealed. Laws 1993, LB 370, § 495.
39-6,203. Repealed. Laws 1993, LB 370, § 495.
39-6,204. Repealed. Laws 1993, LB 370, § 495.
- (m) RADAR DEVICES
- 39-6,205. Transferred to section 60-6,275.
39-6,206. Transferred to section 60-6,274.
39-6,207. Transferred to section 60-6,276.
39-6,208. Repealed. Laws 1993, LB 370, § 495.
39-6,209. Transferred to section 60-6,277.
- (n) PROTECTIVE HELMETS
- 39-6,210. Transferred to section 60-6,278.
39-6,211. Transferred to section 60-6,279.
39-6,212. Transferred to section 60-6,280.
39-6,213. Transferred to section 60-6,281.

Section
39-6,214. Transferred to section 60-6,282.

(a) RULES OF THE ROAD; GENERAL OPERATING RULES

- 39-601 Transferred to section 60-602.**
- 39-602 Repealed. Laws 1993, LB 370, § 495.**
- 39-603 Transferred to section 60-6,108.**
- 39-604 Transferred to section 60-6,110.**
- 39-605 Transferred to section 60-6,111.**
- 39-606 Transferred to section 60-6,112.**
- 39-607 Transferred to section 60-6,113.**
- 39-608 Transferred to section 60-6,114.**
- 39-609 Transferred to section 60-6,119.**
- 39-610 Transferred to section 60-6,120.**
- 39-611 Transferred to section 60-6,121.**
- 39-612 Transferred to section 60-677.**
- 39-613 Transferred to section 60-6,122.**
- 39-614 Transferred to section 60-6,123.**
- 39-615 Transferred to section 60-6,124.**
- 39-616 Transferred to section 60-6,125.**
- 39-617 Transferred to section 60-6,126.**
- 39-618 Transferred to section 60-6,127.**
- 39-618.01 Transferred to section 60-6,128.**
- 39-618.02 Transferred to section 39-202.**
- 39-618.03 Repealed. Laws 1978, LB 534, § 5.**
- 39-618.04 Transferred to section 39-203.**
- 39-619 Transferred to section 60-6,129.**
- 39-619.01 Transferred to section 60-6,130.**
- 39-620 Transferred to section 60-6,131.**
- 39-621 Transferred to section 60-6,132.**
- 39-622 Transferred to section 60-6,133.**
- 39-623 Transferred to section 60-6,134.**
- 39-624 Transferred to section 60-6,135.**

- 39-625 Transferred to section 60-6,136.
- 39-626 Transferred to section 60-6,137.
- 39-627 Transferred to section 60-6,138.
- 39-628 Transferred to section 60-6,139.
- 39-628.01 Transferred to section 60-6,224.
- 39-629 Transferred to section 60-6,140.
- 39-630 Transferred to section 60-6,141.
- 39-631 Transferred to section 60-6,142.
- 39-632 Transferred to section 60-6,143.
- 39-633 Transferred to section 60-6,144.
- 39-634 Transferred to section 60-6,145.
- 39-634.01 Transferred to section 39-204.
- 39-634.02 Transferred to section 39-205.
- 39-634.03 Transferred to section 39-206.
- 39-635 Transferred to section 60-6,146.
- 39-636 Transferred to section 60-6,147.
- 39-637 Transferred to section 60-6,148.
- 39-638 Transferred to section 60-6,149.
- 39-639 Transferred to section 60-6,150.
- 39-640 Transferred to section 60-6,151.
- 39-641 Transferred to section 60-6,152.
- 39-642 Transferred to section 60-6,153.
- 39-643 Transferred to section 60-6,154.
- 39-644 Transferred to section 60-6,109.
- 39-645 Transferred to section 60-6,155.
- 39-646 Transferred to section 60-6,156.
- 39-647 Transferred to section 60-6,157.
- 39-648 Transferred to section 60-6,158.
- 39-649 Repealed. Laws 1993, LB 370, § 495.
- 39-650 Transferred to section 60-6,159.
- 39-651 Transferred to section 60-6,160.

- 39-652 Transferred to section 60-6,161.
- 39-653 Transferred to section 60-6,162.
- 39-654 Transferred to section 60-6,163.
- 39-655 Transferred to section 60-6,170.
- 39-656 Transferred to section 60-6,171.
- 39-657 Transferred to section 60-6,172.
- 39-658 Transferred to section 60-6,173.
- 39-659 Transferred to section 60-6,174.
- 39-660 Transferred to section 60-6,175.
- 39-660.01 Transferred to section 60-6,176.
- 39-661 Transferred to section 60-6,177.
- 39-662 Transferred to section 60-6,186.
- 39-662.01 Repealed. Laws 1975, LB 381, § 7.
- 39-662.02 Repealed. Laws 1987, LB 430, § 4.
- 39-662.03 Repealed. Laws 1976, LB 202, § 1; Laws 1977, LB 256, § 3.
- 39-663 Transferred to section 60-6,190.
- 39-664 Transferred to section 60-6,192.
- 39-665 Transferred to section 60-6,193.
- 39-666 Transferred to section 60-6,187.
- 39-667 Transferred to section 60-6,194.

(b) SPECIFIC TRAFFIC OFFENSES

- 39-668 Transferred to section 60-6,195.
- 39-669 Transferred to section 60-6,212.
- 39-669.01 Transferred to section 60-6,213.
- 39-669.02 Transferred to section 60-6,215.
- 39-669.03 Transferred to section 60-6,214.
- 39-669.04 Transferred to section 60-6,216.
- 39-669.05 Transferred to section 60-6,217.
- 39-669.06 Transferred to section 60-6,218.
- 39-669.07 Transferred to section 60-6,196.
- 39-669.08 Transferred to section 60-6,197.

- 39-669.09 Transferred to section 60-6,199.
- 39-669.10 Transferred to section 60-6,200.
- 39-669.11 Transferred to section 60-6,201.
- 39-669.12 Transferred to section 60-6,202.
- 39-669.13 Transferred to section 60-6,203.
- 39-669.14 Transferred to section 60-6,204.
- 39-669.15 Transferred to section 60-6,205.
- 39-669.16 Transferred to section 60-6,206.
- 39-669.17 Transferred to section 60-6,207.
- 39-669.18 Transferred to section 60-6,208.
- 39-669.19 Transferred to section 60-6,209.
- 39-669.20 Transferred to section 60-6,210.
- 39-669.21 Transferred to section 60-6,222.
- 39-669.22 Transferred to section 60-497.01.
- 39-669.23 Transferred to section 60-497.02.
- 39-669.24 Transferred to section 60-497.03.
- 39-669.25 Transferred to section 60-497.04.
- 39-669.26 Transferred to section 60-4,182.
- 39-669.27 Transferred to section 60-4,183.
- 39-669.28 Transferred to section 60-4,184.
- 39-669.29 Transferred to section 60-4,185.
- 39-669.30 Transferred to section 60-4,186.
- 39-669.31 Repealed. Laws 1982, LB 568, § 10.
- 39-669.32 Repealed. Laws 1982, LB 568, § 10.
- 39-669.33 Transferred to section 60-4,187.
- 39-669.34 Transferred to section 60-4,129.
- 39-669.35 Transferred to section 60-4,130.
- 39-669.36 Repealed. Laws 1993, LB 370, § 495.
- 39-669.37 Transferred to section 60-4,188.
- 39-669.38 Transferred to section 60-6,211.
- 39-669.39 Transferred to section 60-6,198.

(c) MISCELLANEOUS RULES

- 39-670 Transferred to section 60-6,164.
- 39-670.01 Transferred to section 60-6,220.
- 39-671 Transferred to section 60-6,165.
- 39-672 Transferred to section 60-6,166.
- 39-673 Transferred to section 60-6,167.
- 39-674 Transferred to section 60-6,168.
- 39-675 Transferred to section 60-6,169.
- 39-676 Transferred to section 60-6,178.
- 39-677 Transferred to section 60-6,179.
- 39-678 Transferred to section 60-6,180.
- 39-679 Transferred to section 60-6,181.
- 39-680 Transferred to section 60-6,182.
- 39-681 Transferred to section 60-6,183.
- 39-682 Transferred to section 60-6,184.
- 39-683 Transferred to section 39-311.
- 39-684 Transferred to section 60-679.
- 39-685 Transferred to section 39-313.
- 39-686 Transferred to section 60-6,314.
- 39-687 Transferred to section 60-6,117.
- 39-688 Transferred to section 60-6,315.
- 39-689 Transferred to section 60-6,316.
- 39-690 Transferred to section 60-6,317.
- 39-691 Transferred to section 60-6,318.
- 39-692 Transferred to section 60-6,306.
- 39-693 Transferred to section 60-6,307.
- 39-694 Transferred to section 60-6,308.
- 39-695 Repealed. Laws 1993, LB 370, § 495.
- 39-696 Repealed. Laws 1993, LB 370, § 495.
- 39-697 Transferred to section 60-680.
- 39-698 Transferred to section 60-6,118.

- 39-699** Transferred to section 39-102.
- 39-699.01** Transferred to section 39-103.
- 39-6,100** Transferred to section 60-6,305.
- 39-6,101** Transferred to section 39-308.
- 39-6,102** Transferred to section 60-682.
- 39-6,103** Repealed. Laws 1974, LB 829, § 14.
- 39-6,103.01** Transferred to section 60-6,267.
- 39-6,103.02** Transferred to section 60-6,268.
- 39-6,103.03** Transferred to section 60-6,269.
- 39-6,103.04** Repealed. Referendum 1986, No. 401.
- 39-6,103.05** Transferred to section 60-6,271.
- 39-6,103.06** Transferred to section 60-6,272.
- 39-6,103.07** Transferred to section 60-6,270.
- 39-6,103.08** Transferred to section 60-6,273.

(d) ACCIDENTS AND ACCIDENT REPORTS

- 39-6,104** Transferred to section 60-695.
- 39-6,104.01** Transferred to section 60-697.
- 39-6,104.02** Transferred to section 60-696.
- 39-6,104.03** Transferred to section 60-698.
- 39-6,104.04** Transferred to section 60-699.
- 39-6,104.05** Transferred to section 60-6,100.
- 39-6,104.06** Transferred to section 60-6,101.
- 39-6,104.07** Transferred to section 60-6,102.
- 39-6,104.08** Transferred to section 60-6,103.
- 39-6,104.09** Transferred to section 60-6,104.
- 39-6,104.10** Transferred to section 60-6,105.
- 39-6,104.11** Transferred to section 60-6,106.
- 39-6,104.12** Transferred to section 60-6,107.

(e) GENERAL PENALTY PROVISIONS AND
POSTCONVICTION REMEDIES

- 39-6,105** Transferred to section 60-684.

- 39-6,106 Repealed. Laws 1974, LB 829, § 14.
- 39-6,106.01 Repealed. Laws 1993, LB 370, § 495.
- 39-6,107 Transferred to section 60-685.
- 39-6,108 Transferred to section 60-686.
- 39-6,109 Transferred to section 60-687.
- 39-6,110 Transferred to section 60-692.
- 39-6,111 Transferred to section 60-688.
- 39-6,112 Transferred to section 60-689.
- 39-6,112.01 Repealed. Laws 1993, LB 370, § 495.
- 39-6,113 Repealed. Laws 1989, LB 285, § 145.
- 39-6,114 Repealed. Laws 1993, LB 370, § 495.
- 39-6,114.01 Transferred to section 60-691.
- 39-6,115 Transferred to section 60-690.
- 39-6,116 Transferred to section 60-6,116.
- 39-6,117 Repealed. Laws 1993, LB 370, § 495.
- 39-6,118 Transferred to section 60-693.
- 39-6,119 Transferred to section 60-694.
- 39-6,120 Transferred to section 60-603.
- 39-6,121 Transferred to section 60-604.
- 39-6,122 Transferred to section 60-601.

(f) EQUIPMENT OF VEHICLES

- 39-6,123 Transferred to section 60-6,253.
- 39-6,124 Transferred to section 60-6,254.
- 39-6,125 Transferred to section 60-6,241.
- 39-6,126 Transferred to section 60-6,242.
- 39-6,127 Transferred to section 60-6,235.
- 39-6,128 Transferred to section 60-6,283.
- 39-6,129 Transferred to section 60-6,304.
- 39-6,130 Transferred to section 60-6,243.
- 39-6,130.01 Transferred to section 60-6,293.
- 39-6,130.02 Repealed. Laws 1993, LB 370, § 495.

- 39-6,131 Transferred to section 60-6,250.
- 39-6,131.01 Repealed. Laws 1983, LB 50, § 2.
- 39-6,131.02 Repealed. Laws 1983, LB 50, § 2.
- 39-6,131.03 Repealed. Laws 1983, LB 50, § 2.
- 39-6,131.04 Repealed. Laws 1983, LB 50, § 2.
- 39-6,131.05 Repealed. Laws 1983, LB 50, § 2.
- 39-6,131.06 Repealed. Laws 1983, LB 50, § 2.
- 39-6,131.07 Repealed. Laws 1983, LB 50, § 2.
- 39-6,131.08 Transferred to section 60-6,251.
- 39-6,131.09 Transferred to section 60-6,252.
- 39-6,131.10 Repealed. Laws 1993, LB 370, § 495.
- 39-6,132 Transferred to section 60-6,284.
- 39-6,133 Transferred to section 60-6,244.
- 39-6,134 Transferred to section 60-6,246.
- 39-6,135 Transferred to section 60-6,285.
- 39-6,136 Transferred to section 60-6,255.
- 39-6,136.01 Transferred to section 60-6,257.
- 39-6,136.02 Transferred to section 60-6,258.
- 39-6,136.03 Transferred to section 60-6,259.
- 39-6,136.04 Transferred to section 60-6,260.
- 39-6,136.05 Transferred to section 60-6,261.
- 39-6,137 Transferred to section 60-6,286.
- 39-6,138 Transferred to section 60-6,219.
- 39-6,138.01 Transferred to section 60-6,319.
- 39-6,138.02 Repealed. Laws 1993, LB 370, § 495.
- 39-6,139 Transferred to section 60-6,225.
- 39-6,140 Transferred to section 60-6,221.
- 39-6,141 Transferred to section 60-6,227.
- 39-6,142 Transferred to section 60-6,223.
- 39-6,143 Repealed. Laws 1987, LB 224, § 31.
- 39-6,144 Repealed. Laws 1987, LB 224, § 31.

- 39-6,145 Repealed. Laws 1987, LB 224, § 31.
- 39-6,146 Repealed. Laws 1987, LB 224, § 31.
- 39-6,147 Transferred to section 60-6,229.
- 39-6,148 Transferred to section 60-6,230.
- 39-6,149 Transferred to section 60-6,231.
- 39-6,150 Transferred to section 60-6,232.
- 39-6,151 Transferred to section 60-6,233.
- 39-6,152 Transferred to section 60-6,234.
- 39-6,153 Repealed. Laws 1993, LB 370, § 495.
- 39-6,154 Transferred to section 60-6,228.
- 39-6,155 Transferred to section 60-6,263.
- 39-6,156 Transferred to section 60-6,262.
- 39-6,157 Repealed. Laws 1987, LB 224, § 31.
- 39-6,158 Repealed. Laws 1987, LB 224, § 31.
- 39-6,159 Repealed. Laws 1993, LB 370, § 495.
- 39-6,160 Transferred to section 60-6,264.
- 39-6,161 Transferred to section 60-6,247.
- 39-6,162 Transferred to section 60-6,236.
- 39-6,163 Transferred to section 60-6,237.
- 39-6,164 Transferred to section 60-6,238.
- 39-6,165 Transferred to section 60-6,239.
- 39-6,166 Transferred to section 60-6,240.
- 39-6,167 Repealed. Laws 1987, LB 224, § 31.
- 39-6,168 Repealed. Laws 1987, LB 224, § 31.
- 39-6,169 Transferred to section 60-6,287.
- 39-6,170 Transferred to section 60-6,256.
- 39-6,171 Transferred to section 60-6,266.
- 39-6,172 Transferred to section 60-6,248.
- 39-6,173 Repealed. Laws 1980, LB 633, § 10.
- 39-6,174 Repealed. Laws 1980, LB 633, § 10.
- 39-6,175 Repealed. Laws 1980, LB 633, § 10.

39-6,176 Repealed. Laws 1993, LB 370, § 495.

(g) SIZE, WEIGHT, AND LOAD

39-6,177 Transferred to section 60-6,288.

39-6,178 Transferred to section 60-6,289.

39-6,179 Transferred to section 60-6,290.

39-6,179.01 Transferred to section 60-6,292.

39-6,179.02 Repealed. Laws 1993, LB 370, § 495.

39-6,180 Transferred to section 60-6,294.

39-6,180.01 Transferred to section 60-6,295.

39-6,180.02 Transferred to section 60-6,297.

39-6,181 Transferred to section 60-6,298.

39-6,181.01 Transferred to section 60-6,299.

39-6,181.02 Repealed. Laws 1993, LB 370, § 495.

39-6,182 Transferred to section 60-6,300.

39-6,183 Transferred to section 60-6,191.

39-6,184 Transferred to section 60-6,296.

39-6,185 Transferred to section 60-6,301.

39-6,185.01 Transferred to section 60-6,302.

39-6,186 Transferred to section 60-6,303.

39-6,187 Repealed. Laws 1993, LB 370, § 495.

39-6,188 Transferred to section 60-6,291.

39-6,189 Transferred to section 60-681.

(h) GENERAL PENALTY PROVISIONS

39-6,190 Transferred to section 39-310.

39-6,191 Transferred to section 25-21,237.

39-6,191.01 Transferred to section 25-21,238.

(i) ENFORCEMENT

39-6,192 Transferred to section 60-683.

(j) LIABILITY OF OWNER OF LEASED TRUCKS

39-6,193 Transferred to section 25-21,239.

(k) GRADE CROSSING PROTECTION FUND

39-6,194 Transferred to section 74-1317.

39-6,195 Transferred to section 74-1318.

(l) MOPEDS

39-6,196 Transferred to section 60-6,309.

39-6,197 Transferred to section 60-6,310.

39-6,198 Transferred to section 60-6,311.

39-6,199 Transferred to section 60-6,312.

39-6,200 Transferred to section 60-6,313.

39-6,201 Repealed. Laws 1993, LB 370, § 495.

39-6,202 Repealed. Laws 1993, LB 370, § 495.

39-6,203 Repealed. Laws 1993, LB 370, § 495.

39-6,204 Repealed. Laws 1993, LB 370, § 495.

(m) RADAR DEVICES

39-6,205 Transferred to section 60-6,275.

39-6,206 Transferred to section 60-6,274.

39-6,207 Transferred to section 60-6,276.

39-6,208 Repealed. Laws 1993, LB 370, § 495.

39-6,209 Transferred to section 60-6,277.

(n) PROTECTIVE HELMETS

39-6,210 Transferred to section 60-6,278.

39-6,211 Transferred to section 60-6,279.

39-6,212 Transferred to section 60-6,280.

39-6,213 Transferred to section 60-6,281.

39-6,214 Transferred to section 60-6,282.

ARTICLE 7

REGULATIONS GOVERNING THE USE OF PUBLIC ROADS

Section	
39-701.	Repealed. Laws 1963, c. 218, § 1.
39-702.	Repealed. Laws 1963, c. 218, § 1.
39-703.	Transferred to section 39-301.
39-703.01.	Transferred to section 39-302.
39-704.	Transferred to section 39-303.

HIGHWAYS AND BRIDGES

Section	
39-705.	Transferred to section 39-307.
39-706.	Transferred to section 39-305.
39-707.	Transferred to section 39-306.
39-708.	Repealed. Laws 1969, c. 306, § 2.
39-709.	Repealed. Laws 1969, c. 306, § 2.
39-710.	Repealed. Laws 1969, c. 306, § 2.
39-711.	Repealed. Laws 1969, c. 306, § 2.
39-712.	Repealed. Laws 1969, c. 306, § 2.
39-712.01.	Transferred to section 39-312.
39-713.	Repealed. Laws 1973, LB 45, § 125.
39-713.01.	Repealed. Laws 1973, LB 45, § 125.
39-714.	Transferred to section 39-619.01.
39-714.01.	Transferred to section 39-201.
39-714.02.	Repealed. Laws 1993, LB 370, § 495.
39-714.03.	Repealed. Laws 1973, LB 45, § 125.
39-714.04.	Repealed. Laws 1974, LB 593, § 9.
39-714.05.	Transferred to section 39-618.01.
39-715.	Transferred to section 39-304.
39-716.	Transferred to section 39-6,190.
39-717.	Transferred to section 39-309.
39-718.	Repealed. Laws 1974, LB 593, § 9.
39-719.	Transferred to section 39-6,177.
39-719.01.	Repealed. Laws 1973, LB 45, § 125.
39-720.	Transferred to section 39-6,178.
39-721.	Transferred to section 39-6,179.
39-722.	Transferred to section 39-6,180.
39-722.01.	Transferred to section 39-6,181.
39-722.02.	Transferred to section 39-6,180.01.
39-723.	Repealed. Laws 1973, LB 45, § 125.
39-723.01.	Repealed. Laws 1961, c. 185, § 5.
39-723.02.	Repealed. Laws 1973, LB 45, § 125.
39-723.03.	Transferred to section 39-6,182.
39-723.04.	Transferred to section 39-6,123.
39-723.05.	Transferred to section 39-6,183.
39-723.06.	Transferred to section 39-6,184.
39-723.07.	Transferred to section 39-6,185.
39-723.08.	Transferred to section 39-6,186.
39-723.09.	Transferred to section 39-6,187.
39-723.10.	Transferred to section 39-6,125.
39-723.11.	Transferred to section 39-6,126.
39-724.	Repealed. Laws 1973, LB 45, § 125.
39-724.01.	Repealed. Laws 1973, LB 45, § 125.
39-725.	Transferred to section 39-6,188.
39-726.	Transferred to section 39-6,106.01.
39-727.	Transferred to section 39-669.07.
39-727.01.	Repealed. Laws 1971, LB 948, § 8.
39-727.02.	Repealed. Laws 1971, LB 948, § 8.
39-727.03.	Transferred to section 39-669.08.
39-727.04.	Transferred to section 39-669.09.
39-727.05.	Transferred to section 39-669.10.
39-727.06.	Transferred to section 39-669.11.
39-727.07.	Transferred to section 39-669.12.
39-727.08.	Repealed. Laws 1971, LB 948, § 8.
39-727.09.	Repealed. Laws 1971, LB 948, § 8.
39-727.10.	Repealed. Laws 1971, LB 948, § 8.
39-727.11.	Repealed. Laws 1971, LB 948, § 8.
39-727.12.	Repealed. Laws 1971, LB 948, § 8.
39-727.13.	Transferred to section 39-669.13.
39-727.14.	Repealed. Laws 1971, LB 948, § 8.
39-727.15.	Transferred to section 39-669.14.
39-727.16.	Transferred to section 39-669.15.

REGULATIONS GOVERNING THE USE OF PUBLIC ROADS

Section	
39-727.17.	Transferred to section 39-669.16.
39-727.18.	Transferred to section 39-669.17.
39-727.19.	Transferred to section 39-669.18.
39-727.20.	Transferred to section 39-669.19.
39-727.21.	Transferred to section 39-669.31.
39-727.22.	Transferred to section 39-669.32.
39-728.	Repealed. Laws 1971, LB 265, § 11.
39-729.	Repealed. Laws 1973, LB 45, § 125.
39-730.	Repealed. Laws 1974, LB 593, § 9.
39-731.	Repealed. Laws 1973, LB 45, § 125.
39-732.	Repealed. Laws 1973, LB 45, § 125.
39-733.	Transferred to section 39-628.01.
39-734.	Repealed. Laws 1974, LB 593, § 9.
39-735.	Transferred to section 39-6,127.
39-735.01.	Transferred to section 39-6,128.
39-735.02.	Transferred to section 39-6,129.
39-735.03.	Repealed. Laws 1974, LB 593, § 9.
39-736.	Repealed. Laws 1973, LB 45, § 125.
39-737.	Repealed. Laws 1973, LB 45, § 125.
39-737.01.	Repealed. Laws 1973, LB 45, § 125.
39-738.	Repealed. Laws 1973, LB 45, § 125.
39-739.	Repealed. Laws 1973, LB 45, § 125.
39-740.	Transferred to section 39-6,191.
39-741.	Repealed. Laws 1973, LB 45, § 125.
39-742.	Repealed. Laws 1973, LB 45, § 125.
39-743.	Repealed. Laws 1973, LB 45, § 125.
39-744.	Repealed. Laws 1973, LB 45, § 125.
39-745.	Repealed. Laws 1973, LB 45, § 125.
39-745.01.	Repealed. Laws 1973, LB 45, § 125.
39-746.	Repealed. Laws 1973, LB 45, § 125.
39-746.01.	Repealed. Laws 1973, LB 45, § 125.
39-746.02.	Repealed. Laws 1973, LB 45, § 125.
39-746.03.	Repealed. Laws 1973, LB 45, § 125.
39-746.04.	Repealed. Laws 1973, LB 45, § 125.
39-746.05.	Repealed. Laws 1973, LB 45, § 125.
39-746.06.	Repealed. Laws 1973, LB 45, § 125.
39-746.07.	Repealed. Laws 1973, LB 45, § 125.
39-746.08.	Repealed. Laws 1973, LB 45, § 125.
39-747.	Repealed. Laws 1973, LB 45, § 125.
39-748.	Repealed. Laws 1961, c. 190, § 9.
39-749.	Repealed. Laws 1973, LB 45, § 125.
39-750.	Repealed. Laws 1973, LB 45, § 125.
39-751.	Repealed. Laws 1973, LB 45, § 125.
39-752.	Repealed. Laws 1973, LB 45, § 125.
39-752.01.	Repealed. Laws 1973, LB 45, § 125.
39-753.	Repealed. Laws 1973, LB 45, § 125.
39-754.	Repealed. Laws 1973, LB 45, § 125.
39-754.01.	Repealed. Laws 1973, LB 45, § 125.
39-754.02.	Repealed. Laws 1973, LB 45, § 125.
39-754.03.	Repealed. Laws 1973, LB 45, § 125.
39-754.04.	Repealed. Laws 1973, LB 45, § 125.
39-754.05.	Repealed. Laws 1973, LB 45, § 125.
39-754.06.	Repealed. Laws 1973, LB 45, § 125.
39-754.07.	Repealed. Laws 1973, LB 45, § 125.
39-754.08.	Repealed. Laws 1973, LB 45, § 125.
39-754.09.	Repealed. Laws 1973, LB 45, § 125.
39-755.	Repealed. Laws 1973, LB 45, § 125.
39-756.	Repealed. Laws 1973, LB 45, § 125.
39-757.	Repealed. Laws 1973, LB 45, § 125.
39-757.01.	Repealed. Laws 1973, LB 45, § 125.
39-758.	Repealed. Laws 1973, LB 45, § 125.

HIGHWAYS AND BRIDGES

Section	
39-759.	Repealed. Laws 1973, LB 45, § 125.
39-760.	Repealed. Laws 1973, LB 45, § 125.
39-761.	Repealed. Laws 1973, LB 45, § 125.
39-762.	Transferred to section 39-6,104.01.
39-762.01.	Transferred to section 39-6,104.02.
39-763.	Transferred to section 39-6,104.03.
39-764.	Transferred to section 39-6,104.04.
39-764.01.	Repealed. Laws 1973, LB 45, § 125.
39-765.	Transferred to section 39-6,104.05.
39-766.	Repealed. Laws 1973, LB 45, § 125.
39-767.	Repealed. Laws 1973, LB 45, § 125.
39-768.	Repealed. Laws 1973, LB 45, § 125.
39-769.	Transferred to section 39-6,130.
39-770.	Transferred to section 39-6,189.
39-771.	Transferred to section 39-6,131.
39-772.	Transferred to section 39-6,132.
39-773.	Transferred to section 39-6,133.
39-773.01.	Transferred to section 39-6,134.
39-774.	Transferred to section 39-6,135.
39-775.	Transferred to section 39-6,124.
39-776.	Transferred to section 39-6,136.
39-777.	Transferred to section 39-6,137.
39-778.	Transferred to section 39-6,138.
39-779.	Transferred to section 39-6,139.
39-780.	Transferred to section 39-6,140.
39-780.01.	Transferred to section 39-6,141.
39-781.	Transferred to section 39-6,142.
39-782.	Transferred to section 39-6,143.
39-783.	Transferred to section 39-6,144.
39-784.	Repealed. Laws 1973, LB 240, § 4.
39-784.01.	Repealed. Laws 1973, LB 240, § 4.
39-785.	Repealed. Laws 1973, LB 240, § 4.
39-786.	Transferred to section 39-6,145.
39-787.	Transferred to section 39-6,146.
39-788.	Transferred to section 39-6,147.
39-788.01.	Transferred to section 39-6,148.
39-788.02.	Transferred to section 39-6,149.
39-788.03.	Transferred to section 39-6,150.
39-788.04.	Transferred to section 39-6,151.
39-788.05.	Transferred to section 39-6,152.
39-788.06.	Transferred to section 39-6,153.
39-788.07.	Transferred to section 39-6,154.
39-789.	Repealed. Laws 1973, LB 45, § 125.
39-790.	Repealed. Laws 1973, LB 45, § 125.
39-791.	Repealed. Laws 1973, LB 45, § 125.
39-792.	Repealed. Laws 1973, LB 45, § 125.
39-793.	Repealed. Laws 1973, LB 45, § 125.
39-794.	Transferred to section 39-669.22.
39-795.	Transferred to section 39-669.23.
39-796.	Transferred to section 39-669.24.
39-797.	Transferred to section 39-669.25.
39-798.	Repealed. Laws 1974, LB 593, § 9.
39-799.	Repealed. Laws 1973, LB 45, § 125.
39-7,100.	Repealed. Laws 1961, c. 284, § 1.
39-7,101.	Transferred to section 39-6,155.
39-7,102.	Transferred to section 39-6,156.
39-7,103.	Transferred to section 39-6,157.
39-7,104.	Transferred to section 39-6,158.
39-7,105.	Transferred to section 39-6,159.
39-7,106.	Transferred to section 39-6,160.
39-7,107.	Transferred to section 39-669.01.

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- 39-7,107.01. Transferred to section 39-669.02.
- 39-7,107.02. Transferred to section 39-669.03.
- 39-7,107.03. Transferred to section 39-669.04.
- 39-7,107.04. Transferred to section 39-669.05.
- 39-7,107.05. Transferred to section 39-669.06.
- 39-7,108. Repealed. Laws 1973, LB 45, § 125.
- 39-7,108.01. Repealed. Laws 1973, LB 45, § 125.
- 39-7,108.02. Repealed. Laws 1973, LB 45, § 125.
- 39-7,109. Repealed. Laws 1973, LB 45, § 125.
- 39-7,110. Repealed. Laws 1973, LB 45, § 125.
- 39-7,111. Repealed. Laws 1973, LB 45, § 125.
- 39-7,112. Transferred to section 39-670.01.
- 39-7,113. Transferred to section 39-6,161.
- 39-7,114. Repealed. Laws 1974, LB 593, § 9.
- 39-7,115. Repealed. Laws 1973, LB 45, § 125.
- 39-7,116. Repealed. Laws 1973, LB 45, § 125.
- 39-7,117. Repealed. Laws 1973, LB 45, § 125.
- 39-7,118. Transferred to section 39-6,162.
- 39-7,118.01. Transferred to section 39-6,163.
- 39-7,119. Transferred to section 39-6,164.
- 39-7,120. Transferred to section 39-6,165.
- 39-7,121. Transferred to section 39-6,166.
- 39-7,122. Transferred to section 39-6,167.
- 39-7,123. Transferred to section 39-6,168.
- 39-7,123.01. Transferred to section 39-6,169.
- 39-7,123.02. Repealed. Laws 1973, LB 45, § 125.
- 39-7,123.03. Repealed. Laws 1973, LB 45, § 125.
- 39-7,123.04. Transferred to section 39-6,170.
- 39-7,123.05. Transferred to section 39-6,171.
- 39-7,123.06. Transferred to section 39-6,172.
- 39-7,123.07. Transferred to section 39-6,173.
- 39-7,123.08. Transferred to section 39-6,174.
- 39-7,123.09. Transferred to section 39-6,175.
- 39-7,123.10. Transferred to section 39-6,176.
- 39-7,123.11. Repealed. Laws 1973, LB 45, § 125.
- 39-7,124. Transferred to section 39-6,192.
- 39-7,125. Transferred to section 39-669.20.
- 39-7,126. Transferred to section 39-669.21.
- 39-7,127. Repealed. Laws 1973, LB 45, § 125.
- 39-7,128. Transferred to section 39-669.26.
- 39-7,128.01. Repealed. Laws 1961, c. 284, § 1.
- 39-7,129. Transferred to section 39-669.27.
- 39-7,130. Transferred to section 39-669.28.
- 39-7,131. Repealed. Laws 1959, c. 174, § 5.
- 39-7,132. Transferred to section 39-669.29.
- 39-7,133. Transferred to section 39-669.30.
- 39-7,134. Repealed. Laws 1973, LB 45, § 125.
- 39-7,134.01. Transferred to section 39-699.01.
- 39-7,135. Transferred to section 39-6,193.
- 39-7,136. Transferred to section 39-6,194.
- 39-7,137. Transferred to section 39-6,195.

39-701 Repealed. Laws 1963, c. 218, § 1.

39-702 Repealed. Laws 1963, c. 218, § 1.

39-703 Transferred to section 39-301.

39-703.01 Transferred to section 39-302.

39-704 Transferred to section 39-303.

- 39-705 Transferred to section 39-307.
- 39-706 Transferred to section 39-305.
- 39-707 Transferred to section 39-306.
- 39-708 Repealed. Laws 1969, c. 306, § 2.
- 39-709 Repealed. Laws 1969, c. 306, § 2.
- 39-710 Repealed. Laws 1969, c. 306, § 2.
- 39-711 Repealed. Laws 1969, c. 306, § 2.
- 39-712 Repealed. Laws 1969, c. 306, § 2.
- 39-712.01 Transferred to section 39-312.
- 39-713 Repealed. Laws 1973, LB 45, § 125.
- 39-713.01 Repealed. Laws 1973, LB 45, § 125.
- 39-714 Transferred to section 39-619.01.
- 39-714.01 Transferred to section 39-201.
- 39-714.02 Repealed. Laws 1993, LB 370, § 495.
- 39-714.03 Repealed. Laws 1973, LB 45, § 125.
- 39-714.04 Repealed. Laws 1974, LB 593, § 9.
- 39-714.05 Transferred to section 39-618.01.
- 39-715 Transferred to section 39-304.
- 39-716 Transferred to section 39-6,190.
- 39-717 Transferred to section 39-309.
- 39-718 Repealed. Laws 1974, LB 593, § 9.
- 39-719 Transferred to section 39-6,177.
- 39-719.01 Repealed. Laws 1973, LB 45, § 125.
- 39-720 Transferred to section 39-6,178.
- 39-721 Transferred to section 39-6,179.
- 39-722 Transferred to section 39-6,180.
- 39-722.01 Transferred to section 39-6,181.
- 39-722.02 Transferred to section 39-6,180.01.
- 39-723 Repealed. Laws 1973, LB 45, § 125.
- 39-723.01 Repealed. Laws 1961, c. 185, § 5.
- 39-723.02 Repealed. Laws 1973, LB 45, § 125.

- 39-723.03 Transferred to section 39-6,182.
- 39-723.04 Transferred to section 39-6,123.
- 39-723.05 Transferred to section 39-6,183.
- 39-723.06 Transferred to section 39-6,184.
- 39-723.07 Transferred to section 39-6,185.
- 39-723.08 Transferred to section 39-6,186.
- 39-723.09 Transferred to section 39-6,187.
- 39-723.10 Transferred to section 39-6,125.
- 39-723.11 Transferred to section 39-6,126.
- 39-724 Repealed. Laws 1973, LB 45, § 125.
- 39-724.01 Repealed. Laws 1973, LB 45, § 125.
- 39-725 Transferred to section 39-6,188.
- 39-726 Transferred to section 39-6,106.01.
- 39-727 Transferred to section 39-669.07.
- 39-727.01 Repealed. Laws 1971, LB 948, § 8.
- 39-727.02 Repealed. Laws 1971, LB 948, § 8.
- 39-727.03 Transferred to section 39-669.08.
- 39-727.04 Transferred to section 39-669.09.
- 39-727.05 Transferred to section 39-669.10.
- 39-727.06 Transferred to section 39-669.11.
- 39-727.07 Transferred to section 39-669.12.
- 39-727.08 Repealed. Laws 1971, LB 948, § 8.
- 39-727.09 Repealed. Laws 1971, LB 948, § 8.
- 39-727.10 Repealed. Laws 1971, LB 948, § 8.
- 39-727.11 Repealed. Laws 1971, LB 948, § 8.
- 39-727.12 Repealed. Laws 1971, LB 948, § 8.
- 39-727.13 Transferred to section 39-669.13.
- 39-727.14 Repealed. Laws 1971, LB 948, § 8.
- 39-727.15 Transferred to section 39-669.14.
- 39-727.16 Transferred to section 39-669.15.
- 39-727.17 Transferred to section 39-669.16.

- 39-727.18 Transferred to section 39-669.17.
- 39-727.19 Transferred to section 39-669.18.
- 39-727.20 Transferred to section 39-669.19.
- 39-727.21 Transferred to section 39-669.31.
- 39-727.22 Transferred to section 39-669.32.
- 39-728 Repealed. Laws 1971, LB 265, § 11.
- 39-729 Repealed. Laws 1973, LB 45, § 125.
- 39-730 Repealed. Laws 1974, LB 593, § 9.
- 39-731 Repealed. Laws 1973, LB 45, § 125.
- 39-732 Repealed. Laws 1973, LB 45, § 125.
- 39-733 Transferred to section 39-628.01.
- 39-734 Repealed. Laws 1974, LB 593, § 9.
- 39-735 Transferred to section 39-6,127.
- 39-735.01 Transferred to section 39-6,128.
- 39-735.02 Transferred to section 39-6,129.
- 39-735.03 Repealed. Laws 1974, LB 593, § 9.
- 39-736 Repealed. Laws 1973, LB 45, § 125.
- 39-737 Repealed. Laws 1973, LB 45, § 125.
- 39-737.01 Repealed. Laws 1973, LB 45, § 125.
- 39-738 Repealed. Laws 1973, LB 45, § 125.
- 39-739 Repealed. Laws 1973, LB 45, § 125.
- 39-740 Transferred to section 39-6,191.
- 39-741 Repealed. Laws 1973, LB 45, § 125.
- 39-742 Repealed. Laws 1973, LB 45, § 125.
- 39-743 Repealed. Laws 1973, LB 45, § 125.
- 39-744 Repealed. Laws 1973, LB 45, § 125.
- 39-745 Repealed. Laws 1973, LB 45, § 125.
- 39-745.01 Repealed. Laws 1973, LB 45, § 125.
- 39-746 Repealed. Laws 1973, LB 45, § 125.
- 39-746.01 Repealed. Laws 1973, LB 45, § 125.
- 39-746.02 Repealed. Laws 1973, LB 45, § 125.

- 39-746.03 Repealed. Laws 1973, LB 45, § 125.
- 39-746.04 Repealed. Laws 1973, LB 45, § 125.
- 39-746.05 Repealed. Laws 1973, LB 45, § 125.
- 39-746.06 Repealed. Laws 1973, LB 45, § 125.
- 39-746.07 Repealed. Laws 1973, LB 45, § 125.
- 39-746.08 Repealed. Laws 1973, LB 45, § 125.
- 39-747 Repealed. Laws 1973, LB 45, § 125.
- 39-748 Repealed. Laws 1961, c. 190, § 9.
- 39-749 Repealed. Laws 1973, LB 45, § 125.
- 39-750 Repealed. Laws 1973, LB 45, § 125.
- 39-751 Repealed. Laws 1973, LB 45, § 125.
- 39-752 Repealed. Laws 1973, LB 45, § 125.
- 39-752.01 Repealed. Laws 1973, LB 45, § 125.
- 39-753 Repealed. Laws 1973, LB 45, § 125.
- 39-754 Repealed. Laws 1973, LB 45, § 125.
- 39-754.01 Repealed. Laws 1973, LB 45, § 125.
- 39-754.02 Repealed. Laws 1973, LB 45, § 125.
- 39-754.03 Repealed. Laws 1973, LB 45, § 125.
- 39-754.04 Repealed. Laws 1973, LB 45, § 125.
- 39-754.05 Repealed. Laws 1973, LB 45, § 125.
- 39-754.06 Repealed. Laws 1973, LB 45, § 125.
- 39-754.07 Repealed. Laws 1973, LB 45, § 125.
- 39-754.08 Repealed. Laws 1973, LB 45, § 125.
- 39-754.09 Repealed. Laws 1973, LB 45, § 125.
- 39-755 Repealed. Laws 1973, LB 45, § 125.
- 39-756 Repealed. Laws 1973, LB 45, § 125.
- 39-757 Repealed. Laws 1973, LB 45, § 125.
- 39-757.01 Repealed. Laws 1973, LB 45, § 125.
- 39-758 Repealed. Laws 1973, LB 45, § 125.
- 39-759 Repealed. Laws 1973, LB 45, § 125.
- 39-760 Repealed. Laws 1973, LB 45, § 125.

- 39-761 Repealed. Laws 1973, LB 45, § 125.
- 39-762 Transferred to section 39-6,104.01.
- 39-762.01 Transferred to section 39-6,104.02.
- 39-763 Transferred to section 39-6,104.03.
- 39-764 Transferred to section 39-6,104.04.
- 39-764.01 Repealed. Laws 1973, LB 45, § 125.
- 39-765 Transferred to section 39-6,104.05.
- 39-766 Repealed. Laws 1973, LB 45, § 125.
- 39-767 Repealed. Laws 1973, LB 45, § 125.
- 39-768 Repealed. Laws 1973, LB 45, § 125.
- 39-769 Transferred to section 39-6,130.
- 39-770 Transferred to section 39-6,189.
- 39-771 Transferred to section 39-6,131.
- 39-772 Transferred to section 39-6,132.
- 39-773 Transferred to section 39-6,133.
- 39-773.01 Transferred to section 39-6,134.
- 39-774 Transferred to section 39-6,135.
- 39-775 Transferred to section 39-6,124.
- 39-776 Transferred to section 39-6,136.
- 39-777 Transferred to section 39-6,137.
- 39-778 Transferred to section 39-6,138.
- 39-779 Transferred to section 39-6,139.
- 39-780 Transferred to section 39-6,140.
- 39-780.01 Transferred to section 39-6,141.
- 39-781 Transferred to section 39-6,142.
- 39-782 Transferred to section 39-6,143.
- 39-783 Transferred to section 39-6,144.
- 39-784 Repealed. Laws 1973, LB 240, § 4.
- 39-784.01 Repealed. Laws 1973, LB 240, § 4.
- 39-785 Repealed. Laws 1973, LB 240, § 4.
- 39-786 Transferred to section 39-6,145.

- 39-787 Transferred to section 39-6,146.
- 39-788 Transferred to section 39-6,147.
- 39-788.01 Transferred to section 39-6,148.
- 39-788.02 Transferred to section 39-6,149.
- 39-788.03 Transferred to section 39-6,150.
- 39-788.04 Transferred to section 39-6,151.
- 39-788.05 Transferred to section 39-6,152.
- 39-788.06 Transferred to section 39-6,153.
- 39-788.07 Transferred to section 39-6,154.
- 39-789 Repealed. Laws 1973, LB 45, § 125.
- 39-790 Repealed. Laws 1973, LB 45, § 125.
- 39-791 Repealed. Laws 1973, LB 45, § 125.
- 39-792 Repealed. Laws 1973, LB 45, § 125.
- 39-793 Repealed. Laws 1973, LB 45, § 125.
- 39-794 Transferred to section 39-669.22.
- 39-795 Transferred to section 39-669.23.
- 39-796 Transferred to section 39-669.24.
- 39-797 Transferred to section 39-669.25.
- 39-798 Repealed. Laws 1974, LB 593, § 9.
- 39-799 Repealed. Laws 1973, LB 45, § 125.
- 39-7,100 Repealed. Laws 1961, c. 284, § 1.
- 39-7,101 Transferred to section 39-6,155.
- 39-7,102 Transferred to section 39-6,156.
- 39-7,103 Transferred to section 39-6,157.
- 39-7,104 Transferred to section 39-6,158.
- 39-7,105 Transferred to section 39-6,159.
- 39-7,106 Transferred to section 39-6,160.
- 39-7,107 Transferred to section 39-669.01.
- 39-7,107.01 Transferred to section 39-669.02.
- 39-7,107.02 Transferred to section 39-669.03.
- 39-7,107.03 Transferred to section 39-669.04.

- 39-7,107.04 Transferred to section 39-669.05.
- 39-7,107.05 Transferred to section 39-669.06.
- 39-7,108 Repealed. Laws 1973, LB 45, § 125.
- 39-7,108.01 Repealed. Laws 1973, LB 45, § 125.
- 39-7,108.02 Repealed. Laws 1973, LB 45, § 125.
- 39-7,109 Repealed. Laws 1973, LB 45, § 125.
- 39-7,110 Repealed. Laws 1973, LB 45, § 125.
- 39-7,111 Repealed. Laws 1973, LB 45, § 125.
- 39-7,112 Transferred to section 39-670.01.
- 39-7,113 Transferred to section 39-6,161.
- 39-7,114 Repealed. Laws 1974, LB 593, § 9.
- 39-7,115 Repealed. Laws 1973, LB 45, § 125.
- 39-7,116 Repealed. Laws 1973, LB 45, § 125.
- 39-7,117 Repealed. Laws 1973, LB 45, § 125.
- 39-7,118 Transferred to section 39-6,162.
- 39-7,118.01 Transferred to section 39-6,163.
- 39-7,119 Transferred to section 39-6,164.
- 39-7,120 Transferred to section 39-6,165.
- 39-7,121 Transferred to section 39-6,166.
- 39-7,122 Transferred to section 39-6,167.
- 39-7,123 Transferred to section 39-6,168.
- 39-7,123.01 Transferred to section 39-6,169.
- 39-7,123.02 Repealed. Laws 1973, LB 45, § 125.
- 39-7,123.03 Repealed. Laws 1973, LB 45, § 125.
- 39-7,123.04 Transferred to section 39-6,170.
- 39-7,123.05 Transferred to section 39-6,171.
- 39-7,123.06 Transferred to section 39-6,172.
- 39-7,123.07 Transferred to section 39-6,173.
- 39-7,123.08 Transferred to section 39-6,174.
- 39-7,123.09 Transferred to section 39-6,175.
- 39-7,123.10 Transferred to section 39-6,176.

- 39-7,123.11 Repealed. Laws 1973, LB 45, § 125.**
- 39-7,124 Transferred to section 39-6,192.**
- 39-7,125 Transferred to section 39-669.20.**
- 39-7,126 Transferred to section 39-669.21.**
- 39-7,127 Repealed. Laws 1973, LB 45, § 125.**
- 39-7,128 Transferred to section 39-669.26.**
- 39-7,128.01 Repealed. Laws 1961, c. 284, § 1.**
- 39-7,129 Transferred to section 39-669.27.**
- 39-7,130 Transferred to section 39-669.28.**
- 39-7,131 Repealed. Laws 1959, c. 174, § 5.**
- 39-7,132 Transferred to section 39-669.29.**
- 39-7,133 Transferred to section 39-669.30.**
- 39-7,134 Repealed. Laws 1973, LB 45, § 125.**
- 39-7,134.01 Transferred to section 39-699.01.**
- 39-7,135 Transferred to section 39-6,193.**
- 39-7,136 Transferred to section 39-6,194.**
- 39-7,137 Transferred to section 39-6,195.**

ARTICLE 8 BRIDGES

Cross References

Constitutional provision:

Special legislation prohibited, see Article III, section 18, Constitution of Nebraska.

Bridge construction, safety regulations, see section 48-425.

County bridges:

County board action to recover for damages to, see section 23-124.

Emergency repairs, see section 23-338.

Irrigation ditches, bridges across, see sections 46-251 and 46-255.

Railroad bridges, lien for labor or materials, see sections 52-115 to 52-117.

Subways and viaducts, see sections 18-601 to 18-636.

(a) MISCELLANEOUS PROVISIONS

Section

- 39-801.** Repealed. Laws 1996, LB 1114, § 75.
- 39-802.** County special emergency bridge levy; collection; disbursement.
- 39-803.** City or village bridge; vehicle exceeding maximum weight; claim or damages not allowed.
- 39-803.01.** Repealed. Laws 1976, LB 678, § 1.
- 39-803.02.** Repealed. Laws 1976, LB 678, § 1.
- 39-803.03.** Repealed. Laws 1976, LB 678, § 1.
- 39-803.04.** Repealed. Laws 1976, LB 678, § 1.
- 39-803.05.** Repealed. Laws 1976, LB 678, § 1.
- 39-803.06.** Repealed. Laws 1976, LB 678, § 1.
- 39-804.** Bridges in cities and villages; construction and repair by counties.

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- Section
39-805. Bridge over irrigation or drainage ditch; construction and maintenance; cost; how paid.
39-806. Destroying bridge or landmark; penalty.
39-807. Signs or advertising on bridges or culverts; when unlawful.
39-808. Signs or advertising on bridges or culverts; violation; penalty.
39-809. Bridge, culvert, or highway construction; flood damages; liability of county or township; limitation.
- (b) CONTRACTS FOR CONSTRUCTION AND REPAIR OF BRIDGES
- 39-810. Bridges; culverts; construction and repair; road improvements; contracts; letting; procedures.
39-811. Bridges; construction and repair; materials used; itemized statement; bridge record.
39-812. Bridge construction; yearly contracts; when made; when authorized; terms.
39-813. Bridge construction; yearly contracts; concrete substructures; terms.
39-814. Bridge construction; yearly contracts; metal substructures; terms.
39-815. Bridge repairs; yearly contracts; terms.
39-816. Superstructure, substructure, unit quantity in place, defined.
39-817. Bridge construction contracts; advertisement for bids; contents; bids; certified checks or cash deposits required.
39-818. Bridge construction contracts; bidding blanks; infringement on patent rights; bids; acceptance or rejection; construction by county.
39-819. Bridge construction contracts; plans and specifications; uniformity required; contents; inspection of work by Director-State Engineer.
39-820. Bridge and culvert construction contracts; separate bids required on each type; yearly contracts; letting; conditions.
39-821. Bridge and culvert construction contracts; plans, specifications, and estimates; preparation; approval; printed copies furnished to counties.
39-822. Bridge and culvert construction contracts; plans, specifications, and estimates furnished to bidders; statement of construction done.
39-823. Bridge and culvert construction; plans and specifications; duplicate copies; filing with county clerk.
39-824. Bridge construction; cost; limitation on expenditures.
39-825. Bridge construction; contract; bond or other surety.
39-826. Bridges and culverts; emergency repairs.
39-826.01. Proposed bridge or culvert; dam in lieu of; how determined.
39-826.02. Proposed bridge or culvert; natural resources district; dam; feasibility study.
- (c) BRIDGES IN OR NEAR TWO OR MORE COUNTIES
- 39-827. Bridges in or near two or more counties; construction and repair; cost; division.
39-828. Bridges in or near two or more counties; joint contracts for construction or repair; failure of county to join; separate maintenance of bridges.
39-829. Bridges in or near two or more counties; joint contracts; enforcement; procedure.
39-830. Bridges in or near two or more counties; joint contracts; judgment; board members individually liable, when.
- (d) DEFECTIVE BRIDGES
- 39-831. Defective bridge; notice to county board.
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- 39-887. Repealed. Laws 1959, c. 175, § 34.
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(a) MISCELLANEOUS PROVISIONS

39-801 Repealed. Laws 1996, LB 1114, § 75.**39-802 County special emergency bridge levy; collection; disbursement.**

The funds arising from the special emergency bridge levy shall be collected in the same manner as the funds arising from the county general levy. The county treasurer shall keep a separate account of such funds and shall deposit them the same as county general funds are required to be deposited. Such special emergency bridge fund shall be at the disposal of the county board to be used by the board for the construction or repair of bridges whenever in the judgment of the board an emergency has arisen warranting the use of the same.

Source: Laws 1909, c. 32, § 2, p. 214; R.S.1913, § 3002; C.S.1922, § 2754; C.S.1929, § 39-840.

39-803 City or village bridge; vehicle exceeding maximum weight; claim or damages not allowed.

Any person owning, operating, or traveling in any vehicle which exceeds the maximum weight carrying capacity or load limit conspicuously posted or attached to any bridge within the jurisdiction or under the administration or control of any city or village shall not have a claim against or recover damages from such city or village for any claim or injury arising out of the vehicle being upon or crossing such bridge.

Source: Laws 1990, LB 1077, § 1.

39-803.01 Repealed. Laws 1976, LB 678, § 1.**39-803.02 Repealed. Laws 1976, LB 678, § 1.****39-803.03 Repealed. Laws 1976, LB 678, § 1.****39-803.04 Repealed. Laws 1976, LB 678, § 1.****39-803.05 Repealed. Laws 1976, LB 678, § 1.****39-803.06 Repealed. Laws 1976, LB 678, § 1.****39-804 Bridges in cities and villages; construction and repair by counties.**

The county board may, in its discretion, whenever there is sufficient money on hand in the county road fund, build or repair any bridge or bridges within the limits of any incorporated city or village in its county.

Source: Laws 1879, § 58, p. 133; R.S.1913, § 2975; C.S.1922, § 2733; C.S.1929, § 39-820.

39-805 Bridge over irrigation or drainage ditch; construction and maintenance; cost; how paid.

Whenever any public highway within this state shall cross or be crossed by any ditch or channel of any public drainage or irrigation district it shall be the duty of the governing board of the drainage or irrigation district and the governing board of the county or municipal corporation involved to negotiate and agree for the building and maintenance of bridges and approaches thereto

on such terms as shall be equitable, all things considered, between such drainage or irrigation district and such county or municipality. If such boards for any reason shall fail to agree with reference to said matter, it shall be the duty of the drainage or irrigation district to build the necessary bridges and approaches, and restore the highway in question to its former state as nearly as may be as it was laid out prior to the construction of the ditch or channel in question, and it shall be the duty of the county or municipal corporation involved to maintain said bridges and approaches; *Provided*, where more than seventy-five percent of the water passing through any such ditch or channel is used by any person, firm or corporation for purposes other than irrigation or drainage, it shall be the duty of such person, firm or corporation, so using such seventy-five percent or more of such water, to build and maintain solely at his, their or its expense, all such bridges and approaches thereto. Any bridge that may be built by any drainage or irrigation district or by any person, firm or corporation under the provisions of this section shall be constructed under the supervision of the Department of Roads, if on a state highway, and under the supervision of the county board or governing body of a municipality, if under the jurisdiction of such board or governing body of such municipality.

Source: Laws 1913, c. 172, § 1, p. 524; R.S.1913, § 2983; C.S.1922, § 2734; Laws 1929, c. 172, § 1, p. 586; C.S.1929, § 39-821.

Cross References

Irrigation ditches, bridges across, see sections 46-251 and 46-255.

This section is in conflict with common law and must be strictly construed. *Platte Valley P. P. & I. Dist. v. County of Lincoln*, 163 Neb. 196, 79 N.W.2d 61 (1956).

County was obligated to maintain bridge across drainage ditch. *Henneberg v. County of Burt*, 160 Neb. 250, 69 N.W.2d 920 (1955).

When a highway is crossed by a drainage ditch, it is the duty of drainage district to build necessary bridges and approaches thereto under supervision of county board, after which it becomes the duty of the county to maintain the same. *Ritter v. Drainage Dist. No. 1*, 148 Neb. 873, 29 N.W.2d 782 (1947).

This section makes it the duty of the governing board of any irrigation or drainage district to build and maintain, under the supervision of the county board or the governing body of the

municipality, all bridges and approaches necessitated by the crossing of a public highway. *Wright v. Loup River Public Power Dist.*, 133 Neb. 715, 277 N.W. 53 (1938).

Where irrigation canal was established long prior to establishment of highway, owners of canal cannot be compelled to construct or maintain a bridge. *Nine Mile Irr. Dist. v. State*, 118 Neb. 522, 225 N.W. 679 (1929); *State ex rel. Keith County v. Western Irr. Dist. Ditch Co.*, 116 Neb. 736, 219 N.W. 11 (1928).

County board, notified that drainage district proposes to construct bridges over its ditches on county roads under board's supervision, which fails to take action but permits district to proceed, is estopped to complain. *State ex rel. County of Burt v. Burt-Washington Drainage Dist.*, 103 Neb. 763, 174 N.W. 316 (1919).

39-806 Destroying bridge or landmark; penalty.

If any person shall knowingly, willfully, and maliciously demolish, cut down or destroy any private, public or toll bridge, cut, fell, deface, alter, remove or destroy any landmark, corner or bearing tree, witness trench and pits or witness pits, properly established, the person so offending shall be guilty of a Class III misdemeanor.

Source: G.S.1873, §§ 58, 99, p. 743; R.S.1913, § 3003; Laws 1915, c. 59, § 1, p. 153; C.S.1922, § 2755; C.S.1929, § 39-841; R.S.1943, § 39-806; Laws 1977, LB 40, § 208.

Cross References

Damaging or obstructing bridge, penalties, see sections 39-303 and 39-304.

39-807 Signs or advertising on bridges or culverts; when unlawful.

It is hereby declared unlawful for any person or persons whether for himself, herself, or themselves or as the agent, servant, or employee of any firm, association, corporation, partnership, or limited liability company to post,

paste, paint, tack, fasten or otherwise secure to any bridge or culvert in the State of Nebraska, any bills, billboards, signs, posters, advertisements, or banners of any matter or description whatsoever, whether of paper, metal, wood, or other composition. Nothing in this section shall be construed to prohibit road markers designating a particular highway being painted on bridges and culverts.

Source: Laws 1917, c. 186, § 1, p. 424; C.S.1922, § 2756; C.S.1929, § 39-842; R.S.1943, § 39-807; Laws 1993, LB 121, § 208.

39-808 Signs or advertising on bridges or culverts; violation; penalty.

If any person or persons, whether for himself, herself, or themselves or as the agent, servant, or employee of any firm, association, corporation, partnership, or limited liability company violates section 39-807, such person or persons shall be guilty of a Class V misdemeanor.

Source: Laws 1917, c. 186, § 2, p. 424; C.S.1922, § 2757; C.S.1929, § 39-843; R.S.1943, § 39-808; Laws 1977, LB 40, § 209; Laws 1993, LB 121, § 209.

39-809 Bridge, culvert, or highway construction; flood damages; liability of county or township; limitation.

If any special damage happens to the property of any person, firm or corporation from the accumulation of water due to the construction or repair of any bridge, culvert or highway, which the county or township is liable to construct or keep in repair, through the fault, neglect or oversight of the board of county commissioners or supervisors, township board, road overseer or other officer in charge of road work, such person, firm or corporation may recover in an action against the county or township so repairing or constructing such bridge, culvert or highway. If the damage occurs in consequence of the construction of any bridge, culvert or highway, erected and maintained by two or more counties or townships, the action can be brought against one of the counties or townships, or all of the counties and townships liable for the erection and for the repair of the same; and damages and costs shall be paid by the counties or townships in proportion as they are liable for the repairs; *Provided*, the procedure for bringing claims and suits under this section shall be the same as for claims and suits under sections 13-901 to 13-926.

Source: Laws 1921, c. 290, § 1, p. 940; C.S.1922, § 2747; C.S.1929, § 39-833; R.S.1943, § 39-809; Laws 1959, c. 181, § 9, p. 657; Laws 1969, c. 138, § 25, p. 636.

Section does not apply to unlawful diversion of surface waters flowing in natural watercourse. *Purdy v. County of Madison*, 156 Neb. 212, 55 N.W.2d 617 (1952).

County is liable for crop damage from overflow caused by heavy rain and insufficient passageway under bridge. *Croft v. Scotts Bluff County*, 121 Neb. 343, 237 N.W. 149 (1931).

County is liable for elevating highway grade across flood channel of natural stream without providing for drainage. *Clark v. Cedar County*, 118 Neb. 465, 225 N.W. 235 (1929).

(b) CONTRACTS FOR CONSTRUCTION AND REPAIR OF BRIDGES

39-810 Bridges; culverts; construction and repair; road improvements; contracts; letting; procedures.

The county board of each county may erect and repair all bridges and approaches thereto and build all culverts and make improvements on roads,

including the purchase of gravel for roads, and stockpile any materials to be used for such purposes, the cost and expense of which shall for no project exceed sixty thousand dollars. All contracts for the erection or repair of bridges and approaches thereto or for the building of culverts and improvements on roads, the cost and expense of which shall exceed sixty thousand dollars, shall be let by the county board to the lowest responsible bidder. All contracts for materials for repairing, erecting, and constructing bridges and approaches thereto or culverts or for the purchase of gravel for roads, the cost and expense of which exceed ten thousand dollars, shall be let to the lowest responsible bidder, but the board may reject any and all bids submitted for such materials. Upon rejection of any bid or bids by the board of such a county, such board shall have power and authority to purchase materials to repair, erect, or construct the bridges of such county, approaches thereto, or culverts or to purchase gravel for roads. All contracts for bridge erection or repair, approaches thereto, culverts, or road improvements in excess of ten thousand dollars shall require individual cost-accounting records on each individual project. The total costs of each such separate project shall be included in the annual reports to the Board of Public Roads Classifications and Standards as required by section 39-2120. All bids for the letting of contracts shall be deposited with the county clerk of such a county, opened by him or her in the presence of the county board, and filed in such clerk's office.

Source: Laws 1905, c. 126, § 1, p. 540; Laws 1911, c. 111, § 1, p. 391; R.S.1913, § 2956; C.S.1922, § 2714; C.S.1929, § 39-801; Laws 1931, c. 84, § 1, p. 222; C.S.Supp.,1941, § 39-801; R.S.1943, § 39-810; Laws 1955, c. 159, § 1, p. 462; Laws 1969, c. 328, § 1, p. 1173; Laws 1975, LB 115, § 1; Laws 1988, LB 429, § 1.

Cross References

Authority of board to purchase materials, other provisions, see sections 39-818, 39-824, and 39-826.

Separate contracts for the purchase of gravel which do not exceed the statutory limits under section 39-1406 (now repealed) and this section do not require advertising for bids. State ex rel. Schuler v. Board of County Commissioners, 210 Neb. 594, 316 N.W.2d 302 (1982).

Where statute does not avoid the obligation of contract made contrary to its terms, recovery in quantum meruit may be allowed. Capital Bridge Co. v. County of Saunders, 164 Neb. 304, 83 N.W.2d 18 (1957).

Ordinary resurfacing of public gravel highways amounts to repair and does not constitute an improvement under this section. Cheney v. County Board of Supervisors of Buffalo County, 123 Neb. 624, 243 N.W. 881 (1932).

Cost of culverts are chargeable to county bridge fund. Central Bridge & Constr. Co. v. Saunders County, 106 Neb. 484, 184 N.W. 220 (1921).

Paving contract bid, failing to specify time of performance, is insufficient to support award of contract. Root v. Douglas County, 105 Neb. 262, 180 N.W. 46 (1920).

This section has no application to repair of bridges across irrigation ditches. Dawson County v. Dawson County Irr. Co., 104 Neb. 137, 176 N.W. 78 (1920); Dawson County Irr. Co. v. Dawson County, 103 Neb. 692, 173 N.W. 696 (1919).

Board has no authority to let annual contracts for repairing bridges. Levy of current year cannot be taken into account until made. Clark v. Lancaster County, 69 Neb. 717, 96 N.W. 593 (1903).

Recovery can be had where one furnishes labor and material in good faith without express contract. Cass County v. Sarpy County, 66 Neb. 473, 92 N.W. 635 (1902), 97 N.W. 352 (1903).

39-811 Bridges; construction and repair; materials used; itemized statement; bridge record.

The records of each county board pertaining to such improvements shall be kept in a separate book provided for that purpose. The book shall be kept indexed up to date. A complete record of each bridge repaired or constructed by the county shall be kept in the book as hereinafter provided. (1) The date of construction or repair must be given. (2) The bridge repaired or constructed must be located by giving its distance and direction from the nearest section corner, stating which section corner, naming the section and township in which the section is located. (3) There must be recorded an itemized statement of all

material used, giving the amount, kind, quality, and price of material and date furnished, which statement must be sworn to by the person or persons furnishing the same, and an itemized statement of all work and labor performed, giving the number of days, the dates, and the price per day, which statement must be sworn to by the person or persons performing such work. The original statements for material and labor shall be filed away by the county clerk, and it shall be designated in the record where they are filed; *Provided*, such record shall be kept by the county engineer in counties having such officer. (4) An itemized statement of all material used in construction of approaches and culverts, and of all material used in improvements on roads, and all labor performed, must be signed and sworn to by the party or parties furnishing the material and the party or parties performing the labor; and the record of such improvements shall be kept in the same manner as is herein provided in repairing or constructing bridges by the county. (5) A similar record of all bridges or improvements made by contract shall be kept in such book.

Source: Laws 1905, c. 126, § 1, p. 540; Laws 1911, c. 111, § 1, p. 391; R.S.1913, § 2956; C.S.1922, § 2714; C.S.1929, § 39-801; Laws 1931, c. 84, § 1, p. 222; C.S.Supp.,1941, § 39-801.

To justify removal of county officer for failure to comply with this section, action must be shown to have been prompted by evil intent or notice, or without sufficient grounds to believe that he was properly performing his duty. *Hiatt v. Tomlinson*, 100 Neb. 51, 158 N.W. 383 (1916).

Person crossing bridge or highway has right to expect bridge to be reasonably safe. *Central City v. Marquis*, 75 Neb. 233, 106 N.W. 221 (1905).

County should provide bridge adequate for what may be anticipated as requisite for accommodation of public, in bridge's locality. *Seyfer v. Otoe County*, 66 Neb. 566, 92 N.W. 756 (1902).

Increase over contract price cannot be enforced if contracted for without bids. *Townsend v. Holt County*, 40 Neb. 852, 59 N.W. 381 (1894).

39-812 Bridge construction; yearly contracts; when made; when authorized; terms.

The county board of each county in the state shall have power and is hereby authorized to make annual contracts, which contracts may be made after July 1 of any year and cover the fiscal year of the county, for the construction and erection of the superstructure, the substructure and approaches of all bridges, and for furnishing the materials in connection with the same, to be built within their respective counties for the period of one year, at a specified sum per lineal foot for the superstructure of all such bridges; at a specified sum per lineal foot for the superstructure of all such approaches; at a specified sum per lineal foot for all piling used in the substructure of all bridges and approaches; and at a specified sum per foot, board measure, for all caps, sway braces, and other wood materials used in the substructure of such bridges and approaches.

Source: Laws 1905, c. 126, § 2, p. 540; R.S.1913, § 2957; C.S.1922, § 2715; C.S.1929, § 39-802; R.S.1943, § 39-812; Laws 1947, c. 150, § 1, p. 415.

Cross References

Superstructure and substructure, defined, see section 39-816.

Board cannot let contract for building bridges for a period longer or less than one year. New contract to take effect before

expiration of old one is void. *Whedon v. Lancaster County*, 80 Neb. 682, 114 N.W. 1102 (1908).

39-813 Bridge construction; yearly contracts; concrete substructures; terms.

In the event the substructure of such bridges or approaches is built wholly or in part of stone, brick, cement or concrete, the contract for the portion of the

substructure to be built of such material shall be let at a specified sum per cubic foot in place.

Source: Laws 1905, c. 126, § 3, p. 540; R.S.1913, § 2958; C.S.1922, § 2716; C.S.1929, § 39-803.

39-814 Bridge construction; yearly contracts; metal substructures; terms.

In the event the substructure of such bridges or approaches is wholly or in part of iron, steel or other metal, the contract for the portion of the substructure to be built of iron, steel or other metal shall be let at a specified sum per lineal foot for tubing, and at a specified sum per pound for all other metal in place.

Source: Laws 1905, c. 126, § 4, p. 540; R.S.1913, § 2959; C.S.1922, § 2717; C.S.1929, § 39-804.

39-815 Bridge repairs; yearly contracts; terms.

The county board shall have the power and is hereby authorized to make yearly contracts for repairing all bridges and approaches to bridges which are required to be built, repaired, and maintained by the county, at a specified sum per unit quantity in place.

Source: Laws 1905, c. 126, § 5, p. 540; R.S.1913, § 2960; C.S.1922, § 2718; C.S.1929, § 39-805.

This section is not applicable to repairing of bridges across irrigation ditches. Dawson County v. Dawson County Irr. Co., 104 Neb. 137, 176 N.W. 78 (1920); Dawson County Irr. Co. v. Dawson County, 103 Neb. 692, 173 N.W. 696 (1919).

39-816 Superstructure, substructure, unit quantity in place, defined.

The word superstructure as used in sections 39-812 to 39-815 and 39-820, is hereby defined to mean all that part of a bridge or an approach thereto directly above and resting upon the stone or concrete abutments or piers, iron tubings, pile caps or other similar supports. The word substructure, as used in said sections, is hereby defined to mean all that portion of a bridge or approach thereto directly under and upon which rests the superstructure. The term unit quantity in place, as used in said sections, shall mean cubic feet of stone, cement, brick or concrete; lineal feet of piling; feet of lumber, board measure; lineal feet of tubing; and pounds of all other metal when properly placed in the bridge, approach or culverts according to the terms of the contract.

Source: Laws 1905, c. 126, §§ 6, 7, 8, p. 541; R.S.1913, §§ 2961, 2962, 2963; C.S.1922, §§ 2719, 2720, 2721; C.S.1929, §§ 39-806, 39-807, 39-808.

39-817 Bridge construction contracts; advertisement for bids; contents; bids; certified checks or cash deposits required.

Before any contract shall be let as aforesaid, the county board shall cause to be published three consecutive weeks, in a newspaper printed and of general circulation in the county or, if there is no newspaper printed in the county, in a newspaper of general circulation in the county, an advertisement inviting contractors to compete for such work. Such notice shall state the general character of the work, the number and kind of bridges required to be built, their proposed location as nearly as can be estimated and determined, the time within which and the place where such bids must be presented, and the time

and place of opening such bids. No bids shall be considered unless accompanied by a certified check or cash, the amount of which is to be determined by the county board. All such checks shall be made payable to the county clerk of the county, to be forfeited to the county in case the bidder refuses to enter into a contract with the county, if the same is awarded to him.

Source: Laws 1905, c. 126, § 9, p. 541; R.S.1913, § 2964; C.S.1922, § 2722; C.S.1929, § 39-809; R.S.1943, § 39-817; Laws 1953, c. 136, § 1, p. 424.

When two counties unite in contract to repair boundary bridge, it is not necessary to publish advertisement in both counties. Standard Bridge Co. v. Kearney County, 95 Neb. 455, 145 N.W. 986 (1914).

39-818 Bridge construction contracts; bidding blanks; infringement on patent rights; bids; acceptance or rejection; construction by county.

The county board shall require bidders to bid upon plans and specifications on bidding blanks prepared by the Director-State Engineer or such other officer who may have charge of such matters in this state, to be furnished by Director-State Engineer free of charge, which shall be adopted by the county board; *Provided*, if the county board should adopt plans and specifications which infringe on any patent right granted under and by virtue of the laws of the United States, the county board shall endorse on the plans and specifications the name of the owner of such patent right or the name of the party entitled to receive royalties therefor, and the amount of royalties received by the owner or party entitled thereto; and the board may accept the lowest responsible bid and award the contract accordingly or reject any and all bids submitted for such work. Upon the rejection of any bid or bids by the board, it shall have the power and authority to purchase the necessary bridge material and employ the necessary labor to construct and repair bridges to be built by the county within one year; the purpose being that the county board shall be vested with power and authority to purchase the necessary material and employ the necessary labor, to construct and repair the bridges of the county within one year; *Provided, however*, nothing herein contained shall prevent any person or corporation from submitting to the Director-State Engineer plans and specifications for his consideration.

Source: Laws 1905, c. 126, § 10, p. 542; Laws 1913, c. 88, § 1, p. 230; R.S.1913, § 2965; C.S.1922, § 2723; C.S.1929, § 39-810.

Cross References

Authority to build and repair bridges, other provisions, see sections 39-810, 39-824, and 39-826.

39-819 Bridge construction contracts; plans and specifications; uniformity required; contents; inspection of work by Director-State Engineer.

The county board shall not let or enter into any contract or contracts for the erection of any bridge, the estimated cost of which bridge shall exceed the sum of five hundred dollars, except upon uniform plans and specifications and bidding blanks prepared by the Director-State Engineer, or such other officers who may have charge of such matters in this state, which plans shall be drawn to scale and shall show the outline of the bridge or bridges as it or they will appear when completed. The plans and specifications shall also show at least one cross-sectional view of each. They shall show the name, number, size, grade, dimensions, mixture or other quality of all work and material to be used in the construction of the bridge or bridges. It shall be the duty of the Director-

State Engineer or such other officer who may have charge of such matters in this state, to inspect and check the completed work when called upon so to do by the county board, or by the written request of five resident freeholders of the county.

Source: Laws 1905, c. 126, § 11, p. 542; Laws 1913, c. 88, § 1, p. 231; R.S.1913, § 2966; C.S.1922, § 2724; C.S.1929, § 39-811.

39-820 Bridge and culvert construction contracts; separate bids required on each type; yearly contracts; letting; conditions.

All bidders for the erection and repair of bridges and approaches thereto and for the building of culverts and improvements on roads, when the cost of such erection, repair, building, or improvement shall exceed one hundred dollars, shall be required to bid separately on each different kind and class of bridge with approaches thereto and on each culvert or improvement on roads. The lowest and best bidder on each kind or class of bridges, culverts, or improvements shall be awarded a contract for the same or all bids on the same shall be rejected. The term bridge shall be understood to include both superstructure, substructure, and approaches as herein defined. All bridges constructed entirely of wood shall be considered as constituting a single class, and each different length or style of metal or combination bridge shall constitute a separate class. The county board shall award the contract for building all the same kind and class of bridges, approaches, and culverts that may be required during the year to the lowest and best bidder on such bridges, approaches, and culverts, the object of this section being to give the county board full power to disregard blanket or collective bids. The lowest and best bidder shall enter into a bond with good and sufficient surety or furnish an irrevocable letter of credit, a certified check upon a solvent bank, or a performance bond in a guaranty company qualified to do business in Nebraska in accordance with the provisions of section 39-825.

Source: Laws 1905, c. 126, § 13, p. 543; R.S.1913, § 2967; C.S.1922, § 2725; C.S.1929, § 39-812; R.S.1943, § 39-820; Laws 1987, LB 211, § 5.

Cross References

Superstructure and substructure, defined, see section 39-816.

39-821 Bridge and culvert construction contracts; plans, specifications, and estimates; preparation; approval; printed copies furnished to counties.

The Director-State Engineer, or such other officer who may have charge of such matters in this state, shall prepare plans, specifications, and estimates of the cost of construction, which shall be uniform throughout the state, and strain sheets and estimates of cost of all such standard pattern bridges, the estimated cost of which will exceed five hundred dollars each, as are best adapted to the requirements of the several counties; *Provided*, such plans, specifications, and estimates shall be based upon proper and sufficient data which shall be furnished to the secretary of the county board; and the Director-State Engineer shall supply the several counties with the number of prints of plans and strain sheets and printed copies of specifications, ordered by said

counties, free of charge, and he shall retain all drawings in his office to be turned over to his successor.

Source: Laws 1905, c. 126, § 14, p. 543; Laws 1913, c. 88, § 1, p. 232; R.S.1913, § 2968; Laws 1921, c. 286, § 1, p. 934; C.S.1922, § 2726; C.S.1929, § 39-813.

39-822 Bridge and culvert construction contracts; plans, specifications, and estimates furnished to bidders; statement of construction done.

The county board shall keep in the office of the county clerk of the county a sufficient supply of the prints of the plans and the printed copies of the specifications and estimates of the cost of construction mentioned in section 39-821, to be furnished by the Director-State Engineer for distribution to prospective bidders and taxpayers of the county. No contract shall be entered into under the provisions of sections 39-810 to 39-826 for the construction or erection of any bridge or bridges unless, for the period of thirty days immediately preceding the time of entering into such contract, there shall have been available for distribution by the county clerk the plans and specifications as aforesaid. The county boards of the several counties shall prepare and transmit to the Department of Roads a statement accompanied by the plans and specifications, showing the cost of all bridges built in their counties under the provisions of said sections, and state therein whether they were built under a contract or by the county.

Source: Laws 1905, c. 126, § 15, p. 544; Laws 1913, c. 88, § 1, p. 232; R.S.1913, § 2969; Laws 1921, c. 286, § 2, p. 934; C.S.1922, § 2727; C.S.1929, § 39-814.

39-823 Bridge and culvert construction; plans and specifications; duplicate copies; filing with county clerk.

The county board shall also file duplicate copies of all plans and specifications adopted by them under the provisions of sections 39-810 to 39-826, in the office of the county clerk, who shall keep the same with the records of his office, to be turned over to his successor in office.

Source: Laws 1905, c. 126, § 16, p. 544; Laws 1913, c. 88, § 1, p. 232; R.S.1913, § 2970; C.S.1922, § 2728; C.S.1929, § 39-815.

39-824 Bridge construction; cost; limitation on expenditures.

Bridges shall not be built if the aggregate cost thereof shall exceed a sum greater than the amount of money on hand in the bridge fund derived from the levy of previous years, plus eighty-five percent of the levy of the current year, together with the amount of money in the district road fund in the district where such work is to be performed.

Source: Laws 1905, c. 126, § 17, p. 545; R.S.1913, § 2971; Laws 1919, c. 26, § 1, p. 92; C.S.1922, § 2729; C.S.1929, § 39-816.

Cross References

Authority to build or repair bridges, other provisions, see sections 39-810, 39-818, and 39-826.
District road fund, see section 39-1905.

Provision that county boards may levy special tax to pay indebtedness arising under certain bridge contracts is mandatory, but not in excess of limit of levy for county purposes. State ex rel. Millsap v. Stoddard, 108 Neb. 712, 189 N.W. 299 (1922); Beadle v. Sanders, 104 Neb. 427, 177 N.W. 789 (1920).

Bridge construction in anticipation of levy is valid and a
culvert is a bridge within meaning of proviso. Central Bridge &
Constr. Co. v. Saunders County, 106 Neb. 484, 184 N.W. 220
(1921).

39-825 Bridge construction; contract; bond or other surety.

(1) Except as provided in subsection (2) of this section, every bidder, before entering on work pursuant to contract, shall give bond to the county with at least two good and sufficient sureties, who shall be residents of the state, and one of whom shall be a resident of the county, in any sum not less than one thousand dollars, and in such additional amount as the county board may require, which bond shall be approved by the county board and shall be conditioned for the faithful execution of the contract. The county board may accept or may require a surety bond in like amount and conditioned the same as the personal bond prescribed in this section.

(2) If a contract, the provisions of which are limited to the purchase of supplies or materials, is entered into pursuant to this section and if the amount of the contract is fifty thousand dollars or less, the bidder shall furnish the county with an irrevocable letter of credit, a certified check upon a solvent bank, or a performance bond in a guaranty company qualified to do business in Nebraska, as prescribed by and in an amount determined by the county board, conditioned for the faithful performance of such contract.

Source: Laws 1905, c. 126, § 18, p. 545; R.S.1913, § 2972; C.S.1922, § 2730; C.S.1929, § 39-817; R.S.1943, § 39-825; Laws 1987, LB 211, § 6.

39-826 Bridges and culverts; emergency repairs.

If any bridge, bridges, approach, approaches, culvert or culverts, may need immediate repairs on account of the same having broken down, or on account of high water, or fire, or if for other cause an emergency shall exist, the county board shall have the power to declare that the public good requires immediate action to prevent inconvenience and damage, and may proceed to enter into a contract under the provisions of sections 39-810 to 39-826 for such bridge, bridges, approach or approaches, culvert or culverts, or may buy material and hire labor and repair any such bridges, approaches or culverts.

Source: Laws 1905, c. 126, § 19, p. 545; R.S.1913, § 2973; C.S.1922, § 2731; C.S.1929, § 39-818.

Where emergency existed, as shown by record, county board is not required to advertise for bidders. Standard Bridge Co. v. Kearney County, 95 Neb. 744, 146 N.W. 943 (1914).

39-826.01 Proposed bridge or culvert; dam in lieu of; how determined.

The Department of Roads or the county board shall, prior to the design or construction of a new bridge or culvert in a new or existing highway or road within its jurisdiction, notify in writing, by first-class mail, the natural resources district in which such bridge or culvert will be located. The natural resources district shall, pursuant to section 39-826.02, determine whether it would be beneficial to the district to have a dam constructed in lieu of the proposed bridge or culvert. If the district shall determine that a dam would be more beneficial, the Department of Roads or the county board and the natural resources district shall jointly determine the feasibility of constructing a dam to support the road in lieu of a bridge or culvert. If the Department of Roads or the county board and the natural resources district cannot agree regarding the

feasibility of a dam, the decision of the Department of Roads, in the case of the state highway system, or the county board, in the case of the county road system, shall be controlling.

Source: Laws 1979, LB 213, § 1.

39-826.02 Proposed bridge or culvert; natural resources district; dam; feasibility study.

If a natural resources district shall receive notice of a proposed bridge or culvert, pursuant to section 39-826.01, the district shall make a study to determine whether it would be practicable to construct a dam at or near the proposed site which could be used to support a highway or road. In making the study, such district shall consider the benefit which would be derived and the feasibility of such a dam. After it has made its determination, the natural resources district shall notify the Department of Roads or the county board and shall, if the district favors such a dam, assist in the joint feasibility study and provide any other assistance which may be required.

Source: Laws 1979, LB 213, § 2.

(c) BRIDGES IN OR NEAR TWO OR MORE COUNTIES

39-827 Bridges in or near two or more counties; construction and repair; cost; division.

Bridges over streams which divide counties, bridges over streams on roads on county lines, and bridges over streams near county lines, in which both counties are equally interested, shall be built and repaired at the equal expense of such counties.

Source: Laws 1879, § 87, p. 142; R.S.1913, § 2988; C.S.1922, § 2739; C.S.1929, § 39-825.

1. Liability of counties
2. Notice
3. Mandamus to compel repairs
4. Miscellaneous

1. Liability of counties

County is liable for one-half of cost of bridge entirely washed away, including approaches, grading, etc., essential to proper construction, although previously notified only that repairing was necessary. *Keya Paha County v. Brown County*, 99 Neb. 305, 156 N.W. 507 (1916); *Brown County v. Keya Paha County*, 88 Neb. 117, 129 N.W. 250 (1910).

Liability of counties, separated by stream, in absence of contract, is fixed by statute existing at time of repairs. *Buffalo County v. Kearney County*, 95 Neb. 439, 145 N.W. 985 (1914).

Liability of adjoining counties for repairs depends upon statute in force when repairs are made and liability incurred. *Buffalo County v. Hull*, 93 Neb. 586, 141 N.W. 154 (1913).

A county may be required to contribute toward the repair of a bridge abutting in such county although it is located mainly within the territorial jurisdiction of an adjoining county. *Dodge County v. Saunders County*, 70 Neb. 442, 97 N.W. 617 (1903).

One county cannot build or repair bridge and enforce contribution from another, in the absence of special agreement to build, or refusal to enter into contract for repairs. *Saline County v. Gage County*, 66 Neb. 839, 92 N.W. 1050 (1902), 97 N.W. 583 (1903).

2. Notice

Notice to repair does not fix liability for building new bridge. *Colfax County v. Butler County*, 83 Neb. 803, 120 N.W. 444 (1909).

Notice must be specific. *Buffalo County v. Kearney County*, 83 Neb. 550, 120 N.W. 171 (1909); *Dodge County v. Saunders County*, 77 Neb. 787, 110 N.W. 756 (1906).

3. Mandamus to compel repairs

Where there are not sufficient funds to repair all bridges, court will not by mandamus control discretion of county board to determine what bridges will be repaired. *State ex rel. Ellis v. Switzer*, 79 Neb. 78, 112 N.W. 297 (1907).

Mandamus does not lie unless notice was given to other county. *State ex rel. Sumption v. Smith*, 77 Neb. 1, 108 N.W. 173 (1906).

Mandamus lies to compel board to contribute to repairs of county bridge when notice is given according to law. *Iske v. State*, 72 Neb. 278, 100 N.W. 315 (1904).

4. Miscellaneous

Word stream is used in general sense, and applies to rivers and smaller running watercourses. *Dawson County v. Phelps County*, 94 Neb. 112, 142 N.W. 697 (1916).

Needful repairs does not include new steel repairs. *Platte County v. Butler County*, 91 Neb. 132, 135 N.W. 439 (1912).

A stream, as used in this section, includes rivers and smaller courses of running water. *Dodge County v. Saunders County*, 70 Neb. 451, 100 N.W. 934 (1903).

39-828 Bridges in or near two or more counties; joint contracts for construction or repair; failure of county to join; separate maintenance of bridges.

For the purpose of building or keeping in repair such bridge or bridges, it shall be lawful for the county boards of such adjoining counties to enter into joint contracts. Such contracts may be enforced in law or equity against them jointly, the same as if entered into by individuals, and they may be proceeded against jointly, by any parties interested in such bridge or bridges, for any neglect of duty in reference to such bridge or bridges or for any damages growing out of such neglect. If either of such counties shall refuse to enter into contracts to carry out the provisions of this section for the repair of any such bridge or bridges, it shall be lawful for the other said counties to enter into such contract for all needful repairs and recover by suit from the county so in default such proportion of the cost of making such repairs as it ought to pay, not exceeding one-half of the full amount so expended. Whenever two or more counties have entered into a joint contract whereby one county assumes the responsibility for the separate maintenance and repair of the bridges upon specified portions of public roads upon or across county lines, it shall be the duty of the county agreeing to maintain and keep in repair any such bridge to promptly erect and maintain adequate barriers to prevent accidents, whenever the condition of any such bridge or the approaches thereto is dangerous to public travel, and to diligently proceed with the repair thereof. The performance of such duty by a county agreeing to maintain and keep in repair such bridge may be enforced by mandamus by any other county or counties which are parties to the contract.

Source: Laws 1879, § 88, p. 142; Laws 1881, c. 77, § 1, p. 329; Laws 1899, c. 57, § 1, p. 284; R.S.1913, § 2989; C.S.1922, § 2740; C.S.1929, § 39-826; Laws 1943, c. 101, § 1, p. 341.

One county cannot compel another to contribute to cost of state aid bridge over boundary line stream between counties unless statutory notice has been given to other county. *Buffalo County v. Phelps County*, 129 Neb. 268, 261 N.W. 360 (1935).

County board has power to ratify contract made on its behalf by a member, and to authorize the member to execute it. *Standard Bridge Co. v. Kearney County*, 95 Neb. 455, 145 N.W. 986 (1914).

Approaches are part of the bridge. *Brown County v. Keya Paha County*, 88 Neb. 117, 129 N.W. 250 (1910).

County cannot collect one-half of cost for new bridge under notice to repair. *Colfax County v. Butler County*, 83 Neb. 803, 120 N.W. 444 (1909).

The words recovery by suit include a suit instituted by an appeal from the disallowance of a claim by a county board. *Cass County v. Sarpy County*, 83 Neb. 435, 119 N.W. 685 (1909).

It is duty of board, when notified, to join in contract. *Iske v. State*, 72 Neb. 278, 100 N.W. 315 (1904).

Taxpayer cannot defeat contract by appeal. *Saline County v. Gage County*, 66 Neb. 839, 92 N.W. 1050 (1902), 97 N.W. 583 (1903).

County repairing must proceed according to law. *Cass County v. Sarpy County*, 66 Neb. 473, 92 N.W. 635 (1902), 97 N.W. 352 (1903).

Counties are both bound, even in absence of contract to repair, if proper notice is given. *Cass County v. Sarpy County*, 63 Neb. 813, 89 N.W. 291 (1902).

39-829 Bridges in or near two or more counties; joint contracts; enforcement; procedure.

If the county board of either of such counties, after reasonable notice in writing from the county board of any other such county, shall neglect or refuse to build or repair any such bridge, when any contract or agreement has been made in regard to the same, it shall be lawful for the board so giving notice to build or repair the same, and to recover, by suit, one-half, or such amount as shall have been agreed upon, of the expense of so building or repairing such bridge, with cost of suit and interest from the time of the completion thereof, from the county so neglecting or refusing.

Source: Laws 1879, § 89, p. 142; R.S.1913, § 2990; C.S.1922, § 2741; C.S.1929, § 39-827.

In order to recover part of cost of bridge over a stream that forms boundary between counties, notice must be given of intention to construct. *Buffalo County v. Phelps County*, 129 Neb. 268, 261 N.W. 360 (1935).

39-830 Bridges in or near two or more counties; joint contracts; judgment; board members individually liable, when.

Any judgment so recovered against the county board of either of such counties shall be a charge on such county, unless the jury shall in their verdict certify that the neglect or refusal of such board was willful or malicious, in which case only the members of such board shall be personally liable for such judgment; and the same may be enforced against them in their personal and individual capacity, and upon their official bonds.

Source: Laws 1879, § 90, p. 142; R.S.1913, § 2991; C.S.1922, § 2742; C.S.1929, § 39-828.

(d) DEFECTIVE BRIDGES

39-831 Defective bridge; notice to county board.

Whenever any highway or bridge in any county shall be out of repair, or unsafe for travel, any three citizens or taxpayers of the state may notify the member of the county board of the district within which such road or bridge is situated, in writing, setting forth a description of the road or bridge and the defects therein.

Source: Laws 1889, c. 7, § 1, p. 77; R.S.1913, § 2992; C.S.1922, § 2743; C.S.1929, § 39-829.

Repairs contemplated by this section are such as may be made at once and without considerable cost. *State ex rel. Heil v. Jakubowski*, 151 Neb. 471, 38 N.W.2d 26 (1949).

39-832 Defective bridge; repairs; when made.

It shall then be the duty of such member of the county board, within twenty-four hours after service of such notice, to commence to make suitable repairs to such highway or bridge, and to place it in a safe condition for travel.

Source: Laws 1889, c. 7, § 2, p. 77; R.S.1913, § 2993; C.S.1922, § 2744; C.S.1929, § 39-830.

Mandamus will not lie to compel rebuilding of bridge when funds are exhausted. *State ex rel. Heil v. Jakubowski*, 151 Neb. 471, 38 N.W.2d 26 (1949).

Duty may be enforced by mandamus. *State ex rel. Enerson v. County Commissioners of Boone County*, 102 Neb. 199, 166 N.W. 554 (1918).

Party crossing bridge on public road, without notice of its dangerous condition, has right to assume that it is safe for people of various occupations of locality. *Kovarik v. Saline County*, 86 Neb. 440, 125 N.W. 1082 (1910).

This section refers to such repairs as can be made immediately. *State ex rel. Sumption v. Smith*, 77 Neb. 1, 108 N.W. 173 (1906).

Precinct bridge becomes part of public road and county must repair on notice. *State ex rel. Pankonin v. County Commissioners of Cass*, 58 Neb. 244, 78 N.W. 494 (1899); *Dutton v. State ex rel. Pankonin*, 42 Neb. 804, 60 N.W. 1042 (1894).

County is liable even without notice of unsafe condition of bridge. *Raasch v. Dodge County*, 43 Neb. 508, 61 N.W. 725 (1895).

39-833 Defective bridge on county or township line; notice; procedure.

If the road or bridge shall be on the line between two counties, then the members of the county boards of the respective districts, within which such road or bridge is located, of the respective counties, shall be served with such notice, or if it be on the line between two townships, in counties under township organization, then the supervisors of both townships in which the road or bridge is situated shall be notified in like manner.

Source: Laws 1889, c. 7, § 3, p. 77; R.S.1913, § 2994; C.S.1922, § 2745; C.S.1929, § 39-831.

Where mandamus is brought to compel building of county line bridge, notice must be given to both counties and both joined in action. State ex rel. Sumption v. Smith, 77 Neb. 1, 108 N.W. 173 (1906).

39-834 Transferred to section 23-2410.

(e) BOUNDARY BRIDGES

39-835 Boundary bridge; construction bonds authorized.

Any county, township, precinct, city or village in the State of Nebraska may issue bonds to construct or to aid in the construction of a highway bridge across any boundary river of the state.

Source: Laws 1895, c. 45, § 1, p. 187; R.S.1913, § 2996; C.S.1922, § 2748; C.S.1929, § 39-834.

County may issue bonds to construct or aid in the construction of a highway wagon bridge across a boundary stream. Ahern v. Richardson County, 127 Neb. 659, 256 N.W. 515 (1934).

39-836 Boundary bridge; bonds; election; limitation on amount.

The question of issuing bonds shall first be submitted to the qualified electors of the county, township, precinct, city, or village either at a special election called for that purpose or at a general election as provided in sections 39-837 to 39-841. If a majority of the votes cast at such election are in favor of the proposition to issue bonds, then such county, township, precinct, city, or village, as the case may be, shall issue its bonds in such amounts as specified in the notices of election, not exceeding three and five-tenths percent of the taxable valuation of such county, township, precinct, city, or village as shown by the last assessment prior to the vote authorizing the issuance of such bonds.

Source: Laws 1895, c. 45, § 2, p. 187; R.S.1913, § 2997; C.S.1922, § 2749; C.S.1929, § 39-835; R.S.1943, § 39-836; Laws 1971, LB 534, § 27; Laws 1979, LB 187, § 155; Laws 1992, LB 719A, § 137.

Power of county to issue bonds is purely statutory and must be exercised in manner prescribed. Ahern v. Richardson County, 127 Neb. 659, 256 N.W. 515 (1934).

39-837 Boundary bridge; bonds; petition for special election; bond for expenses.

Whenever a petition, setting forth the amount of bonds asked to be voted, when the same shall become due, the rate of interest the bonds shall bear, whether payable annually or semiannually, and if to aid in the construction of a bridge, the name of the person, firm or corporation to whom the bonds are to be donated, the amount of work to be done on such bridge before the bonds shall be delivered, and signed by not less than twenty freeholders of the county, township, precinct, city or village, which is to issue the bonds, shall be presented to the county board of the county which is to issue the bonds, or the county in which is located the township or precinct which is to issue the bonds, or the city council of the city which is to issue the bonds, or to the trustees of the village which is to issue the bonds, the county board, the city council or the village trustees shall, upon the petitioners' giving bond, to be approved by them, conditioned for the payment of the expenses of a special election in the event the proposition to be submitted shall not receive the requisite number of votes

for its adoption, give notice and call a special election in the county, township, precinct, city or village.

Source: Laws 1895, c. 45, § 3, p. 188; R.S.1913, § 2998; C.S.1922, § 2750; C.S.1929, § 39-836; R.S.1943, § 39-837; Laws 1969, c. 51, § 103, p. 337.

39-838 Boundary bridge; bonds; special election; notice; conduct.

The notice required by section 39-837 shall contain the conditions upon which bonds are to be issued and which are required by section 39-837 to be set forth in the petition, and shall be published for at least thirty days prior to such election in some newspaper published in such county, township, precinct, city or village, if any newspaper is published therein; and if no newspaper is published therein, such notice shall be published by posting notice at the courthouse door in the county and in every voting precinct in the county. In case of a township, precinct, city or village election, such notice, where there is no newspaper published therein, shall be published by posting the notice in at least four public places in each township, precinct, city or village for at least thirty days next preceding the day of holding such election. The election in all other respects shall be governed by and conform to the laws regulating general elections.

Source: Laws 1895, c. 45, § 3, p. 188; R.S.1913, § 2998; C.S.1922, § 2750; C.S.1929, § 39-836.

39-839 Boundary bridge; bonds; submission at general election.

Upon request of the petitioners mentioned in section 39-837, the proposition to issue bonds may be submitted at the next general election after the presentation of the petition, upon giving notice as provided by section 39-838, in which case the petitioners shall not be required to execute any bond for the payment of the expenses of the election as provided by section 39-837.

Source: Laws 1895, c. 45, § 3, p. 189; R.S.1913, § 2998; C.S.1922, § 2750; C.S.1929, § 39-836.

39-840 Boundary bridge; bonds; election; form of ballot.

At any election held pursuant to section 39-838 or 39-839, the ballot used shall be substantially in the following form:

Shall (here enter name of county, township, precinct, city or village it is proposed shall vote bonds) issue bonds in the sum of (here insert the amount) dollars, to construct or aid in the construction of, as the case may be, a highway bridge (and if to aid in the construction, insert the name of the persons, firm or corporation to whom said bonds are to be donated) and to levy a tax for payment of the principal and interest.

Yes. No.

Source: Laws 1895, c. 45, § 3, p. 189; R.S.1913, § 2998; C.S.1922, § 2750; C.S.1929, § 39-836.

39-841 Boundary bridge; bonds; election result recorded; issuance; delivery.

If at any election held pursuant to section 39-838 or 39-839 the proposition to issue bonds receives the requisite number of votes for its adoption as provided

in section 39-836, the county board, city council, or board of village trustees shall cause the petition, the notice of election, and the result of the vote to be recorded in the proper records of the county, city, or village. Thereupon such bonds shall be prepared and issued in accordance with the petition and notice of election and shall be signed and executed by the officers by law authorized to sign and execute bonds issued by a county, township, precinct, or village. The bonds when issued by the county board of any county shall be registered in the office of the county clerk of such county; and when issued by a city or village, they shall be registered in the office of the clerk of such city or village. After being so registered, the bonds shall be delivered to the person, firm, or corporation named in the petition upon their compliance with the terms and conditions upon which the bonds were voted.

Source: Laws 1895, c. 45, § 4, p. 189; R.S.1913, § 2999; C.S.1922, § 2751; C.S.1929, § 39-837; R.S.1943, § 39-841; Laws 1969, c. 317, § 8, p. 1148; Laws 2001, LB 420, § 27.

39-842 Boundary bridge; bonds; annual tax levy; sinking fund.

The proper officers charged with the duty of levying taxes for the county, township, precinct, city or village voting such bonds shall, each year, until the bonds voted under the authority of sections 39-835 to 39-841 are paid, levy upon the taxable property in the county, township, precinct, city or village issuing the bonds, a tax sufficient to pay the interest on such bonds as they mature, and to provide for a sinking fund for the redemption of the bonds at their maturity.

Source: Laws 1895, c. 45, § 5, p. 190; R.S.1913, § 3000; C.S.1922, § 2752; C.S.1929, § 39-838.

39-842.01 Boundary bridge; consent for purchase, operation, and maintenance; counties, cities, and towns of an adjoining state; not exempt from taxation.

Consent of the State of Nebraska is hereby given to counties, cities and towns of any adjoining state to purchase, operate and maintain bridges extending across a stream which, at the point of crossing, is on a boundary line of the State of Nebraska, and a right-of-way to give access to such bridge from the highway system of this state; *Provided*, that the consent herein granted shall not be construed to exempt any property acquired hereunder from taxation.

Source: Laws 1945, c. 96, § 1, p. 320.

(f) TOLL BRIDGES

39-843 Repealed. Laws 1947, c. 179, § 6.

39-844 Repealed. Laws 1947, c. 179, § 6.

39-845 Repealed. Laws 1947, c. 179, § 6.

39-845.01 Repealed. Laws 1959, c. 175, § 34.

39-845.02 Repealed. Laws 1959, c. 175, § 34.

39-845.03 Repealed. Laws 1959, c. 175, § 34.

39-845.04 Repealed. Laws 1959, c. 175, § 34.

(g) STATE AID BRIDGES

39-846 State Aid Bridge Fund; created; use; investment.

In order to expedite the replacement of deficient bridges, the State Aid Bridge Fund is hereby created to provide assistance to counties for replacement of bridges. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1919, c. 190, tit. VII, art. III, § 1, p. 815; C.S.1922, § 8356; C.S.1929, § 39-1501; R.S.1943, § 39-846; Laws 1973, LB 87, § 1; Laws 1995, LB 7, § 35.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

Right of contribution from state for portion of cost of bridge was limited by appropriation for state aid bridge fund. *Scotts Bluff County v. State*, 133 Neb. 508, 276 N.W. 185 (1937).

One county cannot compel another to contribute to cost of state aid bridge over boundary line stream between the two

counties unless notice has been given to other county of intention to build bridge and opportunity given to participate in its construction. *Buffalo County v. Phelps County*, 129 Neb. 268, 261 N.W. 360 (1935).

39-847 State aid for bridges; application for replacement; costs; priorities; plans and specifications; contracts; maintenance.

(1) Any county board may apply, in writing, to the Department of Roads for state aid in the replacement of any bridge under the jurisdiction of such board. The application shall contain a description of the bridge, with a preliminary estimate of the cost of replacement thereof, and a certified copy of the resolution of such board, pledging such county to furnish fifty percent of the cost of replacement of such bridge. The county's share of replacement cost may be from any source except the State Aid Bridge Fund; *Provided*, that where there is any bridge which is the responsibility of two counties, either county may make application to the department and, if the application is approved by the department, such county and the department may replace such bridge and recover, by suit, one-half of the county's cost of such bridge from the county failing or refusing to join in such application. All requests for bridge replacement under sections 39-846 to 39-847.01 shall be forwarded by the department to the Board of Public Roads Classifications and Standards. Such board shall establish priorities for bridge replacement based on critical needs. The board shall, in June and December of each year, consider such applications and establish priorities for a period of time consistent with sections 39-2115 to 39-2119. The board shall return the applications to the department with the established priorities.

(2) The plans and specifications for each bridge shall be furnished by the Department of Roads and replacement shall be under the supervision of the Department of Roads and the county board.

(3) Any contract for the replacement of any such bridge shall be made by the Department of Roads consistent with procedures for contracts for state highways and federal-aid secondary roads.

(4) After the replacement of any such bridge and the acceptance thereof by the Department of Roads, any county having jurisdiction over it shall have sole responsibility for maintenance.

Source: Laws 1911, c. 112, § 2, p. 393; R.S.1913, § 2977; Laws 1919, c. 190, tit. VII, art. III, § 2, p. 815; Laws 1921, c. 260, § 1, p. 875; C.S.1922, § 8357; Laws 1923, c. 157, § 1, p. 382; Laws 1923, c. 156, § 1, p. 381; C.S.1929, § 39-1502; R.S.1943, § 39-847; Laws 1953, c. 287, § 61, p. 966; Laws 1973, LB 87, § 2.

Levy under this section was not authorized. State ex rel. Heil v. Jakubowski, 151 Neb. 471, 38 N.W.2d 26 (1949).

Every contract is made with reference to and subject to existing laws, and no right of contribution can exist based on nonperformance by the state of a contract which it was prohibit-

ed from making. Scotts Bluff County v. State, 133 Neb. 508, 276 N.W. 185 (1937).

State and county are jointly and severally liable for damages caused by construction of bridge as joint enterprise. Nine Mile Irr. Dist. v. State, 118 Neb. 522, 225 N.W. 679 (1929).

39-847.01 State Aid Bridge Fund; State Treasurer; transfer funds to.

The State Treasurer shall transfer monthly thirty-two thousand dollars from the Department of Roads' share of the Highway Trust Fund and thirty-two thousand dollars from the counties' share of the Highway Trust Fund which is allocated to bridges to the State Aid Bridge Fund.

Source: Laws 1973, LB 87, § 3; Laws 1986, LB 599, § 4.

Cross References

Highway Trust Fund, see section 39-2215.

39-848 Repealed. Laws 1976, LB 724, § 11.

39-849 Repealed. Laws 1976, LB 724, § 11.

39-850 Repealed. Laws 1976, LB 724, § 11.

39-851 Repealed. Laws 1976, LB 724, § 11.

39-852 Repealed. Laws 1976, LB 724, § 11.

39-853 Repealed. Laws 1973, LB 87, § 4.

39-854 Repealed. Laws 1976, LB 724, § 11.

(h) INTERSTATE COUNTY BRIDGES

39-855 County, defined; interstate bridge across boundary stream; authority to build.

Whenever used in sections 39-855 to 39-876, the word county or counties shall be construed to include municipal corporations as well and to include any commission or authority which may be established in any county or counties; and whenever the governing body of any county is specifically directed or empowered to perform a given act or function it shall be deemed a grant or direction for the corresponding governing body of a city or village, or any commission or authority which may be established within any county or counties, as the case may be, to do likewise. Any county in the State of Nebraska may build or construct or aid in the construction or complete construction of any highway, wagon, vehicle or automobile bridge within the State of Nebraska and any adjoining state across any river, navigable or nonnavigable stream, forming a boundary line between any county within the State of Nebraska and any other state of the United States.

Source: Laws 1935, c. 87, § 1, p. 278; Laws 1941, c. 78, § 1, p. 314; C.S.Supp.,1941, § 39-2101.

Purchase by counties of interstate bridges already built is authorized. Hansen v. Dakota County, 135 Neb. 582, 283 N.W. 217 (1939).

Power of county to issue bonds is purely statutory and must be exercised in manner prescribed by statute. Ahern v. Richardson County, 127 Neb. 659, 256 N.W. 515 (1934).

39-856 Interstate county bridges; revenue bonds; issuance; tolls; disbursement; federal aid; powers of county.

Any county in the State of Nebraska may issue revenue bonds to construct or to aid in the construction, or complete the construction of any highway, wagon, vehicle, or automobile bridge within the State of Nebraska and any adjoining state across any river, navigable or nonnavigable stream, forming a boundary line between any county within the State of Nebraska and any other state of the United States, which revenue bonds shall be payable solely from the revenue and funds from such bridge and as to which, as shall be recited therein, the county shall incur no indebtedness of any kind or nature, and to support which the county shall not pledge its credit nor its taxing power nor any part thereof. As a part of the cost of any such bridge, the county may include (1) the costs of any river structures approved by the special engineer for the project and with the approval of any required state or federal agency having jurisdiction thereof, and (2) the costs of, or assist in the payment of the costs of, any approach structures or roads not over ten miles from the actual bridge structure. Any such county may levy, collect, and distribute tolls and use the same in payment of the principal and interest on such revenue bonds and for the maintenance, repair, and operation of any such bridge. It may accept gifts and grants of money from the United States Government or any corporation or agency created, designed, or established by the United States, and may enter into contracts with the United States or such corporations or agencies, and do everything necessary thereto, and to construct or aid in the construction or to complete the construction of any such bridge or bridges.

Source: Laws 1935, c. 87, § 2, p. 279; C.S.Supp.,1941, § 39-2102; R.S.1943, § 39-856; Laws 1951, c. 121, § 1, p. 533.

39-857 Interstate county bridges; franchise previously acquired; validation.

If any such county, prior to May 21, 1935, has acquired, purchased or received an assignment by gift or otherwise of a franchise or authority of the United States Government to build any highway, wagon, vehicle or automobile bridge within the State of Nebraska and any adjoining state, across any river, navigable or nonnavigable stream, forming a boundary line between any county within the State of Nebraska and any other state of the United States, if in every other way regular in form, the same shall be and is hereby declared legal and valid and binding on the county, and of the same force and effect as if authority had been theretofore directly conferred on the county.

Source: Laws 1935, c. 87, § 3, p. 279; C.S.Supp.,1941, § 39-2103.

39-858 Interstate county bridges; permit previously acquired; validation.

If any such county prior to May 21, 1935, has acquired, purchased, or received an assignment by gift or otherwise, a permit issued and granted by the United States Government or any corporation or agency created, designated, or established by the United States Government to construct any highway, wagon, vehicle or automobile bridge within the State of Nebraska, and any adjoining state, across any river, navigable or nonnavigable stream, forming a boundary line between any county within the State of Nebraska and any other state of the

United States, if in every other way regular in form, same shall be and hereby is declared legal and binding on the county, and of the same force and effect as if such permit had been theretofore directly granted by the United States Government to such county upon its application.

Source: Laws 1935, c. 87, § 4, p. 280; C.S.Supp.,1941, § 39-2104.

39-859 Interstate county bridges; property previously acquired; validation.

If any such county prior to May 21, 1935, has acquired, purchased, or received an assignment by gift or otherwise, any existing highway, wagon, vehicle or automobile bridge or viaduct including approaches and avenues, rights-of-way or easements, or avenues to approaches, necessary real and personal property incident thereto, special privileges and leases in connection with construction of any bridges within the State of Nebraska and any adjoining state and across any river, navigable or nonnavigable stream, forming a boundary line between any county within the State of Nebraska and any other state of the United States, if in every other way regular in form, the same shall be and is hereby declared legal and valid and the property of the county and of the same force and effect as if such property had been theretofore directly acquired by the county.

Source: Laws 1935, c. 87, § 5, p. 280; C.S.Supp.,1941, § 39-2105.

39-860 Interstate county bridges; revenue bonds; interest; issuance; terms; form.

Any county in the State of Nebraska is authorized to provide funds for the purposes of section 39-856 and for the purpose of providing interest on such bonds during construction, and for a period not to exceed two years after completion of any bridge, by the issuance of revenue bonds of such counties, the principal and interest of which shall be payable solely from the special funds herein provided for, and as to which, as shall be recited therein, the county shall not incur any indebtedness of any kind or nature, and the county shall not pledge its credit, its taxing power, or any part thereof to support or pay the same. Such revenue bonds shall bear interest payable semiannually, shall mature in not more than forty years from their date or dates, and may be redeemable at the option of the county as provided by law. The governing body of the county shall provide the form of such bonds, including coupons to be attached thereto to evidence interest payments. The bonds shall be signed by the chairman of the board of county commissioners of the county, and countersigned and registered by the county clerk under the seal of the county. The coupons shall bear the facsimile signatures of the chairman and county clerk. Such governing body shall fix the denomination or denominations of such bonds and the place of the payment of the principal and interest thereon, which may be at the office of the county treasurer or any bank or trust company in the State of Nebraska or in New York City, New York.

Source: Laws 1935, c. 87, § 7, p. 281; Laws 1941, c. 78, § 2, p. 315; C.S.Supp.,1941, § 39-2107; R.S.1943, § 39-860; Laws 1947, c. 15, § 16, p. 91; Laws 1951, c. 121, § 2, p. 534; Laws 1955, c. 162, § 1, p. 466; Laws 1969, c. 51, § 104, p. 337.

39-861 Interstate county bridges; revenue bonds; negotiability; tax exempt; legal investments and security.

All bonds authorized by section 39-860 shall be and shall have and are declared to have all the qualities and incidents of negotiable instruments under the provisions of article 3, Uniform Commercial Code, without, however, constituting the revenue bonds, herein authorized, an indebtedness of the county issuing the same. Such bonds shall be exempt from all taxation, state and municipal. Such bonds shall be legal investments of banks, savings banks, and trust companies, of trustees and of the trustees of the sinking fund of municipalities and counties, and shall be acceptable as security for the deposit of public money in the same manner and to the same extent as any other negotiable bonds of any county of the State of Nebraska.

Source: Laws 1935, c. 87, § 7, p. 281; Laws 1941, c. 78, § 2, p. 316; C.S.Supp.,1941, § 39-2107; R.S.1943, § 39-861; Laws 1972, LB 1058, § 9.

39-862 Interstate county bridges; revenue bonds; registration; sale; proceeds; deposit; disbursement.

The governing body of the county may provide for the registration of such bonds in the name of the owner as to the principal alone or as to both principal and interest. Such bonds must be sold in such a manner as the governing body of the county may determine to be for the best interests of the county, taking into consideration the financial responsibility of the purchaser and the terms and conditions of the purchase, and the availability of the proceeds of the bonds when required for payment of the costs. The proceeds of such bonds shall be deposited with such depositories as the governing body of the county shall approve, shall be secured in such manner and to such extent as the governing body of the county shall require, and shall be used solely for the payment of the costs of the bridge and costs incident thereto.

Source: Laws 1935, c. 87, § 7, p. 282; Laws 1941, c. 78, § 2, p. 316; C.S.Supp.,1941, § 39-2107.

39-863 Interstate county bridges; revenue bonds; retirement; cancellation; temporary bonds.

The governing body of the county shall have the right to purchase for retirement and cancellation any of such bonds that may be outstanding at the market price, but not exceeding one hundred five and accrued interest, nor exceeding the price, if any, at which the same shall in the same year be redeemable. All bonds redeemed or purchased out of the funds provided by the sale of bridge bonds, shall forthwith be canceled and shall not again be issued. Prior to the preparation of definitive bonds, the governing body of the county may under like restrictions issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the latter.

Source: Laws 1935, c. 87, § 7, p. 282; Laws 1941, c. 78, § 2, p. 316; C.S.Supp.,1941, § 39-2107.

39-864 Interstate county bridges; revenue bonds; trust agreement authorized; terms.

The governing body of the county may enter into an agreement with any competent bank or trust company as trustee for the holders of such bonds, setting forth the duties of the county in respect to the construction, maintenance and operation, and insurance of any such bridge, the conservation and

application of all funds, the insurance of money on hand or on deposit, the rights and remedies of the trustee and the holders of such bonds, and restricting the individual right of action of bondholders as is customary in trust agreements respecting bonds of corporations. The trust agreement may contain such provisions for protecting and enforcing the rights and remedies of the trustee and approval by the original bond purchasers of the appointment of consulting engineers and of the security given by the bridge contractors and by any bank or trust company in which the proceeds of bonds or bridge tolls shall be deposited, and may provide that no contract for construction or purchase shall be made without the approval of the consulting engineers. The trust agreement may further contain provisions and covenants that all or any deposited money shall be secured as may be therein provided, by surety company bonds or otherwise, except as therein provided, or shall be regulated as therein provided, and that insurance upon the bridge and all property connected therewith, and also use and occupancy insurance, shall be carried to the extent and under the conditions therein provided.

Source: Laws 1935, c. 87, § 7, p. 282; Laws 1941, c. 78, § 2, p. 316; C.S.Supp.,1941, § 39-2107.

39-865 Interstate county bridges; revenue bonds; election; when dispensed with.

No election and no vote of electors shall be required upon the question of acquiring or constructing any bridges or issuing revenue bonds as authorized by section 39-860, for the acquisition or construction of any bridge, if the governing body of the county shall determine by vote of a majority of its members to dispense with such election or vote of electors as to such question.

Source: Laws 1935, c. 87, § 7, p. 283; Laws 1941, c. 78, § 2, p. 317; C.S.Supp.,1941, § 39-2107.

39-866 Interstate county bridges; revenue bonds; mortgage security authorized.

The bonds authorized by section 39-860 may, at the option of the governing body of such county, be supported by mortgage or by deed of trust covering such bridge or bridges.

Source: Laws 1935, c. 87, § 7, p. 283; Laws 1941, c. 78, § 2, p. 317; C.S.Supp.,1941, § 39-2107.

39-867 Interstate county bridges; revenue refunding bonds authorized; limitations; conditions.

The governing body of any county is authorized to provide by resolution for the issuance of bridge revenue refunding bonds of such county for the purpose of refunding any bridge revenue bonds or any other indebtedness of said bridge of the county which were issued before April 22, 1941, or may be issued under the provisions of sections 39-860 to 39-866, and amendments thereto, and may be outstanding. The issuance of such bridge revenue refunding bonds, the maturities, and other details thereof, the rights of the holders thereof, and the duties of the county in respect to the same, shall be governed by the provisions of said sections, insofar as the same may be applicable, and by the following provisions: (1) That no bridge revenue refunding bonds shall be delivered in an amount exceeding the amount necessary to provide funds sufficient for refund-

ing the principal amount of outstanding bridge revenue bonds and accrued interest thereon, together with an amount required to produce the sum necessary to provide the redemption premium on any outstanding bonds to be refunded and any expenses incidental thereto; and (2) the rates of tolls, to be charged for the use of the bridge or bridges acquired from the proceeds of the bridge revenue bonds to be refunded, shall be so fixed and adjusted as to provide a fund sufficient to pay the interest on and the principal of such bridge revenue refunding bonds as the same shall become due, and to provide an additional fund to pay the cost of maintaining, repairing, and operating such bridge or bridges. Any such tolls shall be continued until such bridge revenue refunding bonds and the interest thereon shall be paid, or provision made for their payment.

Source: Laws 1941, c. 78, § 2, p. 317; C.S.Supp.,1941, § 39-2107; R.S.1943, § 39-867; Laws 1955, c. 162, § 2, p. 467.

39-868 Bridge commission; creation; general powers.

Through the exercise of the powers conferred by sections 39-855 to 39-872, the governing body of any county, city, or village may by resolution create a bridge commission. Upon the passage of such resolution, the governing body of such county shall appoint three, four, or five persons who shall constitute the bridge commission of such county. The bridge commission shall be a public body corporate and politic and a political subdivision of the State of Nebraska. The bridge commission shall have the power to contract, to sue and be sued, and to adopt a seal and alter the same at pleasure, but shall not have power to pledge the credit or taxing power of the county.

Source: Laws 1941, c. 78, § 2, p. 318; C.S.Supp.,1941, § 39-2107; R.S.1943, § 39-868; Laws 1986, LB 640, § 1; Laws 2003, LB 607, § 2.

39-869 Bridge commission; members; term of office; qualification; oath; officers; expenses; compensation.

(1) The bridge commission shall consist of not less than three nor more than five persons of well-known and successful business qualifications. The commissioners shall immediately enter upon their duties, and three of the commissioners shall hold office until the expiration of two, four, and six years, respectively, from the date or dates of their appointments. If more than three commissioners are appointed, the fourth commissioner shall hold office until the expiration of four years from the date of his or her appointment, and the fifth commissioner, if any, shall hold office until the expiration of six years from the date of his or her appointment. The term of each commissioner shall be designated by the governing body of the county. Except for the initial appointees, commissioners shall be appointed for terms of six years. Any person appointed to fill a vacancy shall serve only for the unexpired term. Before entering upon their duties, the commissioners shall take, subscribe, and file an oath of office as required by law.

(2) Such bridge commission shall elect a chairperson and vice-chairperson from its members and a secretary-treasurer who need not be a member of such commission. Each member of the commission shall serve without compensation but shall be paid his or her actual expenses while engaged in performing the duties of such office, with mileage to be computed at the rate provided in

section 81-1176, and fees on a per diem basis which shall not exceed thirty-five dollars a day for each meeting attended on the specific call of the chairperson, except that they shall not be paid for more than three meetings per month. The commission shall fix the compensation of the secretary-treasurer in its discretion, but if the secretary-treasurer is a member of the commission, he or she shall receive compensation as secretary-treasurer and shall not receive his or her per diem compensation for attending meetings.

Source: Laws 1941, c. 78, § 2, p. 318; C.S.Supp.,1941, § 39-2107; R.S.1943, § 39-869; Laws 1945, c. 94, § 1, p. 317; Laws 1953, c. 137, § 1, p. 425; Laws 1963, c. 234, § 1, p. 723; Laws 1971, LB 459, § 1; Laws 1981, LB 204, § 58; Laws 1986, LB 640, § 2; Laws 1996, LB 1011, § 23.

39-870 Bridge commission; powers; bylaws; regulations; assistants; compensation; records.

The commission shall have power to establish bylaws, rules and regulations for its own government, and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under sections 39-868 to 39-870. The commission may employ engineering, architectural and construction experts and inspectors, and attorneys, and such other employees as may be necessary in its opinion, and fix their compensation, all of whom shall do such work as the commission shall direct. All salaries and compensation shall be obligations against and paid solely from funds provided under the authority of sections 39-855 to 39-876. The office, records, books and accounts of the bridge commission shall always be maintained in the county which the commission represents. Such commission may be charged by the governing body of the county with the purchase of existing bridges, the construction of new bridges or the operation, maintenance, repair, renewal, reconstruction, replacement, extension or enlargement of existing bridges, or bridges hereafter constructed or purchased.

Source: Laws 1941, c. 78, § 2, p. 319; C.S.Supp.,1941, § 39-2107.

39-871 Bridge commission; powers granted; how exercised.

Any commission may exercise the powers granted in sections 39-868 to 39-870 in the method provided in sections 39-860 to 39-870, or in any other method, in whole or in part, as provided in said sections.

Source: Laws 1941, c. 78, § 2, p. 319; C.S.Supp.,1941, § 39-2107.

39-872 County; powers; supplementary.

The powers conferred in sections 39-860 to 39-870 are to be exercised without any restriction or limitation, and these powers are supplementary and additional to powers which have been or may hereafter be conferred upon any county, and are not a limitation to or in any way a restriction upon such county. The powers granted in said sections are in nowise a limitation upon, and the county is specifically authorized to put into effect any right or power which may be necessary for the proper conduct of its authority.

Source: Laws 1941, c. 78, § 2, p. 319; C.S.Supp.,1941, § 39-2107.

39-873 County; powers; how exercised.

Any power granted to a county in Nebraska by sections 39-855 to 39-876 may be exercised by the county independently or in cooperation with or in aid of similar action by any other county or city in Nebraska, or any county or city in an adjoining state, or in cooperation with the State of Nebraska or any adjoining state or states, or the government of the United States.

Source: Laws 1935, c. 87, § 8, p. 283; C.S.Supp.,1941, § 39-2108.

39-874 County; powers; vote of electors not required.

In exercising any or all of the powers granted to the county in sections 39-855 to 39-876, the governing body of the county may act, and no vote of the electors of the county shall be required.

Source: Laws 1935, c. 87, § 9, p. 283; C.S.Supp.,1941, § 39-2109.

39-875 County; acquisition of property in adjoining state.

Any county in Nebraska, in exercising any of the powers granted to any county by sections 39-855 to 39-876, is authorized and empowered to acquire by gift, purchase or otherwise, any real estate or personal property located in an adjoining state, for the purpose of building, constructing or completing the construction of such bridge.

Source: Laws 1935, c. 87, § 12, p. 284; C.S.Supp.,1941, § 39-2111.

39-876 Invalid contracts not validated.

Nothing in sections 39-855 to 39-875 shall be construed to validate or to attempt to validate any contract which has been held to be invalid by the county.

Source: Laws 1935, c. 87, § 13, p. 284; C.S.Supp.,1941, § 39-2112.

(i) INTERSTATE BRIDGE ACT

39-877 Repealed. Laws 1959, c. 175, § 34.

39-878 Repealed. Laws 1959, c. 175, § 34.

39-879 Repealed. Laws 1959, c. 175, § 34.

39-880 Repealed. Laws 1959, c. 175, § 34.

39-881 Repealed. Laws 1959, c. 175, § 34.

39-882 Repealed. Laws 1959, c. 175, § 34.

39-883 Repealed. Laws 1959, c. 175, § 34.

39-884 Repealed. Laws 1959, c. 175, § 34.

39-885 Repealed. Laws 1959, c. 175, § 34.

(j) STATE BRIDGE COMMISSION

39-886 Repealed. Laws 1959, c. 175, § 34.

39-887 Repealed. Laws 1959, c. 175, § 34.

39-888 Repealed. Laws 1959, c. 175, § 34.

39-889 Repealed. Laws 1959, c. 175, § 34.

39-890 Repealed. Laws 1959, c. 175, § 34.

(k) INTERSTATE BRIDGE ACT OF 1959

39-891 Interstate bridges; declaration of purpose.

Recognizing that obstructions on or near the boundary of the State of Nebraska impede commerce and travel between the State of Nebraska and adjoining states, the Legislature hereby declares that bridges over these obstructions are essential to the general welfare of the State of Nebraska.

Providing bridges over these obstructions and for the safe and efficient operation of such bridges is deemed an urgent problem that is the proper concern of legislative action.

Such bridges, properly planned, designated, and managed, provide a safe passage for highway traffic to and from the state highway system and encourage commerce and travel between the State of Nebraska and adjoining states which increase the social and economic progress and general welfare of the state.

It is recognized that bridges between the State of Nebraska and adjoining states are not and cannot be the sole concern of the State of Nebraska. The nature of such bridges requires that a high degree of cooperation be exercised between the State of Nebraska and adjoining states in all phases of planning, construction, maintenance, and operation if proper benefits are to be realized.

It is also recognized that parties other than the State of Nebraska may wish to erect and control bridges between the State of Nebraska and adjoining states and that the construction, operation, and financing of such bridges have previously been authorized by the Legislature. Such bridges also benefit the State of Nebraska, and it is not the intent of the Legislature to abolish such power previously granted.

To this end, it is the intention of the Legislature to supplement sections 39-1301 to 39-1362, relating to state highways, in order that the powers and authority of the department relating to the planning, construction, maintenance, acquisition, and operation of interstate bridges upon the state highway system may be clarified within a single act.

Acting under the direction of the Director-State Engineer, the department, with the advice of the State Highway Commission and the consent of the Governor, is given the power to enter into agreements with the United States and adjoining states, subject to the limitations imposed by the Constitution and the provisions of the Interstate Bridge Act of 1959.

The Legislature intends to place a high degree of trust in the hands of those officials whose duty it may be to enter into agreements with adjoining states and the United States for the planning, development, construction, acquisition, operation, maintenance, and protection of interstate bridges.

In order that the persons concerned may understand the limitations and responsibilities for planning, constructing, acquiring, operating, and maintaining interstate bridges upon the state highway system, it is necessary that the responsibilities for such work shall be fixed, but it is intended that the department, acting under the Director-State Engineer, shall have sufficient freedom to enter into agreements with adjoining states regarding any phase of

planning, constructing, acquiring, maintaining, and operating interstate bridges upon the state highway system in order that the best interests of the State of Nebraska may always be served. The authority of the department to enter into agreements with adjoining states, as granted in the act, is therefor essential.

The Legislature hereby determines and declares that the provisions of the act are necessary for the preservation of the public peace, health, and safety, for the promotion of the general welfare, and as a contribution to the national defense.

Source: Laws 1959, c. 175, § 1, p. 630; Laws 1993, LB 15, § 1.

39-892 Interstate bridges; terms, defined.

For purposes of the Interstate Bridge Act of 1959, unless the context otherwise requires:

(1) Approach shall mean that portion of any interstate bridge which allows the highway access to the bridge structure. It shall be measured along the centerline of the highway from the end of the bridge structure to the nearest right-of-way line of the closest street or road where traffic may leave the highway to avoid crossing the bridge, but in no event shall such approach exceed a distance of one mile. The term shall be construed to include all embankments, fills, grades, supports, drainage facilities, and appurtenances necessary therefor;

(2) Appurtenances shall include, but not be limited to, sidewalks, storm sewers, guardrails, handrails, steps, curb or grate inlets, fire plugs, retaining walls, lighting fixtures, and all other items of a similar nature which the department deems necessary for the proper operation of any interstate bridge or for the safety and convenience of the traveling public;

(3) Boundary line bridge shall mean any bridge upon which no toll, fee, or other consideration is charged for passage thereon and which connects the state highway systems of the State of Nebraska and an adjoining state in the same manner as an interstate bridge. Such bridges shall be composed of right-of-way, bridge structure, approaches, and road in the same manner as an interstate bridge but shall be distinguished from an interstate bridge in that no part of such bridge shall be a part of the state highway system, the title to such bridge being vested in a person other than the State of Nebraska, or the State of Nebraska and an adjoining state jointly. Any boundary line bridge purchased or acquired by the department, or the department and an adjoining state jointly, and added to the state highway system shall be deemed an interstate bridge;

(4) Boundary line toll bridge shall mean any boundary line bridge upon which a fee, toll, or other consideration is charged traffic for the use thereof. Any boundary line toll bridge purchased or acquired by the department, or by the department and an adjoining state jointly, and added to the state highway system shall be deemed an interstate bridge;

(5) Bridge structure shall mean the superstructure and substructure of any interstate bridge having a span of not less than twenty feet between undercopings of extreme end abutments, or extreme ends of openings of multiple boxes, when measured along the centerline of the highway thereon, and shall be construed to include the supports therefor and all appurtenances deemed necessary by the department;

(6) Construction shall mean the erection, fabrication, or alteration of the whole or any part of any interstate bridge. For purposes of this subdivision, alteration shall be construed to be the performance of construction by which the form or design of any interstate bridge is changed or modified;

(7) Department shall mean the Department of Roads;

(8) Emergency shall include, but not be limited to, acts of God, invasion, enemy attack, war, flood, fire, storm, traffic accidents, or other actions of similar nature which usually occur suddenly and cause, or threaten to cause, damage requiring immediate attention;

(9) Expressway shall be defined in the manner provided by section 39-1302;

(10) Freeway shall be defined in the manner provided by section 39-1302;

(11) Highway shall mean a road, street, expressway, or freeway, including the entire area within the right-of-way, which has been designated a part of the state highway system;

(12) Interstate bridge shall mean the right-of-way, approaches, bridge structure, and highway necessary to form a passageway for highway traffic over the boundary line of the State of Nebraska from a point within the State of Nebraska to a point within an adjoining state for the purpose of spanning any obstruction or obstructions which would otherwise hinder the free and safe flow of traffic between such points, such bridge being a part of the state highway system with title vested in the State of Nebraska or in the State of Nebraska and an adjoining state jointly;

(13) Interstate bridge purposes shall include, but not be limited to, the applicable provisions of subdivisions (2)(a) through (l) of section 39-1320;

(14) Maintenance shall mean the act, operation, or continuous process of repair, reconstruction, or preservation of the whole or any part of any interstate bridge for the purpose of keeping it at or near its original standard of usefulness and shall include the performance of traffic services for the safety and convenience of the traveling public. For purposes of this subdivision, reconstruction shall be construed to be the repairing or replacing of any part of any interstate bridge without changing or modifying the form or design of such bridge;

(15) Person shall include bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations;

(16) Right-of-way shall mean land, property, or interest therein, usually in a strip, acquired for or devoted to an interstate bridge;

(17) State highway system shall mean the highways within the State of Nebraska as shown on the map provided for in section 39-1311 and as defined by section 39-1302;

(18) Street shall be defined in the manner provided by section 39-1302;

(19) Title shall mean the evidence of right to property or the right itself; and

(20) Traffic services shall mean the operation of an interstate bridge facility, and the services incidental thereto, to provide for the safe and convenient flow of traffic over such bridge. Such services shall include, but not be limited to, erection of snow fence, snow and ice removal, painting, repairing, and replacing signs, guardrails, traffic signals, lighting standards, pavement stripes and

markings, adding conventional traffic control devices, furnishing power for road lighting and traffic control devices, and replacement of parts.

Source: Laws 1959, c. 175, § 2, p. 631; Laws 1993, LB 121, § 210; Laws 1993, LB 370, § 38.

39-893 Act; applicability.

The provisions of the Interstate Bridge Act of 1959 are intended to be cumulative to, and not amendatory of, sections 39-1301 to 39-1362.

Source: Laws 1959, c. 175, § 3, p. 635; Laws 1993, LB 15, § 2.

39-894 Interstate bridges; application of sections; restrictions.

The provisions of sections 39-891 to 39-8,122 shall apply to all interstate bridges on the state highway system, including interstate bridges upon the National System of Interstate and Defense Highways built with funds of the United States appropriated in an amount exceeding fifty percent of the cost thereof. The provisions of sections 39-891 to 39-8,122 shall not be applicable to any boundary line bridge or boundary line toll bridge, and shall in no manner affect any law of the State of Nebraska concerning such bridges; *Provided*, that such bridges may be purchased or acquired by the department in the manner provided by the provisions of sections 39-8,116 to 39-8,118.

Source: Laws 1959, c. 175, § 4, p. 635.

39-895 Interstate bridges; agreements with adjoining states and the United States.

All agreements made between the department and an adjoining state under the authority of sections 39-891 to 39-8,122 shall be made by the department in the name of the State of Nebraska, with the advice of the State Highway Commission and the consent of the Governor. Any provision of sections 39-891 to 39-8,122 which authorizes the department to enter into an agreement with an adjoining state shall also be deemed to grant the department the necessary authority to carry out the provisions of any such agreement. In addition:

(1) Any agreement made between the department and an authorized agency, bureau, commission, department, or officer of the states of Colorado, Iowa, Kansas, Missouri, South Dakota, or Wyoming shall be construed to be an agreement with an adjoining state;

(2) Any provision of sections 39-891 to 39-8,122 authorizing agreements between the department and an adjoining state shall be deemed to authorize the inclusion of the United States to the whole or any part of such agreement whenever the department and the adjoining state deem such inclusion either necessary or desirable; and

(3) Any agreement made by the department and an adjoining state with an authorized agency, bureau, commission, department, or officer of the federal government shall be construed to be an agreement with the United States.

Source: Laws 1959, c. 175, § 5, p. 635.

39-896 Interstate bridges; funds; how derived; acquisition of property.

(1) The funds necessary to carry out the provisions of sections 39-891 to 39-8,122 shall be derived from the revenue provided to the department by law,

from funds of the United States accepted by the department for use pursuant to the provisions of sections 39-891 to 39-8,122, and from gifts or donations made to the department for use pursuant to sections 39-891 to 39-8,122.

(2) The department shall have the power and authority to accept any funds from the United States which are available to the department for use pursuant to the provisions of sections 39-891 to 39-8,122, and the department may enter into such agreements or contracts with the United States as shall be necessary for the acceptance of such funds; *Provided*, that any such agreement or contract shall not be contrary to the laws of this state.

(3) The department is hereby authorized to acquire, by gift, either temporarily or permanently, lands, real or personal property or any interests therein, or any easements deemed to be necessary or desirable for present or future interstate bridge purposes.

Source: Laws 1959, c. 175, § 6, p. 636.

39-897 Interstate bridges; interstate agreements; division of costs.

Except as otherwise provided by sections 39-898 and 39-8,110, any agreement made between the department and an adjoining state pursuant to the provisions of sections 39-891 to 39-8,122 shall provide that all costs incurred under such agreement shall be shared by the department and the adjoining state in proportion to the percentage of the bridge structure which is located, or which will be located, within each state.

Source: Laws 1959, c. 175, § 7, p. 636.

39-898 Interstate bridges; location studies; agreements with adjoining states; division of costs.

The department shall have the power and authority to enter into agreements with an adjoining state to determine the location of interstate bridges, or the relocation of any part thereof; *Provided*, that any such agreement shall provide that the costs incurred by the department and the adjoining state in pursuance of the agreement shall be shared equally by the department and the adjoining state.

Source: Laws 1959, c. 175, § 8, p. 637.

39-899 Interstate bridges; design and preliminary engineering studies; agreements with adjoining states.

The department shall have the power and authority to enter into agreements with an adjoining state to accomplish such design and preliminary engineering studies as may be deemed necessary prior to the construction of, or any construction upon, an interstate bridge. Such agreements may provide that such design and preliminary engineering studies may be accomplished by consulting engineers contracted for such purpose, or by any other means deemed suitable by the department and the adjoining state after joint consultation.

Source: Laws 1959, c. 175, § 9, p. 637.

39-8,100 Interstate bridges; acquisition of property; responsibilities.

The department and the adjoining state concerned shall be separately responsible within their respective states for the temporary or permanent acquisition

of the land, real or personal property, or any easement or interest therein, which may be necessary or desirable for interstate bridge purposes.

Source: Laws 1959, c. 175, § 10, p. 637.

39-8,101 Interstate bridges; acquisition and disposal of property; power of Department of Roads.

The department shall have the power and authority to acquire any land, real or personal property, or any easement or interest therein, which may be necessary or desirable for interstate bridge purposes, and to sell, convey, and dispose of the same, if it shall no longer be needed, in the same manner provided for state highways by subsection (3) of section 39-1320 and sections 39-1321 to 39-1323, 39-1325, and 39-1326; *Provided*, that the acquisition by the department, through purchase, condemnation, or gift, of any part of any boundary line bridge or boundary line toll bridge, and the land, real or personal property, or any easement or interest therein, necessary thereto, shall be accomplished in the manner provided by sections 39-8,116 to 39-8,118.

Source: Laws 1959, c. 175, § 11, p. 637.

39-8,102 Interstate bridges; Department of Roads; authority to enter upon property; damages.

In addition to the authority granted to the department by section 39-1324, the department shall have the power and authority to enter upon any property for the purpose of conducting location or design and preliminary engineering studies. Such entry shall not be considered as a legal trespass and damages shall not be recoverable upon that account alone. Any actual or demonstrable damages to the premises caused by such entry may be recovered by the property owner in the manner provided by section 39-1324.

Source: Laws 1959, c. 175, § 12, p. 638.

39-8,103 Interstate bridges; Department of Roads; construction and maintenance.

The department shall be responsible for the construction and maintenance of that portion of any interstate bridge located within the State of Nebraska, and shall have the power and authority to enter into agreements with an adjoining state for the joint construction or maintenance of the whole of any such bridge, as authorized by section 39-8,107.

Source: Laws 1959, c. 175, § 13, p. 638.

39-8,104 Interstate bridges; method of construction and maintenance.

In the absence of an agreement between the department and an adjoining state to the contrary, the department may accomplish any construction or maintenance upon that portion of any interstate bridge which is located within the State of Nebraska by any of the following methods which, in the opinion of the department, shall be to the best interests of the State of Nebraska in regard to economy, ease of operation, and traffic control: (1) Utilization of its own personnel, material, and equipment; (2) utilization of its own personnel, and rental, lease, or purchase of the necessary equipment and material; (3) letting contracts for such construction or maintenance to any person qualified; or (4) utilization of any combination of such methods; *Provided*, that all construction

or maintenance done by the department which involves the use of funds of both the State of Nebraska and the United States shall be let by contract in the manner provided by the provisions of section 39-8,105.

Source: Laws 1959, c. 175, § 14, p. 638.

39-8,105 Interstate bridges; construction and maintenance; contracts; letting; procedure.

All contracts let by the department for construction or maintenance upon any interstate bridge, except contracts for emergency maintenance, whether let pursuant to an agreement between the department and an adjoining state, or otherwise, shall be let in the same manner and under the same conditions provided by sections 39-1348 to 39-1354.

Source: Laws 1959, c. 175, § 15, p. 639.

39-8,106 Interstate bridges; construction and maintenance; bidders; bond.

Any agreement made between the department and an adjoining state which authorizes the letting of construction or maintenance contracts by either the department or the adjoining state shall require the person to whom the contract is to be awarded to furnish bond, with good and sufficient sureties approved by the department, in an amount at least equal to the interests of the State of Nebraska in the contract price, conditioned upon the faithful fulfillment of the contract. In the absence of any such agreement between the department and an adjoining state, such bond shall be required of all persons awarded contracts by the department for construction or maintenance to be performed wholly within the State of Nebraska.

Source: Laws 1959, c. 175, § 16, p. 639.

39-8,107 Interstate bridges; construction and maintenance; agreements with adjoining states.

The department shall have the power and authority to enter into agreements with an adjoining state respecting the construction or maintenance of the whole or any part of any interstate bridge between the State of Nebraska and the adjoining state. In addition to the provisions required by sections 39-8,106 and 39-8,108, such agreements may make provision for, but shall not be limited to:

(1) The types of construction and maintenance to be performed, including the construction and maintenance of any movable spans, sections, or parts of such bridges, and maintenance of an emergency nature;

(2) The times and places at which such construction or maintenance shall be accomplished;

(3) Whether such construction or maintenance may be contracted to any person, and under what conditions;

(4) Which state shall perform, or let the necessary contracts for, such construction or maintenance; and

(5) The manner and method of accomplishing any reimbursement which shall be necessary between the department and the adjoining state.

Source: Laws 1959, c. 175, § 17, p. 639.

39-8,108 Interstate bridges; construction contracts; limitations.

Any agreement made between the department and an adjoining state making provision for the manner and method of construction of interstate bridges shall provide that the department shall not let any contract of construction involving construction within both the State of Nebraska and an adjoining state, nor authorize the adjoining state to let any such contract which will bind the department or the State of Nebraska in any manner, until:

(1) The adjoining state has, by appropriate action through the proper authority, appropriated, allocated, or otherwise provided the necessary funds to pay the costs of that portion of such construction to be accomplished within the adjoining state, and bound itself to use such funds in the payment of such costs; and

(2) The adjoining state has acquired the land, real or personal property, or interest therein, which may be necessary before construction can proceed.

Source: Laws 1959, c. 175, § 18, p. 640.

39-8,109 Interstate bridges; Department of Roads; funds; reimbursement.

The funds available to the department under the provisions of sections 39-891 to 39-8,122 may be used by the department in support of any interstate bridge construction or maintenance agreement; *Provided*, that such agreement shall contain provisions which insure that the state performing construction or maintenance, or letting construction or maintenance contracts, pursuant to the agreement shall be reimbursed by the nonperforming state in a percentage of the total construction or maintenance costs equal to the proportion of the agreed construction or maintenance area within the nonperforming state.

Source: Laws 1959, c. 175, § 19, p. 640.

39-8,110 Interstate bridges; movable spans; agreement; payment.

Whenever any interstate bridge has spans, sections, or parts which are required to be movable by the laws, regulations, or codes of the United States, the department shall have the power and authority to enter into agreements with the adjoining state concerned respecting the operation and maintenance of such spans, sections, or parts. Such agreement may be included as a part of any agreement made for the construction or maintenance of interstate bridges, as provided by section 39-8,107, but the costs for the operation and maintenance of such spans, sections, or parts shall be considered separately from other construction and maintenance costs and shall be shared equally by the department and the adjoining state concerned.

Source: Laws 1959, c. 175, § 20, p. 640.

39-8,111 Interstate bridges; closing for construction or maintenance.

The department shall have the power and authority to enter into agreements with the adjoining state concerned to determine the manner in which the whole or any part of any interstate bridge may be closed to traffic for purposes of construction or maintenance. Any such agreement shall determine the party or parties which shall have the authority to close the whole or any part of such bridges, and shall contain provisions not inconsistent with sections 39-891 to 39-8,122. In the absence of such an agreement, the department may close that

portion of any interstate bridge located within the State of Nebraska under the authority of section 39-1345.

Source: Laws 1959, c. 175, § 21, p. 641.

39-8,112 Interstate bridges; closing; notice.

Before the whole or any part of any interstate bridge shall be closed, either pursuant to an agreement between the department and an adjoining state or otherwise, the party closing such bridge shall notify in writing the proper authorities of the department, the adjoining state, and, as may be necessary, the political or governmental subdivisions of the State of Nebraska and the adjoining state directly concerned, of the intent to close the bridge, the area of the bridge which will be closed, the date and time of such closing, the approximate amount of time such area will be closed, and the route of any detours established; *Provided*, that such notice shall not be required when the whole or any part of an interstate bridge is closed for emergency maintenance under the authority of section 39-8,115.

Source: Laws 1959, c. 175, § 22, p. 641.

39-8,113 Interstate bridges; closing; barricades; detours.

After giving the notice required by section 39-8,112, the party authorized to close the whole or any part of any interstate bridge shall, before closing any part of such bridge, erect suitable barricades and make provision for any necessary detours in the manner provided by sections 39-1345 to 39-1347.

Source: Laws 1959, c. 175, § 23, p. 641.

39-8,114 Interstate bridges; closing; barricades; assumption of risk.

The barricades, fences, or other enclosures erected upon any interstate bridge shall serve as notice to the public that the area closed is unsafe for travel and that any person entering such area, without the permission or consent of the party authorized to close such area, shall do so at his own risk.

Source: Laws 1959, c. 175, § 24, p. 642.

39-8,115 Interstate bridges; Department of Roads; emergency maintenance; barricade danger area; contract; bond.

Whenever, in the opinion of the department, an emergency or unusual condition exists requiring immediate attention in order to insure the passage or safe flow of traffic over or upon that portion of any interstate bridge located within the State of Nebraska, the department may close such portion of any such bridge to any or all traffic in order to perform the maintenance necessary thereon. Upon ascertaining the need for emergency maintenance, the department shall mark and post the danger area for the protection of the public and, within twenty-four hours thereafter, shall barricade the danger area and provide any detour necessary in compliance with section 39-8,113. The department may provide any part of the personnel, equipment, and material necessary to perform such emergency maintenance or may contract with any person who, in the opinion of the department, is capable of successfully performing the maintenance necessary; *Provided*, that the department shall not contract such emergency maintenance to any person incapable of furnishing the department with a bond with good and sufficient sureties approved by the department, in

an amount at least equal to the contract price, conditioned upon the faithful fulfillment of the contract. If any agreement between the department and an adjoining state for the maintenance of interstate bridges has made provision for emergency maintenance, as authorized by section 39-8,107, such maintenance and the payment therefor shall be completed in accordance with the agreement.

Source: Laws 1959, c. 175, § 25, p. 642.

39-8,116 Interstate bridges; boundary line or boundary line toll bridges; Department of Roads; power to purchase.

In order that any boundary line bridge or boundary line toll bridge may be added to the highway systems of the State of Nebraska and an adjoining state, the department shall have the power and authority to enter into agreements with an adjoining state to determine the manner and method of purchasing any such bridge, and the land, real or personal property, or any easement or interest necessary thereto, through the joint action of the department and the adjoining state, from the person holding title thereto. Such agreements may provide for any reasonable means of purchase and acceptance of title by the department and the adjoining state not in conflict with the laws of the State of Nebraska and the adjoining state; *Provided*, that no such agreement shall authorize, nor be construed to authorize, (1) the department to purchase the whole of any boundary line bridge or boundary line toll bridge, and the land, real or personal property, or easement or interest necessary thereto, nor (2) to complete any contract for the purchase of that portion of any such bridge, and the land, real or personal property, or easement or interest necessary thereto, located within the State of Nebraska which is not conditioned in performance upon the adjoining state completing a binding contract for purchase of that portion of such bridge, and the land, real or personal property, or easement or interest necessary thereto, located within the adjoining state with the person holding title thereto.

Source: Laws 1959, c. 175, § 26, p. 642.

39-8,117 Interstate bridges; boundary line or boundary line toll bridge; acquisition; agreement with adjoining state; power of eminent domain.

The department shall have the power and authority to enter into agreements with an adjoining state to determine the manner and method of acquiring, through the joint action of the department and the adjoining state, any boundary line bridge or boundary line toll bridge, and the land, real or personal property, or any easement or interest necessary thereto, by condemnation whenever the department and the adjoining state have failed to agree upon terms of purchase for any such bridge, and the land, real or personal property, or any easement or interest necessary thereto, with the person holding title thereto. Any such agreement may be incorporated as a provision of the purchase agreement authorized by section 39-8,116, or may be entered as a distinct and separate agreement between the department and the adjoining state. Such agreements may provide for the acquisition of such bridges, and the land, real or personal property, or easement or interest necessary thereto, by any lawful means of condemnation, and may include provision for, but shall not be limited to, the following:

(1) The election by the department and the adjoining state to institute a single joint proceeding to condemn any boundary line bridge or boundary line toll bridge, and any land, real or personal property, or easement or interest necessary thereto, as an entirety within a proper jurisdiction within either the State of Nebraska or the adjoining state, such proceeding to be conducted subject to the laws and procedure of the selected state and jurisdiction. If such proceeding be instituted within the State of Nebraska, it shall be conducted subject to sections 76-704 to 76-724;

(2) The election by the department and the adjoining state to institute a single joint proceeding to condemn any boundary line bridge or boundary line toll bridge, and any land, real or personal property, or easement or interest necessary thereto, as an entirety in a proper court of the United States, such proceeding to be conducted subject to the laws and rules of procedure specified for such an action in such court of the United States; or

(3) The election by the department and the adjoining state to present a petition to the United States stating that the department and the adjoining state are unable to satisfactorily institute condemnation proceedings against any boundary line bridge or boundary line toll bridge, and the land, real or personal property, or easement or interest necessary thereto, that such bridge and property are desired as additions to the highway systems of the State of Nebraska and the adjoining state, that sufficient funds are available to pay the costs of condemnation and acquisition of such bridge, and that the department and the adjoining state request the United States to institute condemnation proceedings to acquire such bridge and property under the laws of the United States for transfer to the department and the adjoining state; *Provided*, that no such agreement shall authorize, nor be construed to authorize, the department to institute such condemnation proceedings as will result in the department holding title to such bridge and property in the entirety, if such proceedings be successful.

Source: Laws 1959, c. 175, § 27, p. 643.

39-8,118 Interstate bridges; boundary line or boundary line toll bridge; Department of Roads; gift; power to accept; conditions.

The department shall have the power and authority to accept title to and responsibility for the maintenance of that portion of any boundary line bridge or boundary line toll bridge, and the land, real or personal property, or easement or interest necessary thereto, located within the State of Nebraska whenever that portion of any such bridge may be offered to the State of Nebraska free of costs and indebtedness by the person holding title thereto; *Provided*, that any such acceptance given by the department shall be conditioned upon the adjoining state holding or acquiring title to that portion of such bridge, and the land, real or personal property, or easement or interest necessary thereto, located within the adjoining state from the person holding title thereto.

Source: Laws 1959, c. 175, § 28, p. 645.

39-8,119 Interstate bridges; regulation of transmission and pipe lines.

The department shall have the power and authority to enter into agreements with an adjoining state for the purpose of regulating the passage of transmission and pipe lines upon and across interstate bridges. Such agreements may

provide that the department and the adjoining state, jointly, may establish all reasonable rules and regulations necessary to prevent such lines from interfering with any interstate bridge or the safe flow of traffic upon such bridge; *Provided*, that such rules and regulations shall not authorize the passage of any transmission or pipe line across or upon any interstate bridge in violation of the law of the State of Nebraska or of the adjoining state, or of any law, code, rule, or regulation of the United States. Nothing contained within this section shall be construed to limit, change, alter, or invalidate the provisions of any prior existing contract to which the department or the State of Nebraska is a party.

Source: Laws 1959, c. 175, § 29, p. 645.

39-8,120 Interstate bridges; Department of Roads; rules and regulations; adopt.

The department shall have the power and authority to adopt and amend all rules and regulations necessary to carry out the provisions of sections 39-891 to 39-8,122; *Provided*, that such rules and regulations shall not violate any law of the State of Nebraska, or any law, code, rule, or regulation of the United States, pertaining to or affecting interstate bridges.

Source: Laws 1959, c. 175, § 30, p. 645.

39-8,121 Interstate bridges; free of toll.

All interstate bridges, or portions thereof, constructed, purchased, acquired, or maintained by the department shall be free of tolls.

Source: Laws 1959, c. 175, § 31, p. 646.

39-8,122 Act, how cited.

Sections 39-891 to 39-8,122 shall be known and cited as The Interstate Bridge Act of 1959.

Source: Laws 1959, c. 175, § 33, p. 646.

ARTICLE 9

FERRIES

Section	
39-901.	Repealed. Laws 1980, LB 741, § 1.
39-902.	Repealed. Laws 1980, LB 741, § 1.
39-903.	Repealed. Laws 1980, LB 741, § 1.
39-904.	Repealed. Laws 1980, LB 741, § 1.
39-905.	Repealed. Laws 1980, LB 741, § 1.
39-906.	Repealed. Laws 1980, LB 741, § 1.
39-907.	Repealed. Laws 1980, LB 741, § 1.
39-908.	Repealed. Laws 1980, LB 741, § 1.
39-909.	Repealed. Laws 1980, LB 741, § 1.
39-910.	Repealed. Laws 1980, LB 741, § 1.
39-911.	Repealed. Laws 1980, LB 741, § 1.
39-912.	Repealed. Laws 1980, LB 741, § 1.

39-901 Repealed. Laws 1980, LB 741, § 1.

39-902 Repealed. Laws 1980, LB 741, § 1.

39-903 Repealed. Laws 1980, LB 741, § 1.

39-904 Repealed. Laws 1980, LB 741, § 1.

39-905 Repealed. Laws 1980, LB 741, § 1.

39-906 Repealed. Laws 1980, LB 741, § 1.

39-907 Repealed. Laws 1980, LB 741, § 1.

39-908 Repealed. Laws 1980, LB 741, § 1.

39-909 Repealed. Laws 1980, LB 741, § 1.

39-910 Repealed. Laws 1980, LB 741, § 1.

39-911 Repealed. Laws 1980, LB 741, § 1.

39-912 Repealed. Laws 1980, LB 741, § 1.

ARTICLE 10

RURAL MAIL ROUTES

Section

39-1001. Repealed. Laws 1996, LB 1114, § 75.

39-1002. Repealed. Laws 1996, LB 1114, § 75.

39-1003. Repealed. Laws 1996, LB 1114, § 75.

39-1004. Repealed. Laws 1996, LB 1114, § 75.

39-1005. Repealed. Laws 1996, LB 1114, § 75.

39-1006. Repealed. Laws 1996, LB 1114, § 75.

39-1007. Repealed. Laws 1967, c. 236, § 1.

39-1008. Repealed. Laws 1996, LB 1114, § 75.

39-1009. Repealed. Laws 1996, LB 1114, § 75.

39-1010. Mailboxes; location; violation; duty of Department of Roads.

39-1011. Mailboxes; Department of Roads; turnouts; provide.

39-1012. Mailboxes; violations; penalty.

39-1001 Repealed. Laws 1996, LB 1114, § 75.

39-1002 Repealed. Laws 1996, LB 1114, § 75.

39-1003 Repealed. Laws 1996, LB 1114, § 75.

39-1004 Repealed. Laws 1996, LB 1114, § 75.

39-1005 Repealed. Laws 1996, LB 1114, § 75.

39-1006 Repealed. Laws 1996, LB 1114, § 75.

39-1007 Repealed. Laws 1967, c. 236, § 1.

39-1008 Repealed. Laws 1996, LB 1114, § 75.

39-1009 Repealed. Laws 1996, LB 1114, § 75.

39-1010 Mailboxes; location; violation; duty of Department of Roads.

All mailboxes shall be placed such that no part of the mailbox extends beyond the shoulder line of any highway and the mailbox support shall be placed a minimum of one foot outside the shoulder line of any gravel-surfaced highway, and of any hard-surfaced highway having a shoulder width of six feet or more measured from the edge of the hard surfacing. Along hard-surfaced highways

having a shoulder width of less than six feet, the Department of Roads shall, on new construction or reconstruction, where feasible, provide a shoulder width of not less than six feet, or provide for a minimum clear traffic lane of ten feet in width at such mailbox turnouts. On highways built before October 9, 1961, having a shoulder width of less than six feet, the Department of Roads may, where feasible and deemed advisable, provide a shoulder width of not less than six feet or provide for minimum clear traffic lane of ten feet in width at such mailbox turnouts. It shall be the duty of the Department of Roads to notify the owner of all mailboxes in violation of the provisions of this section and the department may remove such mailboxes if the owner fails or refuses to remove the same after a reasonable time after he is notified of such violations.

Source: Laws 1961, c. 194, § 1, p. 593.

39-1011 Mailboxes; Department of Roads; turnouts; provide.

The Department of Roads shall provide and maintain gravel, crushed-rock, or hard-surface turnouts for delivery of mail to all mailboxes placed on the highway rights-of-way to conform with the provisions of section 39-1010.

Source: Laws 1961, c. 194, § 2, p. 593.

39-1012 Mailboxes; violations; penalty.

Any person who violates the provisions of section 39-1010 shall be guilty of a Class V misdemeanor.

Source: Laws 1961, c. 194, § 3, p. 594; Laws 1977, LB 40, § 210.

ARTICLE 11

STATE HIGHWAY COMMISSION

Section

- 39-1101. State Highway Commission; creation; members.
- 39-1102. State Highway Commission; districts.
- 39-1103. Members; term of office.
- 39-1104. Members; removal; procedure.
- 39-1105. Members; oath of office.
- 39-1106. Members; chairperson; per diem; expenses.
- 39-1107. Secretary of commission; employ.
- 39-1108. State Highway Commission; meetings; quorum; minutes; open to public.
- 39-1109. Repealed. Laws 1987, LB 161, § 5.
- 39-1110. State Highway Commission; powers and duties.
- 39-1111. State Highway Commission; quarterly report; contents; file with Governor; file with Clerk of the Legislature.

39-1101 State Highway Commission; creation; members.

There is hereby created in the Department of Roads a State Highway Commission which shall consist of eight members to be appointed by the Governor with the consent of a majority of all the members of the Legislature. One member shall at all times be appointed from each of the eight districts designated in section 39-1102. Each member of the commission shall be (1) a citizen of the United States, (2) not less than thirty years of age, and (3) a bona fide resident of the State of Nebraska and of the district from which he or she is appointed for at least three years immediately preceding his or her appointment. Not more than four members shall be of the same political party. The

Director-State Engineer shall be an ex officio member of the commission who shall vote in case of a tie.

Source: Laws 1953, c. 334, § 1, p. 1095; Laws 1955, c. 163, § 1, p. 468; Laws 1987, LB 161, § 1.

39-1102 State Highway Commission; districts.

The designation and limits of the eight districts from which members of the State Highway Commission are to be appointed shall be as follows:

(1) District No. 1. The counties of Butler, Saunders, Seward, Saline, Nemaha, Lancaster, Gage, Pawnee, Richardson, Johnson, Jefferson, Otoe, and Cass except for a portion north of a line beginning at the intersection of Interstate Highway 80 and the Platte River and proceeding southeasterly to the section corner of the northeast corner of section 21, township 11, north, range 11, east, which is also the junction of Nebraska State Highway 1 and Nebraska State Highway 50; thence southeasterly to the southeast corner of section 14, township 10, north, range 13, east, which is also the junction of U.S. Highway 34 and U.S. Highway 75; thence on a line east to the Missouri River;

(2) District No. 2. The counties of Dodge, Washington, Douglas, and Sarpy and that portion of Cass County which is not within District No. 1;

(3) District No. 3. The counties of Knox, Antelope, Cedar, Dixon, Dakota, Thurston, Wayne, Madison, Stanton, Cuming, Burt, Colfax, Platte, Boone, and Pierce;

(4) District No. 4. The counties of Nance, Thayer, Valley, Greeley, Sherman, Howard, Merrick, Polk, Buffalo, Hall, Hamilton, York, Adams, Clay, Fillmore, Webster, and Nuckolls;

(5) District No. 5. The counties of Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Banner, Kimball, Morrill, Cheyenne, Garden, and Deuel;

(6) District No. 6. The counties of Custer, Grant, Hooker, Thomas, Arthur, McPherson, Blaine, Dawson, Logan, Keith, and Lincoln;

(7) District No. 7. The counties of Chase, Perkins, Dundy, Hayes, Hitchcock, Frontier, Kearney, Red Willow, Gosper, Furnas, Phelps, Harlan, and Franklin; and

(8) District No. 8. The counties of Cherry, Brown, Keya Paha, Rock, Loup, Garfield, Wheeler, Holt, and Boyd.

Source: Laws 1953, c. 334, § 2, p. 1095; Laws 1987, LB 161, § 2; Laws 1991, LB 5, § 1.

39-1103 Members; term of office.

(1) Within thirty days after September 14, 1953, the Governor shall appoint the initial members of the State Highway Commission who shall hold office for the following periods of time from September 14, 1953: (a) Two members for a period of two years; (b) two members for a period of four years; and (c) three members for a period of six years. One additional member shall be appointed for a term of six years beginning September 14, 1987. Each succeeding member of the commission shall be appointed for a term of six years, except members appointed to fill vacancies whose tenure shall be the unexpired term for which they shall be appointed. If the Legislature is not in session when members of the commission are appointed by the Governor, such members

shall take office and act as recess appointees until the next meeting of the Legislature.

(2) Any member serving on the State Highway Commission on August 30, 1987, shall continue to serve until his or her term expires, but in the event the county in which he or she is residing is transferred to a different district upon August 30, 1987, such member shall complete his or her term in the new district in which such county is located pursuant to section 39-1102.

Source: Laws 1953, c. 334, § 3, p. 1096; Laws 1987, LB 161, § 3.

39-1104 Members; removal; procedure.

Members of the State Highway Commission may be removed by the Governor for inefficiency, neglect of duty, or misconduct in office, but only after delivering to the member a copy of the charges and affording him an opportunity of being publicly heard in person or by counsel in his own defense, upon not less than ten days' notice. Such hearing shall be held before the Governor. If such member shall be removed, the Governor shall file in the office of the Secretary of State a complete statement of all the charges made against such member and the findings of the Governor thereon, together with a complete record of the proceedings.

Source: Laws 1953, c. 334, § 4, p. 1096.

39-1105 Members; oath of office.

Each commissioner and every officer under the State Highway Commission, before entering upon the duties of his office, shall subscribe and take the constitutional oath of office, which shall be filed in the office of the Secretary of State.

Source: Laws 1953, c. 334, § 5, p. 1097.

39-1106 Members; chairperson; per diem; expenses.

The members of the State Highway Commission shall meet in January of each year and shall elect a chairperson of the commission from their members. Each member of the commission shall be paid the sum of twenty dollars per day while actually engaged in the business of the commission, but not in excess of twenty-four hundred dollars per annum. The members of the commission shall be paid their mileage, and their expenses while away from home attending to the business of the commission as provided in sections 81-1174 to 81-1177 for state employees.

Source: Laws 1953, c. 334, § 6, p. 1097; Laws 1981, LB 204, § 59.

39-1107 Secretary of commission; employ.

The State Highway Commission, subject to the approval of the Governor, shall employ a person who shall act as secretary of the commission.

Source: Laws 1953, c. 334, § 7, p. 1097; Laws 1955, c. 163, § 2, p. 469.

39-1108 State Highway Commission; meetings; quorum; minutes; open to public.

Regular meetings of the State Highway Commission shall be held upon call of the chairperson, but not less than six times per year. Special meetings may

be held upon call of the chairperson or pursuant to a call signed by three other members, of which the chairperson shall have three days' written notice.

All regular meetings shall be held in suitable offices to be provided in Lincoln unless a majority of the members deem it necessary to hold a regular meeting at another location within this state. Members of the commission may participate by telephone conference call or videoconference as long as the chairperson or vice-chairperson conducts the meeting in an open forum where the public is able to participate by attendance at the scheduled meeting.

Five members of the commission constitute a quorum for the transaction of business. Every act of a majority of the members of the commission shall be deemed to be the act of the commission.

All meetings shall be open to the public and shall be conducted in accordance with the Open Meetings Act.

The minutes of the meetings shall show the action of the commission on matters presented. The minutes shall be open to public inspection.

Source: Laws 1953, c. 334, § 8, p. 1097; Laws 1971, LB 101, § 1; Laws 1981, LB 544, § 4; Laws 1987, LB 161, § 4; Laws 2003, LB 101, § 1; Laws 2004, LB 821, § 11.

Cross References

Open Meetings Act, see section 84-1407.

39-1109 Repealed. Laws 1987, LB 161, § 5.

39-1110 State Highway Commission; powers and duties.

(1) It shall be the duty of the State Highway Commission:

(a) To conduct studies and investigations and to act in an advisory capacity to the Director-State Engineer in the establishment of broad policies for carrying out the duties and responsibilities of the Department of Roads;

(b) To advise the public regarding the policies, conditions, and activities of the Department of Roads;

(c) To hold hearings, make investigations, studies, and inspections, and do all other things necessary to carry out the duties imposed upon it by law;

(d) To advance information and advice conducive to providing adequate and safe highways in the state;

(e) When called upon by the Governor, to advise him or her relative to the appointment of the Director-State Engineer; and

(f) To submit to the Governor its written advice regarding the feasibility of each relinquishment or abandonment of a fragment of a route, section of a route, or a route on the state highway system proposed by the department. The chairperson of the commission shall designate one or more of the members of the commission, prior to submitting such advice, to personally inspect the fragment of a route, section of a route, or a route to be relinquished or abandoned, who shall take into consideration the following factors: Cost to the state for maintenance, estimated cost to the state for future improvements, whether traffic service provided is primarily local or otherwise, whether other facilities provide comparable service, and the relationship to an integrated state highway system. The department shall furnish to the commission all needed assistance in making its inspection and study. If the commission, after making such inspection and study, shall fail to reach a decision as to whether or not the

fragment of a route, section of a route, or a route should be relinquished or abandoned, it may hold a public hearing on such proposed relinquishment or abandonment. The commission shall give a written notice of the time and place of such hearing, not less than two weeks prior to the time of the hearing, to the political or governmental subdivisions or public corporations wherein such portion of the state highway system is proposed to be relinquished or abandoned. The commission shall submit to the Governor, within two weeks after such hearing, its written advice upon such proposed relinquishment or abandonment.

(2) All funds rendered available by law to the Department of Roads, including funds already collected for such purposes, may be used by the State Highway Commission in administering and effecting such purposes, to be paid upon approval by the Director-State Engineer.

(3) All data and information of the Department of Roads shall be available to the State Highway Commission.

(4) The State Highway Commission may issue bonds under the Nebraska Highway Bond Act.

Source: Laws 1953, c. 334, § 10, p. 1098; Laws 1955, c. 163, § 3, p. 469; Laws 2000, LB 1135, § 4.

Cross References

Nebraska Highway Bond Act, see section 39-2222.

39-1111 State Highway Commission; quarterly report; contents; file with Governor; file with Clerk of the Legislature.

The State Highway Commission shall file with the Governor each quarter a report fully and accurately showing conditions existing in the state with reference to the state's highway building and as to construction and maintenance work. Such reports shall further contain an itemized statement of all expenditures and the purposes for such expenditures since the last report submitted to the Governor. Each of such reports shall further contain an itemized budget of all proposed expenditures for the ensuing quarter. A copy of such report shall be filed with the Clerk of the Legislature and be made available to the public. Each member of the Legislature shall receive a copy of such report by making a request for it to the secretary of the commission.

Source: Laws 1953, c. 334, § 11, p. 1099; Laws 1979, LB 322, § 11.

ARTICLE 12

TURNPIKE AUTHORITY

Section	
39-1201.	Repealed. Laws 1955, c. 164, § 1.
39-1202.	Repealed. Laws 1955, c. 164, § 1.
39-1203.	Repealed. Laws 1955, c. 164, § 1.
39-1204.	Repealed. Laws 1955, c. 164, § 1.
39-1205.	Repealed. Laws 1955, c. 164, § 1.
39-1206.	Repealed. Laws 1955, c. 164, § 1.
39-1207.	Repealed. Laws 1955, c. 164, § 1.
39-1208.	Repealed. Laws 1955, c. 164, § 1.
39-1209.	Repealed. Laws 1955, c. 164, § 1.
39-1210.	Repealed. Laws 1955, c. 164, § 1.
39-1211.	Repealed. Laws 1955, c. 164, § 1.
39-1212.	Repealed. Laws 1955, c. 164, § 1.

Section

- 39-1213. Repealed. Laws 1955, c. 164, § 1.
- 39-1214. Repealed. Laws 1955, c. 164, § 1.
- 39-1215. Repealed. Laws 1955, c. 164, § 1.
- 39-1216. Repealed. Laws 1955, c. 164, § 1.
- 39-1217. Repealed. Laws 1955, c. 164, § 1.
- 39-1218. Repealed. Laws 1955, c. 164, § 1.
- 39-1219. Repealed. Laws 1955, c. 164, § 1.
- 39-1220. Repealed. Laws 1955, c. 164, § 1.
- 39-1221. Repealed. Laws 1955, c. 164, § 1.
- 39-1222. Repealed. Laws 1955, c. 164, § 1.
- 39-1223. Repealed. Laws 1955, c. 164, § 1.
- 39-1224. Repealed. Laws 1955, c. 164, § 1.
- 39-1225. Repealed. Laws 1955, c. 164, § 1.
- 39-1226. Repealed. Laws 1955, c. 164, § 1.
- 39-1227. Repealed. Laws 1955, c. 164, § 1.
- 39-1228. Repealed. Laws 1955, c. 164, § 1.
- 39-1229. Repealed. Laws 1955, c. 164, § 1.
- 39-1230. Repealed. Laws 1955, c. 164, § 1.
- 39-1231. Repealed. Laws 1955, c. 164, § 1.
- 39-1232. Repealed. Laws 1955, c. 164, § 1.
- 39-1233. Repealed. Laws 1955, c. 164, § 1.
- 39-1234. Repealed. Laws 1955, c. 164, § 1.
- 39-1235. Repealed. Laws 1955, c. 164, § 1.
- 39-1236. Repealed. Laws 1955, c. 164, § 1.
- 39-1237. Repealed. Laws 1955, c. 164, § 1.
- 39-1238. Repealed. Laws 1955, c. 164, § 1.
- 39-1239. Repealed. Laws 1955, c. 164, § 1.

39-1201 Repealed. Laws 1955, c. 164, § 1.

39-1202 Repealed. Laws 1955, c. 164, § 1.

39-1203 Repealed. Laws 1955, c. 164, § 1.

39-1204 Repealed. Laws 1955, c. 164, § 1.

39-1205 Repealed. Laws 1955, c. 164, § 1.

39-1206 Repealed. Laws 1955, c. 164, § 1.

39-1207 Repealed. Laws 1955, c. 164, § 1.

39-1208 Repealed. Laws 1955, c. 164, § 1.

39-1209 Repealed. Laws 1955, c. 164, § 1.

39-1210 Repealed. Laws 1955, c. 164, § 1.

39-1211 Repealed. Laws 1955, c. 164, § 1.

39-1212 Repealed. Laws 1955, c. 164, § 1.

39-1213 Repealed. Laws 1955, c. 164, § 1.

39-1214 Repealed. Laws 1955, c. 164, § 1.

39-1215 Repealed. Laws 1955, c. 164, § 1.

39-1216 Repealed. Laws 1955, c. 164, § 1.

39-1217 Repealed. Laws 1955, c. 164, § 1.

- 39-1218 Repealed. Laws 1955, c. 164, § 1.
- 39-1219 Repealed. Laws 1955, c. 164, § 1.
- 39-1220 Repealed. Laws 1955, c. 164, § 1.
- 39-1221 Repealed. Laws 1955, c. 164, § 1.
- 39-1222 Repealed. Laws 1955, c. 164, § 1.
- 39-1223 Repealed. Laws 1955, c. 164, § 1.
- 39-1224 Repealed. Laws 1955, c. 164, § 1.
- 39-1225 Repealed. Laws 1955, c. 164, § 1.
- 39-1226 Repealed. Laws 1955, c. 164, § 1.
- 39-1227 Repealed. Laws 1955, c. 164, § 1.
- 39-1228 Repealed. Laws 1955, c. 164, § 1.
- 39-1229 Repealed. Laws 1955, c. 164, § 1.
- 39-1230 Repealed. Laws 1955, c. 164, § 1.
- 39-1231 Repealed. Laws 1955, c. 164, § 1.
- 39-1232 Repealed. Laws 1955, c. 164, § 1.
- 39-1233 Repealed. Laws 1955, c. 164, § 1.
- 39-1234 Repealed. Laws 1955, c. 164, § 1.
- 39-1235 Repealed. Laws 1955, c. 164, § 1.
- 39-1236 Repealed. Laws 1955, c. 164, § 1.
- 39-1237 Repealed. Laws 1955, c. 164, § 1.
- 39-1238 Repealed. Laws 1955, c. 164, § 1.
- 39-1239 Repealed. Laws 1955, c. 164, § 1.

ARTICLE 13 STATE HIGHWAYS

(a) INTENT, DEFINITIONS, AND RULES

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| Section | |
| 39-1301. | State highways; declaration of legislative intent. |
| 39-1302. | Terms, defined. |
| 39-1303. | Repealed. Laws 1967, c. 235, § 5. |

(b) INTERGOVERNMENTAL RELATIONS

- | | |
|-------------|--------------------------------------------------------------------------------|
| 39-1304. | State highways; federal aid; state assents. |
| 39-1304.01. | State highways; federal aid; further assent. |
| 39-1304.02. | State highways; federal aid; relocation of public utilities; cost; limitation. |
| 39-1304.03. | State highways; federal aid; further assent. |
| 39-1305. | Federal aid; cooperation with federal government; agreements authorized. |

HIGHWAYS AND BRIDGES

- Section
- 39-1305.01. Projects for which federal funds are available; department; powers and duties.
 - 39-1306. Federal aid; political subdivisions; Department of Roads; agreements; unused funds; allocation.
 - 39-1306.01. Federal aid; political subdivisions; Department of Roads; unused funds; allocation.
 - 39-1306.02. Federal aid; political subdivisions; allotment; Department of Roads; duration; notice.
 - 39-1307. Department of Roads; political subdivisions; highways, roads, streets; constructing, maintaining, improving, financing; agreements.
 - 39-1308. Department of Roads; political subdivisions; advisory capacity; planning, locating, constructing, maintaining; highways, roads, streets.

(c) DESIGNATION OF SYSTEM

- 39-1309. State highway system; designation; redesignation; factors.
- 39-1309.01. Temporary detour designated part of state highway system; Director-State Engineer; powers; duties.
- 39-1310. Repealed. Laws 1976, LB 724, § 11.
- 39-1311. State highway system; Department of Roads; maintain current map; contents; corridor location; map; notice; beltway; duties.
- 39-1311.01. Corridor map; copy; transmit.
- 39-1311.02. Corridor; review of preliminary subdivision plat; building permit; required.
- 39-1311.03. Corridor; proposed subdivision plat; building permit; notice; statement of intent; issuance.
- 39-1311.04. Corridor; building permit; subdivision plat; county clerk; issuance or approval; when.
- 39-1311.05. Sections; no condition precedent to acquisition of rights-of-way.
- 39-1312. Repealed. Laws 1976, LB 724, § 11.
- 39-1313. State highways; abandonment; relinquishment; hearing.
- 39-1314. State highways; relinquishment; abandonment; fragment or section; offer to political subdivision; procedure.
- 39-1315. State highways; abandonment; written instrument; filing.
- 39-1315.01. State highways; removal from state highway system; conditions.

(d) PLANNING AND RESEARCH

- 39-1316. State highway system; establishment, construction, maintenance; plans and specifications.
- 39-1317. State highways; surveys and research.
- 39-1318. Inspection and testing of materials.
- 39-1319. Testing laboratory; purpose.

(e) LAND ACQUISITION

- 39-1320. State highway purposes; acquisition of property; eminent domain; purposes enumerated.
- 39-1320.01. Transferred to section 39-212.
- 39-1320.02. Transferred to section 39-213.
- 39-1320.03. Transferred to section 39-214.
- 39-1320.04. Repealed. Laws 1963, c. 224, § 4.
- 39-1320.05. Repealed. Laws 1963, c. 224, § 4.
- 39-1320.06. Transferred to section 39-215.
- 39-1320.07. Transferred to section 39-216.
- 39-1320.08. Transferred to section 39-219.
- 39-1320.09. Transferred to section 39-220.
- 39-1320.10. Transferred to section 39-221.
- 39-1320.11. Transferred to section 39-222.
- 39-1320.12. Transferred to section 39-223.
- 39-1320.13. Transferred to section 39-224.
- 39-1320.14. Transferred to section 39-225.
- 39-1320.15. Transferred to section 39-226.

STATE HIGHWAYS

- Section
39-1321. State highway purposes; acquisition of additional property; purpose; method; acquisition of landlocked property.
39-1321.01. Repealed. Laws 1971, LB 190, § 13.
39-1321.02. Repealed. Laws 1971, LB 190, § 13.
39-1321.03. Repealed. Laws 1971, LB 190, § 13.
39-1321.04. Repealed. Laws 1971, LB 190, § 13.
39-1321.05. Repealed. Laws 1971, LB 190, § 13.
39-1321.06. Repealed. Laws 1971, LB 190, § 13.
39-1321.07. Repealed. Laws 1971, LB 190, § 13.
39-1321.08. Repealed. Laws 1971, LB 190, § 13.
39-1321.09. Repealed. Laws 1971, LB 190, § 13.
39-1321.10. Repealed. Laws 1971, LB 190, § 13.
39-1322. Acquisition of additional property; buildings; exchange or replacement of property.
39-1323. Lands of state; acquisition; purpose; consent of Governor required; procedure.
39-1323.01. Lands acquired for highway purposes; lease, rental, or permit for use; authorization; proprietary purposes permitted; disposition of rental funds; conditions, covenants, exceptions, reservations.
39-1324. Surveys; authority to enter land; damages.
39-1325. Real property; power of Department of Roads to sell and convey excess.
39-1326. Real property; sale, deed; bill of sale; execution; conditions; disposition of proceeds.

(f) CONTROL OF ACCESS

- 39-1327. State highways; access rights; acquisition; damages.
39-1328. State highways; frontage roads; abutting owners, egress and ingress.
39-1328.01. State highways; frontage roads; request by municipality, county, or property owners; right-of-way acquired by purchase or lease; Department of Roads; maintenance.
39-1328.02. State highways; frontage roads; request by municipality, county, or property owners; consent of federal government, when; right-of-way; reimbursement; maintenance.
39-1329. State highways; egress and ingress, when required; Department of Roads; prescribe access.
39-1330. State highways; acquisition of property for right-of-way; department powers; reasonable access required.
39-1331. State highways; farm land; severed tracts; access.
39-1332. State highways; construction and maintenance of access road; written permit required, when.
39-1333. State highways; access; Department of Roads; adopt rules and regulations; issue permits.
39-1334. State highways; access; permit; violation; actions.
39-1335. State highways; access; use of adjoining property; permit; rules and regulations; violation; penalty.
39-1336. Department of Roads; political subdivision; access highways; construction, maintenance, location, vacation; agreement.

(g) CONSTRUCTION AND MAINTENANCE

- 39-1337. State highway system; Department of Roads; construction, maintenance, control; improvement; sufficiency rating.
39-1338. State highways; drainage; construct, maintain, improve facilities; damages.
39-1339. State highway system; connecting links, defined; duty of Department of Roads.
39-1340. State highways; additional width or capacity; political subdivisions; agreement.
39-1341. State highways; additional width; political subdivisions; agreement; payment.
39-1342. State highways; construction and maintenance of illumination; sidewalks; safety devices.

HIGHWAYS AND BRIDGES

- Section
39-1343. State highway system; Department of Roads; emergencies; powers.
39-1344. State highways; removal of snow and ice; powers and duties.
39-1345. State highways; temporarily close; powers and duties.
39-1345.01. State highways; public use while under construction, repair, or maintenance; contractor; liability.
39-1345.02. State highways; construction; contractor; liability.
39-1346. State highway system; detours; temporary route part of system.
39-1347. County roads; city and village streets; authority to use for detour; duties of department.

(h) CONTRACTS

- 39-1348. Construction; plans and specifications; advertisement for bids; failure of publication; effect.
39-1349. Construction contracts; letting; procedure; interest on retained payments; predetermined minimum wages.
39-1350. Bids; contracts; letting at offices of Department of Roads; department authorized to act for political subdivision.
39-1351. Construction contracts; bidders; qualifications; evaluation by Department of Roads.
39-1352. Construction contracts; bidders; statement of qualifications; financial showing; certification by public accountant.
39-1353. Construction contracts; proposal forms, issuance to certain bidders.
39-1354. Construction contracts; plans; reproduction; how obtained.

(i) EQUIPMENT AND MATERIALS

- 39-1355. Equipment; office accommodations; storage buildings; department's authority and responsibility; limitations.
39-1356. Road materials; equipment; acquisition; manufacture; powers.
39-1357. Construction or repair of highways; salvaged materials; transfer to political subdivisions.
39-1358. State highway system; funds; source; assistance by political subdivisions.

(j) MISCELLANEOUS

- 39-1359. Rights-of-way; inviolate for state and Department of Roads purposes.
39-1359.01. Rights-of-way; mowing and harvesting of hay; permit; fee; department; powers and duties.
39-1360. Drainage facilities on highways; use; consent of Department of Roads.
39-1361. Cross or dig up highway; permit by Department of Roads; conditions.
39-1362. Cross or dig up highway; violations; penalty.
39-1363. Preservation of historical, archeological, and paleontological remains; agreements; funds; payment.
39-1364. Plans, specifications, and records of highway projects; available to public, when.
39-1365. State highway system; development; legislative findings.
39-1365.01. State highway system; plans; department; duties; priorities.
39-1365.02. State highway system; federal funding; maximum use; department; report on system needs and planning procedures.
39-1366. Repealed. Laws 1973, LB 45, § 125.

(k) FREEWAYS

- 39-1367. Freeways; declaration of legislative intent.
39-1368. Repealed. Laws 1973, LB 45, § 125.
39-1369. Repealed. Laws 1973, LB 45, § 125.
39-1370. Repealed. Laws 1973, LB 45, § 125.
39-1371. Repealed. Laws 1973, LB 45, § 125.
39-1372. Freeways; maintenance of approach, exit, and frontage roads; lighting facilities.
39-1373. Repealed. Laws 1973, LB 45, § 125.
39-1374. Repealed. Laws 1973, LB 45, § 125.
39-1375. Repealed. Laws 1973, LB 45, § 125.
39-1376. Repealed. Laws 1973, LB 45, § 125.
39-1377. Repealed. Laws 1973, LB 45, § 125.

Section	
39-1378.	Repealed. Laws 1973, LB 45, § 125.
39-1379.	Repealed. Laws 1973, LB 45, § 125.
39-1380.	Repealed. Laws 1973, LB 45, § 125.
39-1381.	Repealed. Laws 1973, LB 45, § 125.
39-1382.	Repealed. Laws 1973, LB 45, § 125.
39-1383.	Repealed. Laws 1973, LB 45, § 125.
39-1384.	Repealed. Laws 1973, LB 45, § 125.
39-1385.	Repealed. Laws 1973, LB 45, § 125.
39-1386.	Repealed. Laws 1973, LB 45, § 125.
39-1387.	Repealed. Laws 1973, LB 45, § 125.
39-1388.	Repealed. Laws 1973, LB 45, § 125.
39-1389.	Repealed. Laws 1973, LB 45, § 125.

(l) STATE RECREATION ROADS

39-1390.	State Recreation Road Fund; created; use; preferences; maintenance; investment.
39-1390.01.	State Recreation Road Fund; road projects authorized.
39-1391.	Exterior access roads; interior service roads; plans; reviewed annually; report; contents.
39-1392.	Exterior access roads; interior service roads; Department of Roads; develop and file plans with Governor and Legislature; reviewed annually.

(a) INTENT, DEFINITIONS, AND RULES

39-1301 State highways; declaration of legislative intent.

Recognizing that safe and efficient highway transportation is a matter of important interest to all of the people in the state, the Legislature hereby determines and declares that an integrated system of highways is essential to the general welfare of the State of Nebraska.

Providing such a system of facilities and the efficient management, operation, and control thereof are recognized as urgent problems and the proper objectives of highway legislation.

Adequate highways provide for the free flow of traffic, result in low cost of motor vehicle operation, protect the health and safety of the citizens of the state, increase property values, and generally promote economic and social progress of the state.

It is the intent of the Legislature to consider of paramount importance the convenience and safety of the traveling public in the location, relocation, or abandonment of highways.

In designating the highway system of this state, as provided by sections 39-1301 to 39-1362, the Legislature places a high degree of trust in the hands of those officials whose duty it shall be, within the limits of available funds, to plan, develop, construct, operate, maintain, and protect the highway facilities of this state, for present as well as for future uses.

The design, construction, maintenance, operation, and protection of adequate state highway facilities sufficient to meet the present demands as well as future requirements will, of necessity, require careful organization, with lines of authority definitely fixed, and basic rules of procedure established by the Legislature.

To this end, it is the intent of the Legislature, subject to the limitations of the Constitution and such mandates as the Legislature may impose by the provisions of such sections, to designate the Director-State Engineer and the depart-

ment, acting under the direction of the Director-State Engineer, as direct custodian of the state highway system, with full authority in all departmental administrative details, in all matters of engineering design, and in all matters having to do with the construction, maintenance, operation, and protection of the state highway system.

The Legislature intends to declare, in general terms, the powers and duties of the Director-State Engineer, leaving specific details to be determined by reasonable rules and regulations which may be promulgated by him or her. It is the intent of the Legislature to grant authority to the Director-State Engineer to exercise sufficient power and authority to enable him or her and the department to carry out the broad objectives stated in this section.

While it is necessary to fix responsibilities for the construction, maintenance, and operation of the several systems of highways, it is intended that the State of Nebraska shall have an integrated system of all roads and streets to provide safe and efficient highway transportation throughout the state. The authority granted in such sections to the Director-State Engineer and to the political or governmental subdivisions or public corporations of this state to assist and cooperate with each other is therefor essential.

The Legislature hereby determines and declares that such sections are necessary for the preservation of the public peace, health, and safety, for promotion of the general welfare, and as a contribution to the national defense.

Source: Laws 1955, c. 148, § 1, p. 414; Laws 1993, LB 15, § 3.

This section declares the policy of the state with respect to state highways. *Vap v. City of McCook*, 178 Neb. 844, 136 N.W.2d 220 (1965).

Constitutionality of act raised but not decided. *Haynes v. Anderson*, 163 Neb. 50, 77 N.W.2d 674 (1956).

Legislative declaration of intent is entitled to consideration in construing act. *Hammer v. Department of Roads*, 175 Neb. 178, 120 N.W.2d 909 (1963).

39-1302 Terms, defined.

For purposes of sections 39-1301 to 39-1392, unless the context otherwise requires:

(1) Abandon shall mean to reject all or part of the department's rights and responsibilities relating to all or part of a fragment, section, or route on the state highway system;

(2) Alley shall mean an established passageway for vehicles and pedestrians affording a secondary means of access in the rear to properties abutting on a street or highway;

(3) Approach or exit road shall mean any highway or ramp designed and used solely for the purpose of providing ingress or egress to or from an interchange or rest area of a highway. An approach road shall begin at the point where it intersects with any highway not a part of the highway for which such approach road provides access and shall terminate at the point where it merges with an acceleration lane of a highway. An exit road shall begin at the point where it intersects with a deceleration lane of a highway and shall terminate at the point where it intersects any highway not a part of a highway from which the exit road provides egress;

(4) Arterial highway shall mean a highway primarily for through traffic, usually on a continuous route;

(5) Beltway shall mean the roads and streets not designated as a part of the state highway system and that are under the primary authority of a county or municipality, if the location of the beltway has been approved by (a) record of decision or finding of no significant impact by the federal highway administration and (b) the applicable local planning authority as a part of the comprehensive plan;

(6) Business shall mean any lawful activity conducted primarily for the purchase and resale, manufacture, processing, or marketing of products, commodities, or other personal property or for the sale of services to the public or by a nonprofit corporation;

(7) Channel shall mean a natural or artificial watercourse;

(8) Commercial activity shall mean those activities generally recognized as commercial by zoning authorities in this state, and industrial activity shall mean those activities generally recognized as industrial by zoning authorities in this state, except that none of the following shall be considered commercial or industrial:

(a) Outdoor advertising structures;

(b) General agricultural, forestry, ranching, grazing, farming, and related activities, including wayside fresh produce stands;

(c) Activities normally or regularly in operation less than three months of the year;

(d) Activities conducted in a building principally used as a residence;

(e) Railroad tracks and minor sidings; and

(f) Activities more than six hundred sixty feet from the nearest edge of the right-of-way of the road or highway;

(9) Connecting link shall mean the roads, streets, and highways designated as part of the state highway system and which are within the corporate limits of any city or village in this state;

(10) Controlled-access facility shall mean a highway or street especially designed for through traffic and over, from, or to which owners or occupants of abutting land or other persons have no right or easement or only a controlled right or easement of access, light, air, or view by reason of the fact that their property abuts upon such controlled-access facility or for any other reason. Such highways or streets may be freeways, or they may be parkways;

(11) Department shall mean the Department of Roads;

(12) Displaced person shall mean any individual, family, business, or farm operation which moves from real property acquired for state highway purposes or for a federal-aid highway;

(13) Easement shall mean a right acquired by public authority to use or control property for a designated highway purpose;

(14) Expressway shall mean a divided arterial highway for through traffic with full or partial control of access which may have grade separations at intersections;

(15) Family shall mean two or more persons living together in the same dwelling unit who are related to each other by blood, marriage, adoption, or legal guardianship;

(16) Farm operation shall mean any activity conducted primarily for the production of one or more agricultural products or commodities for sale and home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support;

(17) Federal-aid primary roads shall mean roads, streets, and highways, whether a part of the state highway system, county road systems, or city streets, which have been designated as federal-aid primary roads by the department and approved by the United States Secretary of Transportation and shown on the maps provided for in section 39-1311;

(18) Freeway shall mean an expressway with full control of access;

(19) Frontage road shall mean a local street or road auxiliary to an arterial highway for service to abutting property and adjacent areas and for control of access;

(20) Full control of access shall mean that the right of owners or occupants of abutting land or other persons to access or view is fully controlled by public authority having jurisdiction and that such control is exercised to give preference to through traffic by providing access connections with selected public roads only and by prohibiting crossings or intersections at grade or direct private driveway connections;

(21) Grade separation shall mean a crossing of two highways at different levels;

(22) Highway shall mean a road or street, including the entire area within the right-of-way, which has been designated a part of the state highway system;

(23) Individual shall mean a person who is not a member of a family;

(24) Interchange shall mean a grade-separated intersection with one or more turning roadways for travel between any of the highways radiating from and forming part of such intersection;

(25) Map shall mean a drawing or other illustration or a series of drawings or illustrations which may be considered together to complete a representation;

(26) Mileage shall mean the aggregate distance in miles without counting double mileage where there are one-way or divided roads, streets, or highways;

(27) Parking lane shall mean an auxiliary lane primarily for the parking of vehicles;

(28) Parkway shall mean an arterial highway for noncommercial traffic, with full or partial control of access, and usually located within a park or a ribbon of park-like development;

(29) Relinquish shall mean to surrender all or part of the rights and responsibilities relating to all or part of a fragment, section, or route on the state highway system to a political or governmental subdivision or public corporation of Nebraska;

(30) Right of access shall mean the rights of ingress and egress to or from a road, street, or highway and the rights of owners or occupants of land abutting a road, street, or highway or other persons to a way or means of approach, light, air, or view;

(31) Right-of-way shall mean land, property, or interest therein, usually in a strip, acquired for or devoted to a road, street, or highway;

(32) Road shall mean a public way for the purposes of vehicular travel, including the entire area within the right-of-way. A road designated as part of

the state highway system may be called a highway, while a road in an urban area may be called a street;

(33) Roadside shall mean the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside;

(34) Roadway shall mean the portion of a highway, including shoulders, for vehicular use;

(35) Separation structure shall mean that part of any bridge or road which is directly overhead of the roadway of any part of a highway;

(36) State highway purposes shall have the meaning set forth in subsection (2) of section 39-1320;

(37) State highway system shall mean the roads, streets, and highways shown on the map provided for in section 39-1311 as forming a group of highway transportation lines for which the department shall be the primary authority. The state highway system shall include, but not be limited to, rights-of-way, connecting links, drainage facilities, and the bridges, appurtenances, easements, and structures used in conjunction with such roads, streets, and highways;

(38) Street shall mean a public way for the purposes of vehicular travel in a city or village and shall include the entire area within the right-of-way;

(39) Structure shall mean anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location;

(40) Title shall mean the evidence of a person's right to property or the right itself;

(41) Traveled way shall mean the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes;

(42) Unzoned commercial or industrial area for purposes of control of outdoor advertising shall mean all areas within six hundred sixty feet of the nearest edge of the right-of-way of the interstate and federal-aid primary systems which are not zoned by state or local law, regulation, or ordinance and on which there is located one or more permanent structures devoted to a business or industrial activity or on which a commercial or industrial activity is conducted, whether or not a permanent structure is located thereon, the area between such activity and the highway, and the area along the highway extending outward six hundred feet from and beyond each edge of such activity and, in the case of the primary system, may include the unzoned lands on both sides of such road or highway to the extent of the same dimensions if those lands on the opposite side of the highway are not deemed scenic or having aesthetic value as determined by the department. In determining such an area, measurements shall be made from the furthest or outermost edges of the regularly used area of the commercial or industrial activity, structures, normal points of ingress and egress, parking lots, and storage and processing areas constituting an integral part of such commercial or industrial activity;

(43) Visible, for purposes of section 39-1320, in reference to advertising signs, displays, or devices, shall mean the message or advertising content of such sign, display, or device is capable of being seen without visual aid by a person of normal visual acuity. A sign shall be considered visible even though the message or advertising content may be seen but not read;

(44) Written instrument shall mean a deed or any other document that states a contract, agreement, gift, or transfer of property; and

(45) Zoned commercial or industrial areas shall mean those areas within six hundred sixty feet of the nearest edge of the right-of-way of the Highway Beautification Control System defined in section 39-201.01, zoned by state or local zoning authorities for industrial or commercial activities.

Source: Laws 1955, c. 148, § 2, p. 415; Laws 1969, c. 329, § 1, p. 1174; Laws 1972, LB 1181, § 1; Laws 1975, LB 213, § 4; Laws 1983, LB 120, § 2; Laws 1993, LB 15, § 4; Laws 1993, LB 121, § 211; Laws 1993, LB 370, § 39; Laws 1995, LB 264, § 21; Laws 2005, LB 639, § 1.

Legislature gave to the Department of Roads complete administration of the state highway system. *Vap v. City of McCook*, 178 Neb. 844, 136 N.W.2d 220 (1965).

Term highway was not used in the sense of highway designated as a part of the state highway system. *School Dist. No. 228 v. State Board of Education*, 164 Neb. 148, 82 N.W.2d 8 (1957).

39-1303 Repealed. Laws 1967, c. 235, § 5.

(b) INTERGOVERNMENTAL RELATIONS

39-1304 State highways; federal aid; state assents.

The legislative assent required by section 1 of the Act of Congress approved July 11, 1916, Public Law 156, entitled An Act to provide that the United States shall aid the states in the construction of rural post roads, and for other purposes, is hereby given. The Legislature likewise assents to the Congressional Federal Aid Acts, Federal Highway Acts, and Federal Aid Highway Acts approved subsequent to July 11, 1916. In the absence of contrary legislative action regarding the assent hereby given, the Legislature shall be deemed to have given a continuing assent to subsequent acts, rules, and regulations which either amend or supplement the above-mentioned acts or otherwise provide funds for the same or similar purposes.

Source: Laws 1955, c. 148, § 4, p. 419.

39-1304.01 State highways; federal aid; further assent.

The Legislature hereby reaffirms its continuing assent to the federal acts set forth in section 39-1304.

Source: Laws 1957, c. 171, § 1, p. 592.

39-1304.02 State highways; federal aid; relocation of public utilities; cost; limitation.

Whenever any utility facility which now is, or hereafter may be, located in, over, along, or under any highway or urban extension thereof which is a part of the National System of Interstate and Defense Highways as defined in the Federal Aid Highway Act of 1956, and qualifying for federal aid thereunder, or any highway which at any time was on or designated as a part of the National System of Interstate and Defense Highways but has been removed for any reason, is required to be altered, changed, moved, or relocated for the construction of any federal-aid highway project, the cost of such alteration, change, moving, or relocation, and the expense of acquiring lands or any rights and interests in land or any other rights acquired to accomplish such alteration, change, moving, or relocation, shall be paid by the state as a part of the

expense of such federally aided projects except when such payment to the utility would violate a legal contract between the utility and the state, or between the utility and a county, city, or village of the state, under the express terms of which contract the utility specifically agrees to pay or assume such costs of alteration, change, moving, or relocation. The cost of the alteration, change, moving, or relocation, and the expense of acquiring lands or any rights and interests in land or any other rights required to accomplish such alteration, change, moving, or relocation of a utility facility located in, over, along, or under any highway which at any time was on or designated as a part of the National System of Interstate and Defense Highways but has been removed for any reason shall not be paid by the state on or after July 1, 1993, and the total amount paid from May 5, 1983, until July 1, 1993, including any federal-aid funds, shall not exceed five million dollars. For the purpose of this section, the term cost of relocation shall include the entire amount paid by such utility properly attributable to such alteration, change, moving, or relocation after deducting therefrom any increase in value of the new facility and any salvage value derived from the old facility.

Source: Laws 1957, c. 171, § 2, p. 592; Laws 1983, LB 96, § 1.

39-1304.03 State highways; federal aid; further assent.

The Legislature hereby reaffirms its continuing assent to the federal acts set forth in section 39-1304, and amendments thereto.

Source: Laws 1961, c. 181, § 1, p. 534.

39-1305 Federal aid; cooperation with federal government; agreements authorized.

The department shall have the authority to make all contracts and do all things necessary to cooperate with the United States Government in matters relating to the cooperative construction or improvement of the state highway system, or any road or street of any political or governmental subdivision or any public corporation of this state, or of any road necessary to be constructed for national defense, national forests and scenic purposes, for which federal funds or aid are secured and for maintenance of roads constructed for the United States Government. Such contracts or acts shall be carried out in the manner required by the provisions of the acts of Congress and the rules and regulations made by an agent of the United States in pursuance of such acts.

Source: Laws 1955, c. 148, § 5, p. 419; Laws 1965, c. 221, § 1, p. 643.

39-1305.01 Projects for which federal funds are available; department; powers and duties.

The department may plan, design, construct, maintain, or otherwise undertake projects for which federal funds are available as a National Highway System project under 23 U.S.C. 103(i), as a Surface Transportation Program project under 23 U.S.C. 133(b), or as a Public Lands Highways Program project under 23 U.S.C. 204(h). The department may expend state funds to enable the state to participate in the benefits to be secured from these federal program funds. In accordance with the department's authority set out in sections 39-1306, 39-1307, and 39-1308, the department may assist any state agency, the Nebraska State Historical Society, the Game and Parks Commission, the University of Nebraska, any political or governmental subdivision, or any public

corporation of this state in soliciting and expending federal funds under the federal acts listed in this section.

Source: Laws 1993, LB 15, § 5.

39-1306 Federal aid; political subdivisions; Department of Roads; agreements; unused funds; allocation.

Any political or governmental subdivision or any public corporation of this state shall have the authority to enter into agreements with the federal government through or with the department to enable them to participate in all the benefits to be secured from federal-aid funds, or funds made available from the federal government to be used on roads and streets. The department may negotiate and enter into agreements with the federal government, or any of its constituted agencies, and take all steps and proceedings necessary in order to secure such benefits for such political or governmental subdivisions or public corporations.

Source: Laws 1955, c. 148, § 6, p. 420; Laws 1967, c. 237, § 1, p. 635; Laws 1969, c. 330, § 1, p. 1185.

First class city could contract with Department of Roads to prohibit parking on designated street within city. Vap v. City of McCook, 178 Neb. 844, 136 N.W.2d 220 (1965).

39-1306.01 Federal aid; political subdivisions; Department of Roads; unused funds; allocation.

Unused funds shall be made available by the Department of Roads to other political or governmental subdivisions or public corporations for an additional period of six months. The department shall likewise make available unused funds from allotments which have been made prior to December 25, 1969. The department shall separately classify all unused funds referred to in section 39-1306 from their sources on the basis of the type of political or governmental subdivision or public corporation to which they were allotted. It is the intent of the Legislature that such funds which were allotted to counties and were unused be made available to other counties, and that such funds which were allotted to cities and villages and were unused be made available to other cities and villages. The funds in each classification shall be made available by the department to other subdivisions which have utilized all of the federal funds available to them, and shall be subject to the same conditions as apply to funds received under section 39-1306. Such funds shall be reallocated upon application therefor by the subdivisions.

Source: Laws 1967, c. 237, § 2, p. 635; Laws 1969, c. 330, § 3, p. 1185.

39-1306.02 Federal aid; political subdivisions; allotment; Department of Roads; duration; notice.

When any political or governmental subdivision or any public corporation of this state has an allotment of federal-aid funds made available to it by the federal government, the Department of Roads shall give notice to the political or governmental subdivision of the amount of such funds the department has allotted to it, and, that the duration of the allotment to the political or governmental subdivision or public corporation is for not less than an eighteen-month period, which notice shall state the last date of such allotment to the subdivision or political corporation. The department shall give notice a second

time six months before the last date of such allotment of the impending six months expiration of the allotment and of the amount of funds remaining.

Source: Laws 1969, c. 330, § 2, p. 1185.

39-1307 Department of Roads; political subdivisions; highways, roads, streets; constructing, maintaining, improving, financing; agreements.

The department, on behalf of the state, and any political or governmental subdivision or public corporation of this state shall have the authority to enter into agreements with each other respecting the planning, designating, financing, establishing, constructing, improving, maintaining, using, altering, relocating, regulating, or vacating of highways, roads, streets, connecting links, rights-of-way, including but not limited to, canals, ditches or power, telephone, water, gas, sewer and other service lines owned by such political or governmental subdivision or public corporation. Such agreements may, in the discretion of the parties, include provision for indemnification of, or sharing of, any liability of the parties for future damages occurring to other persons or property and which may arise under the terms of the contract authorized by this section.

When the installation, repair, or modification of an electric generating facility necessitates increased use of a street or road the department may (1) temporarily or permanently provide for the construction and maintenance of such street or road, (2) cooperate with the county or township to maintain such street or road, or (3) designate the street or road as part of the state highway system as provided in section 39-1309. The department shall consider whether improving or maintaining the street or road will benefit the general public, the present condition of the street or road, and the actual or potential traffic volume of such street or road.

Source: Laws 1955, c. 148, § 7, p. 420; Laws 1967, c. 238, § 1, p. 636; Laws 1981, LB 14, § 1.

A first class city may contract with the state through the Department of Roads to prohibit parking on a street which forms a connecting link in the state highway system. *Vap v. City of McCook*, 178 Neb. 844, 136 N.W.2d 220 (1965).

39-1308 Department of Roads; political subdivisions; advisory capacity; planning, locating, constructing, maintaining; highways, roads, streets.

The department shall have the authority to act in an advisory capacity, upon request, to any political or governmental subdivision or public corporation of this state in matters pertaining to the planning, locating, constructing, and maintaining of roads, highways, and streets and other related matters. The department, in such instances, may provide services and may cooperate with such subdivisions and corporations on such terms as may be mutually agreed upon.

Source: Laws 1955, c. 148, § 8, p. 420.

(c) DESIGNATION OF SYSTEM

39-1309 State highway system; designation; redesignation; factors.

(1) The map prepared by the State Highway Commission showing a proposed state highway system in Nebraska, filed with the Clerk of the Legislature and referred to in the resolution filed with the Legislature on February 3, 1955, is hereby adopted by the Legislature as the state highway system on September

18, 1955, except that a highway from Rushville in Sheridan County going south on the most feasible and direct route to the Smith Lake State Recreation Grounds shall be known as state highway 250 and shall be a part of the state highway system.

(2) The state highway system may be redesignated, relocated, redetermined, or recreated by the department with the written advice of the State Highway Commission and the consent of the Governor. In redesignating, relocating, redetermining, or recreating the several routes of the state highway system, the following factors, except as provided in section 39-1309.01, shall be considered: (a) The actual or potential traffic volumes and other traffic survey data, (b) the relevant factors of construction, maintenance, right-of-way, and the costs thereof, (c) the safety and convenience of highway users, (d) the relative importance of each highway to existing business, industry, agriculture, enterprise, and recreation and to the development of natural resources, business, industry, agriculture, enterprise, and recreation, (e) the desirability of providing an integrated system to serve interstate travel, principal market centers, principal municipalities, county seat municipalities, and travel to places of statewide interest, (f) the desirability of connecting the state highway system with any state park, any state forest reserve, any state game reserve, the grounds of any state institution, or any recreational, scenic, or historic place owned or operated by the state or federal government, (g) the national defense, and (h) the general welfare of the people of the state.

(3) Any highways not designated as a part of the state highway system as provided by sections 39-1301 to 39-1362 shall be a part of the county road system, and the title to the right-of-way of such roads shall vest in the counties in which the roads are located.

Source: Laws 1955, c. 148, § 9, p. 420; Laws 1959, c. 176, § 1, p. 647; Laws 1981, LB 285, § 5; Laws 1993, LB 15, § 6.

39-1309.01 Temporary detour designated part of state highway system; Director-State Engineer; powers; duties.

The Director-State Engineer may waive the consideration of factors pursuant to section 39-1309 before a county road used as a temporary detour for the state highway system is designated as part of such state highway system. The director may designate a county road as part of the state highway system over which the department shall have responsibility, as soon as such road is deemed a temporary detour for the state highway system.

If such county road remains a detour road for the state highway system one year after it was initially designated a detour road, the Director-State Engineer shall consider the factors in section 39-1309 to determine whether such road shall continue as part of the state highway system. Upon a determination by the director that such road shall no longer be part of the state highway system, the director shall provide notice of such fact to the county board or the county's governing body having primary authority for such road.

Source: Laws 1981, LB 285, § 4.

39-1310 Repealed. Laws 1976, LB 724, § 11.

39-1311 State highway system; Department of Roads; maintain current map; contents; corridor location; map; notice; beltway; duties.

(1) The Department of Roads at all times shall maintain a current map of the state, which shall show all the roads, highways, and connecting links which have been designated, located, created, or constituted as part of the state highway system, including all corridors. All changes in designation or location of highways constituting the state highway system, or additions thereto, shall be indicated upon the map. The department shall also maintain six separate and additional maps. These maps shall include (a) the roads, highways, and streets designated as federal-aid primary roads as of March 27, 1972, (b) the National System of Interstate and Defense Highways, (c) the roads designated as the federal-aid primary system as it existed on June 1, 1991, (d) the National Highway System, (e) the Highway Beautification Control System as defined in section 39-201.01, and (f) scenic byways as defined in section 39-201.01. The National Highway System is the system designated as such under the federal Intermodal Surface Transportation Efficiency Act. The maps shall be available at all times for public inspection at the offices of the Director-State Engineer and shall be filed with the Legislature of the State of Nebraska each biennium.

(2) Whenever the department has received a corridor location approval for a proposed state highway or proposed beltway to be located in any county or municipality, it shall prepare a map of such corridor sufficient to show the location of such corridor on each parcel of land to be traversed. If the county or municipality in which such corridor is located does not have a requirement for the review and approval of a preliminary subdivision plat or a requirement that a building permit be obtained prior to commencement of a structure, the department shall send notice of the approval of such corridor by certified mail to the owner of each parcel traversed by the corridor at the address shown for such owner on the county tax records. Such notice shall advise the owner of the requirement of sections 39-1311 to 39-1311.05 for preliminary subdivision plats and for building permits.

(3) For any beltway proposed under sections 39-1311 to 39-1311.05, the duties of the department shall be assumed by the county or municipality that received approval for the beltway project.

Source: Laws 1955, c. 148, § 11, p. 422; Laws 1972, LB 1181, § 2; Laws 1974, LB 805, § 1; Laws 1995, LB 264, § 22; Laws 2003, LB 187, § 7; Laws 2005, LB 639, § 2.

39-1311.01 Corridor map; copy; transmit.

The department shall transmit a copy of the map required by subsection (2) of section 39-1311 to the officer responsible for review of preliminary subdivision plats and to the officer responsible for issuance of building permits or, if subdivision plats or building permits are not required in the county or municipality, to the county clerk of the county in which the corridor is located.

Source: Laws 1974, LB 805, § 2; Laws 2003, LB 187, § 8.

39-1311.02 Corridor; review of preliminary subdivision plat; building permit; required.

(1) A review of a preliminary subdivision plat shall be required for all proposals to subdivide land or to make public or private improvements on all land within an approved corridor.

(2) A building permit shall be required for all structures within an approved corridor if the actual cost of the structure exceeds one thousand dollars.

Structures include, but are not limited to, any construction or improvement to land such as public or private streets, sidewalks, and utilities; golf course tee boxes, fairways, or greens; drainage facilities; storm water detention areas; mitigation sites; green space; landscaped areas; or other similar uses. Any application for a building permit shall include a plat drawn by a person licensed as a professional engineer or architect under the Engineers and Architects Regulation Act or registered as a land surveyor as provided in sections 81-8,108 to 81-8,127 showing the location of all existing and proposed structures in the area subject to corridor protection.

Source: Laws 1974, LB 805, § 3; Laws 2003, LB 187, § 9.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

39-1311.03 Corridor; proposed subdivision plat; building permit; notice; statement of intent; issuance.

(1) Upon the filing of a request for a review of a proposed subdivision plat on a parcel located within a corridor, the officer responsible for reviewing subdivision plats or, if the review of a subdivision plat is required only by virtue of sections 39-1311 to 39-1311.05, the county clerk shall give the department notice of the filing of a request for a review of a preliminary subdivision plat. The officer responsible for review of subdivision plats shall not approve or forward for approval a subdivision plat for a period of sixty days from the date of mailing notice of the filing of the request with the department unless the department waives in writing the time period. Within the sixty-day period, the department may if it wishes file with such officer a statement of intent to negotiate with the owner of the land involved. Upon the filing of such statement of intent, the department shall be allowed six months for negotiations with the landowner. At the end of such six-month period, if the landowner has not withdrawn his or her request for review of a subdivision plat, the officer responsible for review of subdivision plats shall proceed with consideration of such preliminary plat if it meets all other applicable codes, ordinances, and laws.

(2) Upon the filing of a request for a building permit on a parcel located within a corridor, the officer responsible for issuance of building permits or, if a building permit is required only by virtue of sections 39-1311 to 39-1311.05, the county clerk shall give the department notice of the filing of the request for a building permit. The officer responsible for issuance of building permits shall not issue a permit for a period of sixty days from the date of mailing notice of the filing of the request with the department unless the department waives in writing the time period. Within the sixty-day period, the department may if it wishes file with such officer a statement of intent to negotiate with the owner of the land involved. Upon the filing of such statement of intent, the department shall be allowed six months for negotiations with the landowner. At the end of such six-month period, if the landowner has not withdrawn his or her application for a permit, it shall be issued if it meets all other applicable codes, ordinances, and laws.

Source: Laws 1974, LB 805, § 4; Laws 2003, LB 187, § 10.

39-1311.04 Corridor; building permit; subdivision plat; county clerk; issuance or approval; when.

When an officer is not now authorized to issue building permits, the county clerk shall be authorized to review and approve subdivision plats or issue building permits required by the provisions of sections 39-1311 to 39-1311.05.

Source: Laws 1974, LB 805, § 5; Laws 2003, LB 187, § 11.

39-1311.05 Sections; no condition precedent to acquisition of rights-of-way.

Nothing in sections 39-1311 to 39-1311.05 shall be deemed a condition precedent to the acquisition of rights-of-way by purchase or by eminent domain.

Source: Laws 1974, LB 805, § 6.

39-1312 Repealed. Laws 1976, LB 724, § 11.

39-1313 State highways; abandonment; relinquishment; hearing.

The department shall have the authority, with the advice of the State Highway Commission and the consent of the Governor, to relinquish or abandon fragments of routes, sections of routes, or routes on the state highway system; *Provided*, that abandonment or relinquishment is accomplished in accordance with and subject to the provisions of sections 39-1314 and 39-1315. Prior to offering its advice to the Governor, the State Highway Commission shall extend an opportunity for a public hearing to the political or governmental subdivisions or public corporations wherein any portion of the state highway system is to be abandoned or relinquished.

Source: Laws 1955, c. 148, § 13, p. 423.

39-1314 State highways; relinquishment; abandonment; fragment or section; offer to political subdivision; procedure.

No fragment or section of a route nor any route on the state highway system shall be abandoned without first offering to relinquish such fragment, section, or route to the political or governmental subdivisions or public corporations wherein any portion of the state highway system is to be abandoned. The department shall offer to relinquish such fragment, section, or route by written notification to such political or governmental subdivisions or public corporations of the department's offer to relinquish. Such offer to relinquish may be conditional or subject to the reservation of any right which the department deems necessary. Four months after sending the notice of offer to relinquish, the department may proceed to abandon such fragment, section, or route on the state highway system unless a petition from a notified political or governmental subdivision or public corporation has been filed with the department, prior to abandonment, setting forth that the political or governmental subdivision or public corporation desires to maintain such fragment, section, route, or portion thereof. The department may reject any petition which does not accept the conditions or reservations specified in the department's offer to relinquish. Any petition which is accepted by the department, together with a written instrument describing the proposed relinquishment, shall be placed upon public record in the department. Such written instrument shall bear the department seal and shall be dated and subscribed by the Director-State Engineer and state upon what conditions, if any, the relinquishment shall be qualified. Such written instrument shall be certified by the department and be recorded in the office of the register of deeds of the county where the portion of

the state highway system is being relinquished. No fee shall be charged for such recording. After such recording, the fragment, section, route, or portion relinquished will be the responsibility of such political or governmental subdivision or public corporation.

Source: Laws 1955, c. 148, § 14, p. 423.

39-1315 State highways; abandonment; written instrument; filing.

Before any fragment, section, or route on the state highway system shall be abandoned, the department shall place upon public record in the department a written instrument describing the proposed abandonment. Such written instrument shall bear the department seal and shall be dated and subscribed by the Director-State Engineer and state upon what conditions, if any, the abandonment shall be qualified and particularly whether or not the title or right-of-way to any abandoned fragment or section shall be sold, revert to private ownership, or remain in the public. Such written instrument shall be certified by the department and be recorded in the office of the register of deeds of each county wherein any portion of the state highway system is being abandoned. No fee shall be charged for such recording. On such recording, the abandonment is complete.

Source: Laws 1955, c. 148, § 15, p. 424.

39-1315.01 State highways; removal from state highway system; conditions.

No road or highway shall be removed from the state highway system until a minimum of three years after such road or highway has been improved with a surface of concrete, asphalt, or material of similar quality, covering at least two traffic lanes, and then only after a determination that traffic along such road or highway is insufficient to justify retention of it as part of the state highway system. The provisions of this section shall not be construed to apply to (1) the relocation of a road or highway pursuant to subsection (2) of section 39-1309, (2) temporary detours or detours designated pursuant to section 39-1309.01, or (3) roads which are removed from the state highway system and added to a county road system or municipal street system pursuant to a contract or agreement between the department and the affected county or municipality. Such a contract or agreement shall not be canceled or amended unless agreed to by all parties to such contract or agreement.

Source: Laws 1969, c. 307, § 1, p. 1098; Laws 1981, LB 285, § 6; Laws 1993, LB 62, § 1.

(d) PLANNING AND RESEARCH

39-1316 State highway system; establishment, construction, maintenance; plans and specifications.

The department shall be responsible for the preparation and adoption of plans and specifications for the establishment, construction, and maintenance of the state highway system. Such plans and specifications may be amended, from time to time, as the department deems advisable. Such plans and specifications should conform, as closely as practicable, to those adopted by the American Association of State Highway Officials.

Source: Laws 1955, c. 148, § 16, p. 424.

39-1317 State highways; surveys and research.

The department shall have the authority to make investigations and to collect and analyze all relevant data relating to (1) road planning studies, (2) traffic problems, (3) financial conditions, and (4) problems relating to state, county, township, municipal, federal, and all other public roads in the state, except any toll facilities. The department also shall have the authority to collect, analyze, and interpret all relevant data concerning the use, construction, improvement, and maintenance of roads, the practices and methods of road organization and development, and such other information, data, and statistics as are deemed necessary. The department may cooperate with the bureau of public roads, federal agencies, research organizations, or political or governmental subdivisions or public corporations of this state and may enter into agreements with other states to carry on research and test projects pertaining to road purposes.

Source: Laws 1955, c. 148, § 17, p. 424.

39-1318 Inspection and testing of materials.

The department shall have the authority to make tests, do research, to inspect and test all materials, supplies, equipment, and machinery used for state purposes or projects involving federal funds, and to develop methods and procedures for this purpose.

Source: Laws 1955, c. 148, § 18, p. 425.

39-1319 Testing laboratory; purpose.

The department shall have the authority to maintain and develop a testing laboratory to carry out the requirements of the provisions of section 39-1318.

Source: Laws 1955, c. 148, § 19, p. 425.

(e) LAND ACQUISITION

39-1320 State highway purposes; acquisition of property; eminent domain; purposes enumerated.

(1) The Department of Roads is hereby authorized to acquire, either temporarily or permanently, lands, real or personal property or any interests therein, or any easements deemed to be necessary or desirable for present or future state highway purposes by gift, agreement, purchase, exchange, condemnation, or otherwise. Such lands or real property may be acquired in fee simple or in any lesser estate. It is the intention of the Legislature that all property leased or purchased from the owner shall receive a fair price.

(2) State highway purposes, as referred to in subsection (1) of this section or otherwise in sections 39-1301 to 39-1362, shall include provision for, but shall not be limited to, the following:

(a) The construction, reconstruction, relocation, improvement, and maintenance of the state highway system. The right-of-way for such highways shall be of such width as is deemed necessary by the department;

(b) Adequate drainage in connection with any highway, cuts, fills, or channel changes and the maintenance thereof;

(c) Controlled-access facilities, including air, light, view, and frontage and service roads to highways;

(d) Weighing stations, shops, storage buildings and yards, and road maintenance or construction sites;

(e) Road material sites, sites for the manufacture of road materials, and access roads to such sites;

(f) The preservation of objects of attraction or scenic value adjacent to, along, or in close proximity to highways and the culture of trees and flora which may increase the scenic beauty of such highways;

(g) Roadside areas or parks adjacent to or near any highway;

(h) The exchange of property for other property to be used for rights-of-way or other purposes set forth in subsection (1) or (2) of this section if the interests of the state will be served and acquisition costs thereby reduced;

(i) The maintenance of an unobstructed view of any portion of a highway so as to promote the safety of the traveling public;

(j) The construction and maintenance of stock trails and cattle passes;

(k) The erection and maintenance of marking and warning signs and traffic signals;

(l) The construction and maintenance of sidewalks and highway illumination;

(m) The control of outdoor advertising which is visible from the nearest edge of the right-of-way of the Highway Beautification Control System as defined in section 39-201.01 to comply with the provisions of 23 U.S.C. 131, as amended;

(n) The relocation of or giving assistance in the relocation of individuals, families, businesses, or farm operations occupying premises acquired for state highway or federal-aid road purposes; and

(o) The establishment and maintenance of wetlands to replace or to mitigate damage to wetlands affected by highway construction, reconstruction, or maintenance. The replacement lands shall be capable of being used to create wetlands comparable to the wetlands area affected. The area of the replacement lands may exceed the wetlands area affected. Lands may be acquired to establish a large or composite wetlands area, sometimes called a wetlands bank, not larger than an area which is one hundred fifty percent of the lands reasonably expected to be necessary for the mitigation of future impact on wetlands brought about by highway construction, reconstruction, or maintenance during the six-year plan as required by sections 39-2115 to 39-2117, an annual plan under section 39-2119, or an annual metropolitan transportation improvement program under section 39-2119.01 in effect upon acquisition of the lands. For purposes of this section, wetlands shall have the definition found in 33 C.F.R. 328.3(b).

(3) The procedure to condemn property authorized by subsection (1) of this section or elsewhere in sections 39-1301 to 39-1362 shall be exercised in the manner set forth in sections 76-704 to 76-724 or as provided by section 39-1323, as the case may be.

Source: Laws 1955, c. 148, § 20, p. 425; Laws 1961, c. 195, § 1, p. 594; Laws 1969, c. 329, § 2, p. 1178; Laws 1972, LB 1181, § 3; Laws 1975, LB 213, § 5; Laws 1992, LB 899, § 1; Laws 1992, LB 1241, § 3; Laws 1993, LB 15, § 7; Laws 1995, LB 264, § 23; Laws 2007, LB277, § 1.

Cross References

Advertising and informational signs along highways and roads, see sections 39-201.01 to 39-226.

Outdoor advertising signs, displays, and devices, rules and regulations of the Department of Roads, see section 39-102.
Outdoor advertising signs, removal, see sections 69-1701 and 69-1702.

An injunction may properly be entered to require compliance with the statute making it unlawful to erect or maintain advertising signs along highways prior to determination of whether there is a right to damages resulting from application of the statute. *State v. Mayhew Products Corp.*, 204 Neb. 266, 281 N.W.2d 783 (1979).

Sections 39-1320 to 39-1320.11 constitute a reasonable and valid exercise of the police power which bears a substantial relation to the public health, safety, and general welfare and are constitutional. *State v. Mayhew Products Corp.*, 204 Neb. 266, 281 N.W.2d 783 (1979).

Advertising easement is required to be taken within six hundred sixty feet of edge of the right-of-way. *State v. Day*, 181 Neb. 308, 147 N.W.2d 919 (1967).

Highway beautification is a highway purpose. *State v. Merritt Brothers Sand & Gravel Co.*, 180 Neb. 660, 144 N.W.2d 180 (1966).

Acquisition of permanent easement for the control of advertising was treated as an exercise of the power of eminent domain. *Wolfe v. State*, 179 Neb. 189, 137 N.W.2d 721 (1965).

The taking of control of outside advertising is compensable under this section. *Mathis v. State*, 178 Neb. 701, 135 N.W.2d 17 (1965).

Case is disposed of in Supreme Court upon theory adopted by both parties that proceedings were instituted to acquire a permanent easement. *Fulmer v. State*, 178 Neb. 664, 134 N.W.2d 798 (1965).

Control of outside advertising within specified distance of highway was expressly conferred. *Fulmer v. State*, 178 Neb. 20, 131 N.W.2d 657 (1964). (Opinion withdrawn, 178 Neb. 664, 134 N.W.2d 798 (1965).)

Injunction granted without prejudice to department to proceed under this section to condemn land for drainage ditch at right angle to highway. *Heppe v. State*, 162 Neb. 403, 76 N.W.2d 255 (1956).

39-1320.01 Transferred to section 39-212.

39-1320.02 Transferred to section 39-213.

39-1320.03 Transferred to section 39-214.

39-1320.04 Repealed. Laws 1963, c. 224, § 4.

39-1320.05 Repealed. Laws 1963, c. 224, § 4.

39-1320.06 Transferred to section 39-215.

39-1320.07 Transferred to section 39-216.

39-1320.08 Transferred to section 39-219.

39-1320.09 Transferred to section 39-220.

39-1320.10 Transferred to section 39-221.

39-1320.11 Transferred to section 39-222.

39-1320.12 Transferred to section 39-223.

39-1320.13 Transferred to section 39-224.

39-1320.14 Transferred to section 39-225.

39-1320.15 Transferred to section 39-226.

39-1321 State highway purposes; acquisition of additional property; purpose; method; acquisition of landlocked property.

In connection with the acquisition of lands, property or interests therein for state highway purposes, the department may, in its discretion, acquire, by any lawful means except through the exercise of eminent domain, an entire lot, block, or tract of land or property if, by so doing, the interests of the public will be best served, even though said entire lot, block, or tract is not immediately needed for state highway purposes. Without limiting the same hereby, this may be done where uneconomic remnants of land would be left the original owner or where severance or consequential damages to a remainder make the acquisition of the entire parcel more economical to the state; *Provided*, that when any

such property or land is left without access to a road, and the cost of acquisition of such landlocked property or land through the exercise of eminent domain would be more economical to the state than the cost of providing a means of reasonable ingress to or egress from the property or land, the state may, in its discretion, acquire such landlocked property or land thereof by eminent domain.

Source: Laws 1955, c. 148, § 21, p. 427; Laws 1961, c. 181, § 6, p. 538.

39-1321.01 Repealed. Laws 1971, LB 190, § 13.

39-1321.02 Repealed. Laws 1971, LB 190, § 13.

39-1321.03 Repealed. Laws 1971, LB 190, § 13.

39-1321.04 Repealed. Laws 1971, LB 190, § 13.

39-1321.05 Repealed. Laws 1971, LB 190, § 13.

39-1321.06 Repealed. Laws 1971, LB 190, § 13.

39-1321.07 Repealed. Laws 1971, LB 190, § 13.

39-1321.08 Repealed. Laws 1971, LB 190, § 13.

39-1321.09 Repealed. Laws 1971, LB 190, § 13.

39-1321.10 Repealed. Laws 1971, LB 190, § 13.

39-1322 Acquisition of additional property; buildings; exchange or replacement of property.

The department may acquire additional real property by gift, agreement, purchase, exchange, or condemnation if such additional real property is needed for the purpose of moving and establishing thereon buildings, structures, or other appurtenances which are situated on real property required by the department for highway purposes. When found to be in the public interest, the department is authorized to provide replacement real property, either lands or facilities, or both, for property in public ownership acquired as a result of a highway or highway-related project which will provide equivalent utility, for that acquired for the project. The department shall have authority to make agreements for the exchange of property, to make allowances for differences in the value of the properties being exchanged, and to move or pay the cost of moving buildings, structures, or other appurtenances.

Source: Laws 1955, c. 148, § 22, p. 427; Laws 1979, LB 568, § 1.

39-1323 Lands of state; acquisition; purpose; consent of Governor required; procedure.

The department may acquire land, as provided for by sections 72-224.02 and 72-224.03, whenever such land is necessary to construct, reconstruct, improve, relocate, and maintain the state highway system and to provide adequate drainage for and access facilities to such highways. The acquisition may be of educational land or any lands owned, occupied, or controlled by any state institution, board, agency, or commission. Prior to taking any land for any of the above purposes, a certificate that the taking of such land is in the public interest, must be obtained from the Governor and from the department and be

filed in the office of the Department of Administrative Services. Written notice of the intent to acquire land of any state institution, board, agency, or commission shall be given to such institution, board, agency, or commission, ten days before the filing of the certificate with the department. Whenever the land taken is educational land which is under the control of any separate agency or board of the State of Nebraska, the damages assessed in the condemnation shall be paid to the Board of Educational Lands and Funds and the agency or board shall then have a claim against the State of Nebraska for the amount so paid.

Source: Laws 1955, c. 148, § 23, p. 427; Laws 1969, c. 317, § 9, p. 1149.

39-1323.01 Lands acquired for highway purposes; lease, rental, or permit for use; authorization; proprietary purposes permitted; disposition of rental funds; conditions, covenants, exceptions, reservations.

The Department of Roads, subject to the approval of the Governor, and the United States Department of Transportation if such department has a financial interest, is authorized to lease, rent, or permit for use, any area, or land and the buildings thereon, which area or land was acquired for highway purposes. The Director-State Engineer, for the department, and in the name of the State of Nebraska, may execute all leases, permits, and other instruments necessary to accomplish the foregoing. Such instruments may contain any conditions, covenants, exceptions, and reservations which the department deems to be in the public interest, including, but not limited to, the provision that upon notice that such property is needed for highway purposes the use and occupancy thereof shall cease. If so leased, rented, or permitted to be used by a municipality, the property may be used for such governmental or proprietary purpose as the governing body of the municipality shall determine, and such governing body may let the property to bid by private operators for proprietary uses. All money received as rent shall be deposited in the state treasury and by the State Treasurer placed in the Highway Cash Fund, subject to reimbursement, if requested, to the United States Department of Transportation for its proportionate financial contribution.

Source: Laws 1961, c. 354, § 1, p. 1114; Laws 1965, c. 222, § 1, p. 644; Laws 1969, c. 331, § 1, p. 1186; Laws 1969, c. 584, § 41, p. 2368; Laws 1986, LB 599, § 5.

39-1324 Surveys; authority to enter land; damages.

The department shall have authority to enter upon any property to make surveys, examinations, investigations, and tests, and to acquire other necessary and relevant data in contemplation of (1) establishing the location of a road, street, or highway, (2) acquiring land, property, and road building materials, or (3) performing other operations incident to highway construction, reconstruction, or maintenance. Entry upon any property, pursuant to this section, shall not be considered to be a legal trespass and no damages shall be recoverable on that account alone. In case of any actual or demonstrable damages to the premises, the department shall pay the owner of the premises the amount of the damages. Upon the failure of the landowner and the department to agree upon the amount of damages, the landowner, in addition to any other available remedy, may file a petition as provided for in section 76-705.

Source: Laws 1955, c. 148, § 24, p. 428.

Department of Roads has authority to enter upon any property to make surveys. *State v. Merritt Brothers Sand & Gravel Co.*, 180 Neb. 660, 144 N.W.2d 180 (1966).

39-1325 Real property; power of Department of Roads to sell and convey excess.

The department shall have the authority to sell and convey, with the approval of the Governor, any part of or any interest in real property held by the department which is no longer deemed necessary or desirable for highway purposes. The sale or conveyance of such real property shall be in such manner as will best serve the interests of the state and will most adequately conserve highway funds.

Source: Laws 1955, c. 148, § 25, p. 428.

39-1326 Real property; sale, deed; bill of sale; execution; conditions; disposition of proceeds.

The Director-State Engineer, for the department, and in the name of the State of Nebraska, may execute, acknowledge, seal, and deliver all deeds, bills of sale, and other instruments necessary and proper to carry out the sale and exchange of real property. Such deeds, bills of sale, and other instruments shall have affixed thereto the seal of the department. The deeds, bills of sale, and other instruments may contain any conditions, covenants, exceptions, and reservations which the department deems are in the public interest or may convey title in fee simple absolute. All money received from the sale of such property shall be deposited in the state treasury and credited to the Highway Cash Fund.

Source: Laws 1955, c. 148, § 26, p. 429; Laws 1986, LB 599, § 6.

(f) CONTROL OF ACCESS

39-1327 State highways; access rights; acquisition; damages.

The department, with the advice of the State Highway Commission and the consent of the Governor, shall designate and establish controlled-access facilities. Upon such consent, the department (1) is authorized to designate and establish controlled-access facilities, (2) may design, construct, maintain, improve, alter, and vacate such facilities, and (3) may regulate, restrict, or prohibit access to such facilities so as to best serve the traffic for which such facilities are intended. The department may provide for the elimination of intersections at grade with existing roads, streets, or highways, if the public interest shall be served thereby, and no road, street, or highway shall be opened into or connected with such facilities without the consent of the department. An existing road, street, or highway may be included within such facilities or such facilities may include new or additional roads, streets, or highways. In order to carry out the purposes of this section, the department may acquire, in public or private property, such rights of access as are deemed necessary, including but not necessarily limited to air, light, view, egress, and ingress. Such acquisitions may be by gift, devise, purchase, agreement, adverse possession, prescription, condemnation, or otherwise and may be in fee simple absolute or in any lesser estate or interest. The department may make provision to mitigate damages caused by such acquisitions, terms, and conditions regarding the abandonment

or reverter of such acquisitions, and any other provisions or conditions that are desirable for the needs of the department and the general welfare of the public.

Source: Laws 1955, c. 148, § 27, p. 429.

Specific right of the state to control access to a state highway is granted by this section. *Hammer v. Department of Roads*, 175 Neb. 178, 120 N.W.2d 909 (1963).

39-1328 State highways; frontage roads; abutting owners, egress and ingress.

The department is authorized to designate, establish, design, construct, maintain, vacate, alter, improve, and regulate frontage roads within the boundaries of any present or hereafter acquired right-of-way and to exercise the same jurisdiction over such frontage roads as is authorized over controlled-access facilities. Such frontage roads may be connected to or separated from the controlled-access facilities at such places as the department shall determine to be consistent with public safety. Upon the construction of any frontage road, any right of access between the controlled-access facility and property abutting or adjacent to such frontage road shall terminate and ingress and egress shall be provided to the frontage road at such places as will afford reasonable and safe connections.

Source: Laws 1955, c. 148, § 28, p. 430.

Right to condemn permanent easement for control of advertising signs is conferred. *Fulmer v. State*, 178 Neb. 20, 131 N.W.2d 657 (1964). (Opinion withdrawn, 178 Neb. 664, 134 N.W.2d 798 (1965).)

Landowner was entitled to damages for loss of direct access to highway. *Balog v. State*, 177 Neb. 826, 131 N.W.2d 402 (1964).

39-1328.01 State highways; frontage roads; request by municipality, county, or property owners; right-of-way acquired by purchase or lease; Department of Roads; maintenance.

Whenever a highway not a freeway, which formerly traversed the corporate limits of a municipality of not more than five thousand inhabitants, is relocated and is made a controlled-access facility, and the Department of Roads is or is not providing any frontage road as authorized by section 39-1328, near an intersection with a roadway connecting with such municipality, the department shall, when consistent with requirements of traffic safety, and when the cost of drainage structures does not exceed five thousand dollars, and upon the conditions hereinafter set out construct such frontage roads if requested to do so by such municipality, the county, or by the owners of sixty percent of the property abutting on such relocated highway if such request is made prior to the purchase, lease, or lease with option to purchase of right-of-way by the department. The quadrant of such intersection in which the frontage road or roads shall be located shall be designated by the governing board of such municipality. The department shall at the request of the county or municipality procure the right-of-way for such frontage road by lease or lease-option to buy or in the same manner as though it were for state highway purposes after receiving from the county or municipality reasonable assurance of reimbursement for such right-of-way costs. The responsibility for the maintenance of such frontage road shall be as provided in section 39-1372.

Source: Laws 1965, c. 211, § 1, p. 619.

39-1328.02 State highways; frontage roads; request by municipality, county, or property owners; consent of federal government, when; right-of-way; reimbursement; maintenance.

Whenever a highway not a freeway, which formerly traversed the corporate limits of a municipality, has been relocated since January 1, 1960, and has been made or will be made a controlled-access facility, and the Department of Roads has not provided any frontage road as authorized by section 39-1328, near an intersection with a roadway connecting with such municipality, the department shall, when consistent with requirements of traffic safety, and when the cost of drainage structures does not exceed five thousand dollars, and upon the conditions hereinafter set out construct such frontage roads if requested to do so by such municipality, the county, or by the owners of sixty percent of the property abutting on such relocated highway within two years after November 18, 1965, or within two years after the highway is made a controlled-access facility. If agreements exist with the federal government requiring its consent to the relinquishment of control of access, the department shall make a bona fide effort to secure such consent, but upon failure to obtain such consent, the frontage road shall not be constructed, or, if conditions are imposed by the federal government, the department shall construct such frontage roads only in accordance with such conditions; *Provided*, that the municipality, county, or owners requesting such frontage road shall reimburse the department for any damages which it paid for such control of access and also for payment to the federal government of such sum, if any, demanded by it for the relinquishment of the access control. The quadrant of such intersection in which the frontage road may be located shall be designated by the governing board of such municipality. The department shall at the request of the county or municipality procure the right-of-way for such frontage road in the same manner as though it were for state highway purposes after receiving from the county or municipality reasonable assurance of reimbursement for such right-of-way costs. The responsibility for the maintenance of such frontage road shall be as provided in section 39-1372.

Source: Laws 1965, c. 211, § 2, p. 620.

39-1329 State highways; egress and ingress, when required; Department of Roads; prescribe access.

The right of reasonable convenient egress and ingress from lands or lots, abutting on an existing highway, street, or road, may not be denied except with the consent of the owners of such lands or lots, or with the condemnation of such right of access to and from such abutting lands or lots. If the construction or reconstruction of any highway, to be paid for in whole or in part with federal or state highway funds, results in the abutment of property on such highway that did not theretofore have direct egress and ingress to it, no rights of direct access shall accrue because of such abutment, but the department may prescribe and define the location of the privilege of access, if any, of properties that then, but not theretofore, abut on such highway.

Source: Laws 1955, c. 148, § 29, p. 430.

There is no right of direct access to a highway constructed upon a new right-of-way where no highway previously existed if the new highway is designated a controlled access facility from the beginning. *Morehead v. State*, 195 Neb. 31, 236 N.W.2d 623 (1975).

Request for instruction relating to this section properly refused when other instructions impliedly excluded irrelevant items addressed thereby. *Thacker v. State*, 193 Neb. 817, 229 N.W.2d 197 (1975).

Evidence of the use of federal funds in a state road project is not admissible in an eminent domain proceeding, but its admission in this case was not prejudicial. *Y Motel, Inc. v. State*, 193 Neb. 526, 227 N.W.2d 869 (1975).

An abutting property owner is entitled to recover damages resulting from the destruction or material impairment by the state of his right of access to an existing highway or street, not to restoration of access. *Danish Vennerforning & Old Peoples Home v. State*, 191 Neb. 774, 217 N.W.2d 819 (1974).

Where there was no previous access to highway, landowner in eminent domain proceedings acquired no new access rights. *Frank v. State*, 176 Neb. 759, 127 N.W.2d 300 (1964).

Adjoining landowner cannot be denied reasonable means of egress and ingress. *Chaloupka v. State*, 176 Neb. 746, 127 N.W.2d 291 (1964).

39-1330 State highways; acquisition of property for right-of-way; department powers; reasonable access required.

In connection with the acquisition of real property for new right-of-way or additional right-of-way for any highway to be constructed, relocated, or reconstructed in either rural or urban areas and paid for in whole or in part with federal or state highway funds, the department may prescribe and define in purchase agreements or condemnation proceedings the location, width, nature, and extent of any right of access that may be permitted between such improved highway and the properties from which such right-of-way or additional right-of-way is acquired, but such prescription and definition shall in no case leave such private properties without a reasonable means of egress and ingress to a road.

Source: Laws 1955, c. 148, § 30, p. 430.

Evidence of the use of federal funds in a state road project is not admissible in an eminent domain proceeding, but its admission in this case was not prejudicial. *Y Motel, Inc. v. State*, 193 Neb. 526, 227 N.W.2d 869 (1975).

Upon reconstruction of state highway, adjoining landowner cannot be denied reasonable means of egress and ingress. *Chaloupka v. State*, 176 Neb. 746, 127 N.W.2d 291 (1964).

39-1331 State highways; farm land; severed tracts; access.

Whenever the location, relocation, establishment, construction, or reconstruction of a highway causes the severance of real property, which is being used for farm or other agricultural purposes and title thereto is held under one owner, the department shall make provision for crossing the highway from one tract to the other, or compensation for the severance of the tract shall be paid; *Provided*, that should the tracts at any time cease to be held under one ownership, the right to such road crossing shall automatically terminate. No connecting road crossing shall be used for or in connection with the conduct of any roadside business or enterprise, but shall be available and used solely for passage from one of the severed tracts to the other.

Source: Laws 1955, c. 148, § 31, p. 431.

39-1332 State highways; construction and maintenance of access road; written permit required, when.

No person shall construct, use, or permit to be used on property owned or occupied by such person any private entrance or exit, approach road, facility, thing, or appurtenance upon or connected to a highway right-of-way without first obtaining a written permit from the department; *Provided*, the owner or occupier of property shall not be required to obtain a permit to use or permit to be used in its existing condition any such private entrance or exit, approach road, facility, thing, or appurtenance existing on September 18, 1955, unless the department determines that the safety and general welfare of the public will be better served by such owner or occupier being required to apply for a permit and the department gives written notice to such owner or occupier that application for a permit must be filed with the department within thirty days from receipt of such notice.

Source: Laws 1955, c. 148, § 32, p. 431.

Owner of land had statutory right to continue to use ornamental light posts. *State v. Merritt Brothers Sand & Gravel Co.*, 180 Neb. 660, 144 N.W.2d 180 (1966).

This section permits the Department of Roads to control the type of access to be granted to state highways. *Chaloupka v. State*, 176 Neb. 746, 127 N.W.2d 291 (1964).

39-1333 State highways; access; Department of Roads; adopt rules and regulations; issue permits.

The department may adopt reasonable rules and regulations and issue permits for the construction or use of any private entrance or exit, approach road, facility, thing, or appurtenance upon or connected to highway right-of-way. Such rules and regulations and such permits may include, but need not be limited to, provisions for construction of culverts, requirements as to depth of fills, and requirements for drainage facilities deemed necessary. Such a permit so issued may contain such terms and conditions as, in the judgment of the granting authority, may be in the best interest of the public. All construction under such permits shall be under the supervision of the granting authority and at the expense of the applicant. After completion of the construction of the particular private entrance or exit, approach road, facility, thing, or appurtenance, the same shall be maintained at the expense of the applicant and in accordance with the rules and regulations of the department. Nothing herein contained shall be determined or construed to grant any right for or authorize the construction of a private entrance or exit or approach road upon or connected to any facility, thing, or appurtenance on the right-of-way of any highway or section of highway for which the department has by gift, agreement, or eminent domain acquired the rights of access on a portion thereof.

Source: Laws 1955, c. 148, § 33, p. 432.

Application of this section was properly covered by instructions given by trial court. *Chaloupka v. State*, 176 Neb. 746, 127 N.W.2d 291 (1964).

39-1334 State highways; access; permit; violation; actions.

The Director-State Engineer, for the department and in the name of the State of Nebraska, may prosecute to final determination any action, suit, or proceeding which in his judgment is necessary for the preservation of public safety, the promotion of the general welfare, and to carry out the provisions of sections 39-1327 to 39-1336. In addition to any other available remedies, the Director-State Engineer may secure an injunction or mandamus (1) to prevent any owner or occupier of property from constructing, using, or permitting to be used a private entrance or exit, approach road, facility, thing, or appurtenance upon or connected to a highway right-of-way without a written permit from the department when a permit is required, (2) to enforce compliance with the conditions of a permit issued by the department to a person for such construction, use, or right to permit such use, and (3) to enforce compliance with the rules and regulations regarding such construction and uses prescribed by the department.

Source: Laws 1955, c. 148, § 34, p. 432.

39-1335 State highways; access; use of adjoining property; permit; rules and regulations; violation; penalty.

Any person who shall construct, use, or permit to be used on property owned or occupied by such person any private entrance or exit, approach road, facility, thing, or appurtenance upon or connected to a highway right-of-way without a permit from the department, when a permit is required, or who shall construct, use, or permit to be used a private entrance or exit, approach road, facility, advertising, advertising signs, displays, or other advertising devices, thing, or appurtenance upon or connected to any highway right-of-way without

complying with the rules and regulations prescribed by the department or with the conditions of a permit issued by the department to such person, shall be guilty of a Class III misdemeanor. Each and every day that such violation continues after the department issues written notification to the violator may constitute a separate offense.

Source: Laws 1955, c. 148, § 35, p. 433; Laws 1961, c. 195, § 5, p. 597; Laws 1977, LB 40, § 212.

39-1336 Department of Roads; political subdivision; access highways; construction, maintenance, location, vacation; agreement.

The department and the governing bodies of any political or governmental subdivision or any public corporation of this state may enter into agreements with each other respecting the planning, designating, financing, establishing, constructing, improving, maintaining, using, altering, relocating, regulating, or vacating of controlled-access roads except any toll facilities.

Source: Laws 1955, c. 148, § 36, p. 433.

Department of Roads and cities may make agreements with respect to controlled access facilities. Hammer v. Department of Roads, 175 Neb. 178, 120 N.W.2d 909 (1963).

(g) CONSTRUCTION AND MAINTENANCE

39-1337 State highway system; Department of Roads; construction, maintenance, control; improvement; sufficiency rating.

The construction, maintenance, protection, and control of the state highway system shall be under the authority and responsibility of the department, except as otherwise provided in sections 39-1339 and 39-1372. The relative urgency of proposed improvements on the state highway system shall be determined by a sufficiency rating established by the department, insofar as the use of such a rating is deemed practicable. The sufficiency rating shall include, but not be limited to, the following factors: (1) Surface condition, (2) economic factors, (3) safety, and (4) service.

Source: Laws 1955, c. 148, § 37, p. 433; Laws 1961, c. 184, § 3, p. 565.

39-1338 State highways; drainage; construct, maintain, improve facilities; damages.

The department shall have the authority to construct, maintain, and improve drainage facilities on the state highway system. The department also shall have the authority to make channel changes, control erosion, and provide stream protection or any other control measures beyond the highway right-of-way limits wherever it is deemed necessary in order to protect the highways and drainage facilities from damage. The department shall have the authority to enter upon private or public property for the above purposes. In case of any damage to the premises, the department shall pay the owner of the premises the amount of the damages. Upon the failure of the landowner and the department to agree upon the amount of damages, the landowner, in addition to any other available remedy, may file a petition as provided for in section 76-705.

Source: Laws 1955, c. 148, § 38, p. 434.

39-1339 State highway system; connecting links, defined; duty of Department of Roads.

Except as provided in section 39-1372, the responsibility of the department for the maintenance of connecting links on the state highway system shall be determined in accordance with the following provisions:

(1) The department shall be liable for the cost of surface maintenance of the traveled way of connecting links, not including the parking lanes thereon, in cities of the metropolitan, primary, and first classes; *Provided*, such connecting links were constructed under the authority of the department and construction costs were paid in whole or in part with county, state or federal-aid funds. The department shall not be responsible for the maintenance of any connecting link or portion thereof which was not built in whole or in part with county, state or federal-aid funds;

(2) The department shall be liable for all of the surface maintenance of the traveled way of connecting links, including parking lanes thereon, in cities of the second class and villages; *Provided*, such connecting links were constructed under the authority of the department and construction costs were paid in whole or in part with county, state or federal-aid funds. The department shall not be responsible for the maintenance of any connecting link or portion thereof which was not built with county, state or federal-aid funds;

(3) The responsibility of the department for the maintenance of the connecting links, described in subdivisions (1) and (2) of this section, shall be limited to such things as are caused either by wear and tear of travel on such connecting links or by acts of God. Maintenance shall not be construed to include (a) snow removal, (b) maintenance caused by constructing, placing, replacing, repairing, or servicing water mains, sewers, gas lines, pipes, utility equipment, or other similar things placed beneath, across, or upon the surface of any portion of a connecting link, or (c) repairs or reconstruction going beyond the scope of normal surface maintenance or wear and tear of travel;

(4) The maintenance of structures, on the connecting links described in subdivisions (1) and (2) of this section, shall not be limited to the traveled way but shall include the entire structure; *Provided*, the department shall have no responsibility for the maintenance of appurtenances to such connecting links and the structures thereon, except by special agreement with the city or village in which the connecting link is situated. Appurtenances shall include, but are not limited to, sidewalks, storm sewers, guardrails, handrails, steps, curb or grate inlets, driveways, fire plugs, or retaining walls;

(5) The department shall maintain and keep in repair all public bridges and the approaches thereto when located in cities of the first class and on connecting links which were constructed under the authority of the department and construction costs were paid in whole or in part with state or federal funds;

(6) Nothing contained in this section shall be construed to prevent the department from entering into special agreements with cities or villages regarding the reconstruction and maintenance of connecting links in such cities and villages; and

(7) As used in this section, unless the context otherwise requires, connecting link shall mean a street now designated as a state highway.

Source: Laws 1955, c. 148, § 39, p. 434; Laws 1961, c. 181, § 7, p. 539; Laws 1961, c. 184, § 35, p. 565; Laws 1967, c. 239, § 1, p. 637.

39-1340 State highways; additional width or capacity; political subdivisions; agreement.

The governing body of any political or governmental subdivision or public corporation may enter into a written agreement with the department for the construction of a highway, structure, or appurtenance thereto, of greater width or capacity than would be necessary to accommodate highway traffic, upon any highway or connecting link within its boundaries and may appropriate from any funds available and pay into the Highway Cash Fund such sum or sums of money as may be agreed upon. Nothing contained in this section shall prevent any such governing body from constructing such highway, structure, or appurtenance of greater width or capacity independent of any contract with the department if such construction shall conform to such reasonable standards and regulations as the department may prescribe.

Source: Laws 1955, c. 148, § 40, p. 436; Laws 1986, LB 599, § 7.

39-1341 State highways; additional width; political subdivisions; agreement; payment.

The governing body of any political or governmental subdivision or public corporation may enter into a written agreement with the department for the maintenance of the additional width, as provided for in section 39-1305, by the department and from time to time, in accordance with such agreement, shall appropriate and pay into the Highway Cash Fund such sums of money as may be agreed upon. Nothing contained in this section shall be construed to prevent any political or governmental subdivision or public corporation from maintaining such additional width at its own expense.

Source: Laws 1955, c. 148, § 41, p. 436; Laws 1986, LB 599, § 8.

39-1342 State highways; construction and maintenance of illumination; sidewalks; safety devices.

The department shall have the authority to construct and maintain highway illumination and sidewalks along such parts of the state highway system as are necessary for safety and public welfare. The department may also erect and maintain any other appurtenances to the state highway system which the department deems necessary for safety and public welfare. Appurtenances shall include, but are not limited to, sidewalks, storm sewers, guardrails, handrails, steps, curb or grate inlets, driveways, fire plugs, and retaining walls.

Source: Laws 1955, c. 148, § 42, p. 437.

39-1343 State highway system; Department of Roads; emergencies; powers.

When, in the opinion of the department, an emergency or unusual condition exists requiring immediate action in order to preserve, continue, open, reopen, or provide for safe conditions on a fragment, portion, or route on the state highway system, the department may make necessary repairs, provide necessary equipment or services, or may contract for such repairs, equipment, or services without calling for competitive bids.

Source: Laws 1955, c. 148, § 43, p. 437.

39-1344 State highways; removal of snow and ice; powers and duties.

The department shall keep the highways, except the connecting links, sufficiently clear of snow and ice so as to be reasonably safe for travel. The department shall have the authority to enter upon private and public property adjacent to any highway and place and maintain thereon snow fences wherever it is deemed necessary in order to prevent snow drifting upon the traveled way of the highway. Such snow fences shall be erected in such a manner as to provide the most protection to the highway and shall not be placed on such property prior to October 15, nor remain on such property after April 1, without the consent of the property owner. In case of any damage to such property, the department shall pay the amount of such damage to the owner of the property.

Source: Laws 1955, c. 148, § 44, p. 437.

39-1345 State highways; temporarily close; powers and duties.

The department shall have the authority to close temporarily any part or all of a highway. Whenever the department closes such highway or part thereof, the department or its contractor shall erect, at both ends of the portion of the highway so closed, suitable barricades, fences, or other enclosures and shall post signs warning the public that the highway is closed by authority of law. Such barricades, fences, enclosures, and signs shall serve as notice to the public that such highway is unsafe and that anyone entering such closed highway, without the permission or consent of the department, does so at his own peril. The department, if it deems it advisable, may permit the public use of a highway undergoing construction, repair, or maintenance in lieu of a detour route and is authorized to regulate, limit, or control traffic thereon.

Source: Laws 1955, c. 148, § 45, p. 437.

39-1345.01 State highways; public use while under construction, repair, or maintenance; contractor; liability.

Whenever the Department of Roads, under the authority of section 39-1345, permits the public use of a highway undergoing construction, repair, or maintenance in lieu of a detour route, the contractor shall not be held responsible for damages to those portions of the project upon which the department has permitted public use, when such damages are the result of no proximate act or failure to act on the part of the contractor.

Source: Laws 1969, c. 310, § 1, p. 1114; Laws 2001, LB 489, § 11.

This section exempts contractors from liability for damages caused to public works by the public allowed to travel on the highway under construction, except where the specifications contemplated that the public would travel on the highway during construction. *Slagle v. J.P. Theisen & Sons*, 251 Neb. 904, 560 N.W.2d 758 (1997).

39-1345.02 State highways; construction; contractor; liability.

A contractor shall not be held responsible, either during construction or after construction is completed, for damages which may result from or be due to inadequate, faulty, or insufficient design, plans, or specifications.

Source: Laws 1969, c. 310, § 2, p. 1115.

This section provides an exception to section 39-1345.01 wherein, if contractors follow specifications provided, but those specifications are inadequate, faulty, or insufficient and so the traveling public still damages public works despite the implementation of the specifications, the contractors will not be liable for the damages to the actual construction project. The definition of damages found in section 39-1345.01 limiting damages to only those caused to an actual construction project also applies to the word "damages" as it appears in this section. *Slagle v. J.P. Theisen & Sons*, 251 Neb. 904, 560 N.W.2d 759 (1997).

39-1346 State highway system; detours; temporary route part of system.

When (1) any portion of the state highway system is impassable or dangerous to travel, (2) it shall be deemed necessary, because of construction or maintenance work or for other reasons, to suspend all or part of the travel thereon, or (3) it is impracticable to maintain any portion of the state highway system as laid out, the department may route travel over a detour around such portion of the state highway system. Such detour shall temporarily be considered part of the state highway system. The department may create a new temporary road or may use an existing road, highway, or street for a detour.

Source: Laws 1955, c. 148, § 46, p. 438; Laws 1989, LB 21, § 2.

39-1347 County roads; city and village streets; authority to use for detour; duties of department.

Authority is granted to the department to use any road or street as a detour for the state highway system. During the time that said detour is in effect, the same shall in all respects be the responsibility of the department; *Provided*, that such authority and responsibility shall become effective only after due written notice is given to the governing body having primary authority for such road or street. The responsibility of the department shall cease only upon written notice being duly given to such authorities. At the time of the termination of the use of such road or street as a state highway, the same shall be returned to the responsibility of the primary authority in as good condition as it was at the time of said temporary taking for use as a state highway by the department.

Source: Laws 1955, c. 148, § 47, p. 438.

(h) CONTRACTS

39-1348 Construction; plans and specifications; advertisement for bids; failure of publication; effect.

Before letting contracts for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances, the department shall advertise for sealed bids for not less than twenty days by publication of a notice thereof once a week three consecutive weeks in the official county newspaper designated by the county board in the county where the work is to be done, and in such additional newspaper or newspapers as may appear necessary to the department in order to give notice of the receiving of bids. Such advertisement shall state the place where the plans and specifications for the work may be inspected and shall designate the time when the bids shall be filed and opened; *Provided*, that if through no fault of the department, publication of such notice fails to appear in any newspaper or newspapers in the manner hereinbefore provided, the department shall be deemed to have fulfilled the requirements of this section.

Source: Laws 1955, c. 148, § 48, p. 439; Laws 1961, c. 181, § 8, p. 541.

39-1349 Construction contracts; letting; procedure; interest on retained payments; predetermined minimum wages.

(1) Except as provided in subsection (3) of this section, all contracts for the construction, reconstruction, improvement, maintenance, or repair of state highway system roads and bridges and their appurtenances shall be let by the department to the lowest responsible bidder who has been qualified by the

department. The department may reject any or all bids and cause the work to be done as may be directed by the department. If the contractor has furnished the department all required records and reports, the department shall pay to the contractor interest at a rate three percentage points above the average annual Federal Reserve composite prime lending rate for the previous calendar year rounded to the nearest one-tenth of one percent on the amount retained and on the final payment due the contractor beginning sixty days after the work under the contract has been completed as evidenced by the completion date established in the department's letter of tentative acceptance or, when tentative acceptance has not been issued, beginning sixty days after completion of the work and running until the date when payment is tendered to the contractor.

(2) When the department is required by acts of Congress and rules and regulations made by an agent of the United States in pursuance of such acts to predetermine minimum wages to be paid laborers and mechanics employed on highway construction, the Director-State Engineer shall cause minimum rates of wages for such laborers and mechanics to be predetermined and set forth in contracts for such construction. The minimum rates shall be the scale of wages which the Director-State Engineer finds are paid and maintained by at least fifty percent of the contractors in performing highway work contracted with the department unless the Director-State Engineer further finds that such scale of wages so determined would unnecessarily increase the cost of such highway work to the state, in which event he or she shall reduce such determination to such scale of wages as he or she finds is required to avoid such unnecessary increase in the cost of such highway work.

(3) The department, in its sole discretion, may permit a city or county to let state or federally funded contracts for the construction, reconstruction, improvement, maintenance, or repair of state highways, bridges, and their appurtenances located within the jurisdictional boundaries of such city or county, to the lowest responsible bidder prequalified to bid by the department when the work to be let is primarily local in nature and the department determines that it is in the public interest that the contract be let by the city or the county.

Source: Laws 1955, c. 148, § 49, p. 439; Laws 1959, c. 177, § 1, p. 648; Laws 1961, c. 197, § 1, p. 599; Laws 1967, c. 240, § 1, p. 640; Laws 1969, c. 332, § 1, p. 1188; Laws 1980, LB 279, § 3; Laws 1993, LB 539, § 1; Laws 2002, LB 491, § 1.

39-1350 Bids; contracts; letting at offices of Department of Roads; department authorized to act for political subdivision.

The department shall have the authority to act for any political or governmental subdivision or public corporation of this state for the purpose of taking bids or letting contracts for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances. The department, while so acting, may take such bids and let such contracts at the offices of the Department of Roads, Lincoln, Nebraska; *Provided*, that the department has the written consent of the political or governmental subdivision or public corporation where the work is to be done.

Source: Laws 1955, c. 148, § 50, p. 439; Laws 1969, c. 333, § 1, p. 1189.

39-1351 Construction contracts; bidders; qualifications; evaluation by Department of Roads.

Any person desiring to submit to the department a bid for the performance of any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances, which the department proposes to let, shall apply to the department for prequalification not later than ten days before the letting of the contract. The department shall determine the extent of any applicant's qualifications by a full and appropriate evaluation of his experience, equipment, financial resources, and performance record. In determining the qualification of persons to bid on any particular contract, the department shall consider the equipment and resources available for the particular contract contemplated; *Provided*, that the above requirements shall not apply to contracts for repair and maintenance when the estimate of the engineer for such repair and maintenance is less than twenty-five hundred dollars, or of an emergency nature.

Source: Laws 1955, c. 148, § 51, p. 439; Laws 1973, LB 491, § 6.

39-1352 Construction contracts; bidders; statement of qualifications; financial showing; certification by public accountant.

Any person, proposing to bid on a contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances to be let by the department, shall submit to the department, at such times as it may require, a statement showing his qualifications. Such statement shall be under oath and on a standard form to be prepared and supplied by the department. The financial showing required in the statement shall be certified by a certified public accountant or by a public accountant holding a currently valid permit from the Nebraska State Board of Public Accountancy. The statement shall be confidential and only for the use of the department.

Source: Laws 1955, c. 148, § 52, p. 440; Laws 1961, c. 198, § 1, p. 601.

39-1353 Construction contracts; proposal forms, issuance to certain bidders.

Proposal forms for submitting bids, on any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances to be let by the department, shall be issued at the offices of the Department of Roads, Lincoln, Nebraska not later than 5 p.m. of the day before the letting of the contract. Such proposal forms shall be issued only to those persons previously qualified by the department and bids shall be accepted only from such qualified persons.

Source: Laws 1955, c. 148, § 53, p. 440; Laws 1969, c. 333, § 2, p. 1189; Laws 1995, LB 447, § 1.

39-1354 Construction contracts; plans; reproduction; how obtained.

The department, in its discretion, may provide reproductions of the plans prepared by the department for any contract to be let for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances, to any person desiring such reproductions. Such person shall pay to the department a reasonable sum, to be fixed by the department in an amount estimated to cover the actual cost of preparing such a reproduction.

Source: Laws 1955, c. 148, § 54, p. 441.

(i) EQUIPMENT AND MATERIALS

39-1355 Equipment; office accommodations; storage buildings; department's authority and responsibility; limitations.

The department shall have authority to purchase, lease, employ, or acquire by other means, all needed road materials, machinery, equipment, supplies, services, and labor necessary for the construction, reconstruction, maintenance, and control of the state highway system and all tools and materials necessary to keep such machinery and equipment in repair. The department shall also have authority to lease, purchase, construct, or cause to be constructed, buildings for office accommodations, which are necessary in the administration of the duties of the department, and buildings for the storing and housing of materials, machinery, equipment, and supplies; *Provided*, that the department may not construct or cause to be constructed any building exceeding a cost of one hundred thousand dollars without the consent of the Legislature. The maintenance, protection, and control of the materials, machinery, equipment, supplies, tools, and buildings shall be under the authority and responsibility of the department.

Source: Laws 1955, c. 148, § 55, p. 441.

39-1356 Road materials; equipment; acquisition; manufacture; powers.

The department may purchase, lease, construct, or otherwise acquire and may maintain all necessary equipment, machinery, supplies, buildings, and other essential items and employ the necessary labor to remove road materials from the land, to prepare the materials for use, and to manufacture the materials into roadmaking products. The department may sell any surplus of materials or products to any political or governmental subdivision or public corporation of this state or to any contractor who will use such materials or products exclusively for building or maintaining roads, streets, alleys, or structures of a political or governmental subdivision or public corporation of this state. The funds received from the sale of the road materials or products shall be paid into the state treasury and credited to the Highway Cash Fund.

Source: Laws 1955, c. 148, § 56, p. 441; Laws 1986, LB 599, § 9.

39-1357 Construction or repair of highways; salvaged materials; transfer to political subdivisions.

The department is authorized to transfer, upon such terms as the department shall prescribe, to any other political or governmental subdivision or public corporation of this state, any materials salvaged and recovered from and through the construction, reconstruction, or repair of a highway if the salvaged materials are not presently needed by the department to carry on its work.

Source: Laws 1955, c. 148, § 57, p. 442.

39-1358 State highway system; funds; source; assistance by political subdivisions.

Funds for the construction of the state highway system shall be derived from such state revenue as may be provided by law. Any governmental or political subdivision or public corporation of this state may, if it has funds available, assist with such funds in the construction of any part of a highway in such governmental or political subdivision or public corporation, and when such

funds are used, bids shall be received and contracts awarded as provided in sections 39-1348 and 39-1349; *Provided*, that county road dragging funds shall not be used for this purpose.

Source: Laws 1955, c. 148, § 58, p. 442; Laws 1959, c. 167, § 3, p. 610.

(j) MISCELLANEOUS

39-1359 Rights-of-way; inviolate for state and Department of Roads purposes.

The rights-of-way acquired by the department shall be held inviolate for state highway and departmental purposes and no physical or functional encroachments, structures, or uses shall be permitted within such right-of-way limits, except by written consent of the department.

Source: Laws 1955, c. 148, § 59, p. 442.

No physical or functional encroachments upon right-of-way of state highway are permitted without written consent of Department of Roads. State v. Merritt Brothers Sand & Gravel Co., 180 Neb. 660, 144 N.W.2d 180 (1966).

39-1359.01 Rights-of-way; mowing and harvesting of hay; permit; fee; department; powers and duties.

For purposes of this section, the definitions in section 39-1302 apply.

The Department of Roads shall issue permits which authorize and regulate the mowing and harvesting of hay on the right-of-way of highways of the state highway system. The applicant for a permit shall be informed in writing and shall sign a release acknowledging (1) that he or she will assume all risk and liability for hay quality and for any accidents and damages that may occur as a result of the work and (2) that the State of Nebraska assumes no liability for the hay quality or for work done by the permittee. The applicant shall show proof of liability insurance of at least one million dollars. The owner or the owner's assignee of land abutting the right-of-way shall have priority to receive a permit for such land under this section until July 30 of each year. Applicants who are not owners of abutting land shall be limited to a permit for five miles of right-of-way per year. The department shall allow mowing and hay harvesting on or after July 15 of every other year unless haying was completed the year prior due to drought or other declaration. The department shall charge a permit fee in an amount calculated to defray the costs of administering this section. All fees received under this section shall be remitted to the State Treasurer for credit to the Highway Cash Fund. The department shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2007, LB43, § 1.

39-1360 Drainage facilities on highways; use; consent of Department of Roads.

No person may use the drainage facilities of a highway for private purposes without first obtaining the written consent of the department.

Source: Laws 1955, c. 148, § 60, p. 442.

39-1361 Cross or dig up highway; permit by Department of Roads; conditions.

No person, firm, or corporation may dig up, cross, or otherwise use any portion of the state highway system for laying or relaying pipelines, ditches, flumes, pipes, sewers, railways, or any other similar purpose without obtaining a written permit from the department and agreeing to comply with such reasonable regulations as the department shall prescribe. Such regulations may include provisions relevant to an existing portion of the state highway system and also may contemplate future or contingent problems by providing protection to the department from expense or damage arising in the reconstruction or relocation of a portion of the state highway system when such expense or damage would not have existed but for the activity authorized by the permit. No person, firm, or corporation shall construct or install any new pole line, any underground conduit, or any buried cable or erect any new guy wires upon any portion of the state highway right-of-way without obtaining a written consent or permit from the department. The department shall grant such written consent or permits to do any of the things mentioned in this section if the installation of such thing does not interfere with, or cause unreasonable hazards to, the use of the right-of-way for highway purposes. The person, firm, or corporation to whom, or in whose behalf, the permit is given shall pay the cost of placing the highway in as good condition as it was prior to being dug up, crossed, or used and shall, upon the request of the department, furnish the state with a cash deposit or certified check upon a solvent bank, or a surety bond in a guaranty company qualified to do business in Nebraska. The deposit, check, or bond shall be in the amount required by the department and shall be furnished on condition that the sum be forfeited to the state in the event that the conditions of the permit or regulations of the department are breached. A written permit to do any of the things mentioned in this section shall not be required for emergency maintenance or emergency repair work on existing facilities, but in such cases oral consent shall be secured from the Director-State Engineer or his authorized representative as soon as the exigencies of the situation allow.

Source: Laws 1955, c. 148, § 61, p. 442.

39-1362 Cross or dig up highway; violations; penalty.

Any person, who shall dig up, cross, or otherwise use any portion of the state highway system or drainage facilities of the state highway system for laying or relaying pipelines, ditches, flumes, sewers, railways, for constructing, or installing any new pole line, underground conduit, buried cable, or new guy wires, or for any other similar purpose without obtaining a written permit from the department or without complying with the regulations of the department shall be guilty of a Class III misdemeanor. Each and every day that such a violation continues, after the department issues written notification to the violator, may constitute a separate offense.

Source: Laws 1955, c. 148, § 62, p. 443; Laws 1977, LB 40, § 213.

39-1363 Preservation of historical, archeological, and paleontological remains; agreements; funds; payment.

To more effectually preserve the historical, archeological, and paleontological remains of the state, the Department of Roads is authorized to enter into agreements with the appropriate agencies of the state charged with preserving historical, archeological, and paleontological remains to have these agencies remove and preserve such remains disturbed or to be disturbed by highway

construction and to use highway funds, when appropriated, for this purpose. This authority specifically extends to highways which are part of the National System of Interstate and Defense Highways as defined in the Federal Aid Highway Act of 1956, Public Law 627, 84th Congress, and the use of state funds on a matching basis with federal funds therein.

Source: Laws 1959, c. 178, § 1, p. 649.

39-1364 Plans, specifications, and records of highway projects; available to public, when.

The Department of Roads shall, upon the request of any citizen of this state, disclose to such citizen full information concerning any highway construction, alteration, maintenance, or repair project in this state, whether completed, presently in process, or contemplated for future action, and permit an examination of the plans, specifications, and records concerning such project; *Provided*, any information received by the department as confidential by the laws of this state shall not be disclosed. Any person who willfully fails to comply with the provisions of this section shall be guilty of official misconduct. By the provisions of this section, the officials of the Department of Roads will not be required to furnish information on the right-of-way of any proposed highway until such information can be made available to the general public.

Source: Laws 1959, c. 179, § 1, p. 650.

39-1365 State highway system; development; legislative findings.

The Legislature finds and declares that the highways of the state are of the utmost importance to future development within the state and that the following actions are necessary for such development: (1) The accelerated completion of all improvement and expansion projects on the Nebraska segments of the National System of Interstate and Defense Highways; (2) the accelerated completion of improvement projects on state highways with geometric and capacity deficiencies; (3) the resurfacing of highways to protect pavement integrity; (4) the development of a system of expressways, which shall include, but not be limited to, a north-south expressway; and (5) the general upgrading of the state highway system concerning driving surfaces and surfaced shoulders.

Source: Laws 1988, LB 632, § 23.

39-1365.01 State highway system; plans; department; duties; priorities.

The Department of Roads shall be responsible for developing a specific and long-range state highway system plan. The department shall annually formulate plans to meet the state highway system needs of all facets of the state and shall assign priorities for such needs. The department shall, on or before December 1 of each year, present such plans to the Legislature. The plans shall be referred to the appropriate standing committees of the Legislature for review. In establishing priorities, the department shall consider a variety of factors, including, but not limited to, current and projected traffic volume, safety requirements, economic development needs, current and projected demographic trends, and maintenance and enhancement of the quality of life for all Nebraska citizens. The state highway system plan shall include the designation of those portions of the state highway system which shall be expressways.

Source: Laws 1988, LB 632, § 24.

39-1365.02 State highway system; federal funding; maximum use; department; report on system needs and planning procedures.

(1) The Department of Roads shall apply for and make maximum use of available federal funding, including discretionary funding, on all highway construction projects which are eligible for such assistance.

(2) The Department of Roads shall transmit to the Legislature, by December 1 of each year, a report on the needs of the state highway system and the department's planning procedures. Such report shall include:

(a) The criteria by which highway needs are determined;

(b) The standards established for each classification of highways;

(c) An assessment of current and projected needs of the state highway system, such needs to be defined by category of improvement required to bring each segment up to standards. Projected fund availability shall not be a consideration by which needs are determined;

(d) Criteria and data, including factors enumerated in section 39-1365.01, upon which decisions may be made on possible special priority highways for commercial growth; and

(e) A review of the department's procedure for selection of projects for the annual construction program, the five-year planning program, and extended planning programs.

Source: Laws 1988, LB 632, § 25.

39-1366 Repealed. Laws 1973, LB 45, § 125.

(k) FREEWAYS

39-1367 Freeways; declaration of legislative intent.

Recognizing that safe and efficient transportation on modern high-speed highways is a matter of important interest to all the people in the state, the Legislature determines and declares that effective maintenance, operation, and control of freeways is essential to the general welfare of the State of Nebraska and is therefor a matter of statewide concern.

The establishment of laws capable of meeting future requirements as well as present demands of safe and efficient transportation is recognized as an urgent problem and a proper objective of highway legislation.

It is the intent of the Legislature to consider of paramount importance the convenience and safety of the traveling public.

The Legislature hereby determines and declares that sections 39-1337, 39-1339, 39-1367, and 39-1372 are necessary for the preservation of the public health and safety, for promotion of the general welfare, and as a contribution to the national defense.

Source: Laws 1961, c. 184, § 1, p. 548; Laws 1993, LB 370, § 40.

39-1368 Repealed. Laws 1973, LB 45, § 125.**39-1369 Repealed. Laws 1973, LB 45, § 125.****39-1370 Repealed. Laws 1973, LB 45, § 125.**

39-1371 Repealed. Laws 1973, LB 45, § 125.

39-1372 Freeways; maintenance of approach, exit, and frontage roads; lighting facilities.

(1) The department is charged with the maintenance of any freeway, including approach or exit roads thereto or part thereof whether or not such road is situated within or without the limits of any county, village, or city, including cities of the metropolitan and primary classes, except as hereinafter provided otherwise; *Provided*, that responsibility for maintenance of frontage roads shall automatically become the responsibility of the county or city in which they are located unless the department contracts to maintain them.

(2) The responsibility of the department for the maintenance of approach and exit roads shall end at the point where such roads terminate, merge, or intersect with city streets or county roads, except as hereinafter provided.

(3) The department is charged with the maintenance of the separation structure of any bridge situated overhead of a freeway except for ice treatment and removal of snow from such structures; *Provided*, that the department shall not be liable for the maintenance of the approaches to such separation structures or of anything outside the abutments to such separation structures.

(4) The department shall be responsible for construction of lighting facilities upon any part of the roadway of a freeway, including approach or exit roads thereto; *Provided*, that the maintenance and operation of such lighting facilities located within the limits of any city or village shall become the responsibility of such city or village.

(5) Nothing contained in this section shall be construed to prevent the department from entering into special agreements with cities or villages regarding the reconstruction and maintenance of freeways, including approach or exit roads thereto within the limits of such cities or villages.

Source: Laws 1961, c. 184, § 6, p. 552.

39-1373 Repealed. Laws 1973, LB 45, § 125.

39-1374 Repealed. Laws 1973, LB 45, § 125.

39-1375 Repealed. Laws 1973, LB 45, § 125.

39-1376 Repealed. Laws 1973, LB 45, § 125.

39-1377 Repealed. Laws 1973, LB 45, § 125.

39-1378 Repealed. Laws 1973, LB 45, § 125.

39-1379 Repealed. Laws 1973, LB 45, § 125.

39-1380 Repealed. Laws 1973, LB 45, § 125.

39-1381 Repealed. Laws 1973, LB 45, § 125.

39-1382 Repealed. Laws 1973, LB 45, § 125.

39-1383 Repealed. Laws 1973, LB 45, § 125.

39-1384 Repealed. Laws 1973, LB 45, § 125.

39-1385 Repealed. Laws 1973, LB 45, § 125.

39-1386 Repealed. Laws 1973, LB 45, § 125.

39-1387 Repealed. Laws 1973, LB 45, § 125.

39-1388 Repealed. Laws 1973, LB 45, § 125.

39-1389 Repealed. Laws 1973, LB 45, § 125.

(I) STATE RECREATION ROADS

39-1390 State Recreation Road Fund; created; use; preferences; maintenance; investment.

The State Recreation Road Fund is created. The money in the fund shall be transferred by the State Treasurer, on the first day of each month, to the Department of Roads and shall be expended by the Director-State Engineer with the approval of the Governor for construction and maintenance of dustless-surface roads to be designated as state recreation roads as provided in this section, except that for the period beginning July 1, 2003, and ending June 30, 2005, transfers may be made to the General Fund at the direction of the Legislature. Except as to roads under contract as of March 15, 1972, only those roads, excluding state highways, giving direct and immediate access to or located within state parks, state recreation areas, or other recreational or historical areas, shall be eligible for designation as state recreation roads. Such eligibility shall be determined by the Game and Parks Commission and certified to the Director-State Engineer, who shall, after receiving such certification, be authorized to commence construction on such recreation roads as funds are available. After construction of such roads they shall be shown on the map provided by section 39-1311. Preference in construction shall be based on existing or potential traffic use by other than local residents. Unless the State Highway Commission otherwise recommends, such roads upon completion of construction shall be incorporated into the state highway system. If such a road is not incorporated into the state highway system, the Department of Roads and the county within which such road is located shall enter into a maintenance agreement establishing the responsibility for maintenance of the road, the maintenance standards to be met, and the responsibility for maintenance costs. Any money in the State Recreation Road Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1963, c. 348, § 2, p. 1119; Laws 1965, c. 501, § 1, p. 1595; Laws 1965, c. 225, § 1, p. 649; Laws 1969, c. 584, § 42, p. 2369; Laws 1972, LB 1131, § 1; Laws 1995, LB 7, § 36; Laws 2003, LB 408, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

39-1390.01 State Recreation Road Fund; road projects authorized.

Section 39-1390 shall not prevent the expenditure of funds from the State Recreation Road Fund on road projects (1)(a) that begin upon or terminate within state highway rights-of-way or (b) that are for intersections, interchang-

es, or connecting ramps located within state rights-of-way, designed to connect roads of the state highway system to recreation roads, and (2) that are to be constructed as part of a recreation road improvement project.

Source: Laws 1988, LB 814, § 1.

39-1391 Exterior access roads; interior service roads; plans; reviewed annually; report; contents.

The Game and Parks Commission shall develop and file with the Governor and the Legislature a one-year plan and a long-range five-year plan of proposed construction and improvements for all exterior access roads and interior service roads as provided in section 39-1390, based on priority of needs and calculated to contribute to the orderly development of an integrated system of roads with the facilities maintained or managed by the Game and Parks Commission. The first such plan shall be filed on or before January 1, 1974. The plans shall be reviewed and extended annually, on or before January 1 of each year, so that there shall always be a current one-year and five-year plan on file. All plans shall specify the criteria employed in setting the priorities and shall also identify any additional recreation road requirements which may exist but are not reflected in the one-year and five-year plans. The commission shall also, at the time it files such plans and extensions thereof, report the construction and improvements certified during each of the two immediately preceding calendar years.

Source: Laws 1973, LB 374, § 1.

39-1392 Exterior access roads; interior service roads; Department of Roads; develop and file plans with Governor and Legislature; reviewed annually.

The Department of Roads shall develop and file with the Governor and the Legislature a one-year and a long-range five-year plan of scheduled design, construction, and improvement for all exterior access roads and interior service roads as certified to it by the Game and Parks Commission. The first such plans shall be filed on or before January 1, 1974. The plans shall be reviewed and extended annually, on or before January 1 of each year, so that there shall always be a current one-year and five-year plan on file. The department shall also, at the time it files such plans and extensions thereof, report the design, construction, and improvement accomplished during each of the two immediately preceding calendar years.

Source: Laws 1973, LB 374, § 2.

ARTICLE 14

COUNTY ROADS. GENERAL PROVISIONS

Cross References

Bridge construction and repair, bonds, see sections 23-397 and 23-398.

Section

- 39-1401. Terms, defined.
- 39-1402. Public roads; supervision by county board.
- 39-1403. Roads on county or township line; deviation from line.
- 39-1404. Public grounds, interests in; cannot arise by operation of law.
- 39-1405. Streets in unincorporated villages and sanitary and improvement districts; powers and duties of county or township authorities; liability for damages.
- 39-1406. Repealed. Laws 1985, LB 393, § 18.

Section

- 39-1407. County road improvement projects; lettings; procedure; county board may authorize Department of Roads to conduct; contractors' bonds.
- 39-1408. County or township roads; emergencies; authority of county or township boards.
- 39-1409. Labor on roads; wages fixed by county board.
- 39-1410. Section lines declared roads; opening; damages, appraisal and allowance; government corners, how perpetuated.
- 39-1411. Road and bridge records, who must keep; carrying capacity posted on bridges.
- 39-1412. County bridges; loads exceeding posted capacity; no damage recovery; penalty.

39-1401 Terms, defined.

As used in Chapter 39, articles 14 to 20, except sections 39-1520.01 and 39-1908, unless the context otherwise requires:

- (1) County board shall mean the board of county commissioners in commissioner-type counties and the board of county supervisors in township counties;
- (2) Public roads shall mean all roads within this state which have been laid out in pursuance of any law of this state, and which have not been vacated in pursuance of law, and all roads located and opened by the county board of any county and traveled for more than ten years; and
- (3) County road unit system shall mean the administration of county and township roads as provided in sections 39-1513 to 39-1518.

Source: Laws 1957, c. 155, art. I, § 1, p. 508.

39-1402 Public roads; supervision by county board.

General supervision and control of the public roads of each county is vested in the county board. The board shall have the power and authority of establishment, improvement, maintenance and abandonment of public roads of the county and of enforcement of the laws in relation thereto as provided by the provisions of Chapter 39, articles 14 to 20, except sections 39-1520.01 and 39-1908.

Source: Laws 1957, c. 155, art. I, § 2, p. 509.

This section and section 31-740 authorize concurrent authority in a county and a sanitary and improvement district to maintain and improve public roads within the boundaries of the sanitary and improvement district. SID No. 2 of Stanton County v. County of Stanton, 252 Neb. 731, 567 N.W.2d 115 (1997).

This section outlines a county's authority over public roads within the county. State ex rel. Scherer v. Madison Cty. Comrs., 247 Neb. 384, 527 N.W.2d 615 (1995).

The County Board is vested with general supervision and control of the public roads located in its county as provided in this section. Art-Kraft Signs, Inc. v. County of Hall, 203 Neb. 523, 279 N.W.2d 159 (1979).

The statutory definition of public roads makes no distinction between county roads and township roads for the general purpose of this section. Art-Kraft Signs, Inc. v. County of Hall, 203 Neb. 523, 279 N.W.2d 159 (1979).

39-1403 Roads on county or township line; deviation from line.

Any public road that is or shall hereafter be laid out on a county or township line shall be held to be a road on a county or township line, although, owing to the topography of the ground along the county or township line, or at the crossing of any stream of water, the proper authorities, in establishing or locating such road, may have located a portion of the same to one side of such county or township line.

Source: Laws 1957, c. 155, art. I, § 3, p. 509.

39-1404 Public grounds, interests in; cannot arise by operation of law.

No privilege, franchise, right, title, right of user, or other interest in or to any street, avenue, road, thoroughfare, alley or public grounds in any county, city, municipality, town, or village of this state, or in the space or region under, through or above any such street, avenue, road, thoroughfare, alley, or public grounds, shall ever arise or be created, secured, acquired, extended, enlarged or amplified by user, occupation, acquiescence, implication, or estoppel.

Source: Laws 1957, c. 155, art. I, § 4, p. 509.

Title by prescription cannot be obtained to all or any part of state highway. State v. Merritt Brothers Sand & Gravel Co., 180 Neb. 660, 144 N.W.2d 180 (1966).

39-1405 Streets in unincorporated villages and sanitary and improvement districts; powers and duties of county or township authorities; liability for damages.

(1) All public streets of unincorporated villages are a part of the public roads and shall be worked and maintained by the respective county or township authorities.

(2) The county board may, after the clearance of snow and ice from the county road system, clear snow and ice from all public streets of incorporated sanitary and improvement districts in the same manner as if such streets were part of the county road system.

Any county board performing such snow and ice clearance in a sanitary and improvement district shall not be held liable for any damages arising from such snow and ice clearance unless damages arise as a result of gross negligence.

(3) The county board of commissioners in counties having a population of sixty thousand inhabitants or more may enter into contracts with incorporated associations of homeowners representing at least fifty individual housing units which are located wholly within the county and are not part of any sanitary and improvement district or incorporated municipality for the provision of road maintenance services or snow and ice removal services on nonpublic roads which serve the homeowner association. Such contracts shall provide for payment to the county of an amount which fairly represents the cost to the county of providing such additional services.

Source: Laws 1957, c. 155, art. I, § 5, p. 509; Laws 1975, LB 211, § 1; Laws 1986, LB 1131, § 1; Laws 1994, LB 501, § 5.

Subsection (1) of this section requires counties to maintain the public roads within unincorporated villages. Subsection (2) of this section permits, but does not obligate, a county to perform snow and ice clearance in a sanitary and improvement district. State ex rel. Scherer v. Madison Cty. Comrs., 247 Neb. 384, 527 N.W.2d 615 (1995).

39-1406 Repealed. Laws 1985, LB 393, § 18.

39-1407 County road improvement projects; lettings; procedure; county board may authorize Department of Roads to conduct; contractors' bonds.

Whenever contracts are to be let for road improvements it shall be the duty of the county board to cause to be prepared and filed with the county clerk an estimate of the nature of the work and the cost thereof. After such estimate has been filed, bids for such contracts shall be advertised by publication of a notice thereof once a week for three consecutive weeks in a legal newspaper of the county prior to the date set for receiving bids. Bids shall be let to the lowest responsible bidder. The board shall have the discretionary power to reject any and all bids for sufficient cause. If all bids are rejected, the county board shall

have the power to negotiate any contract for road improvements, but the county board shall adhere to all specifications that were required for the initial bids on contracts. The board shall have the discretionary power to authorize the Department of Roads to take and let bids on behalf of the county at the offices of the department in Lincoln, Nebraska. When the bid is accepted the bidder shall enter into a sufficient bond for the use and benefit of the county, precinct, or township, for the faithful performance of the contract, and for the payment of all laborers employed in the performance of the work, and for the payment of all damages which the county, precinct, or township may sustain by reason of any failure to perform the work in the manner stipulated. It shall be the duty of the county to determine whether or not the work is performed in keeping with such contract before paying for the same.

Source: Laws 1957, c. 155, art. I, § 7, p. 510; Laws 1972, LB 1058, § 12; Laws 1975, LB 114, § 2.

39-1408 County or township roads; emergencies; authority of county or township boards.

When an emergency or unusual condition exists requiring immediate action in order to preserve a county or township road or provide for safe conditions, the county board as to county roads within the county and the township board as to township roads within the township, or some person to whom such board has delegated such authority, may cause necessary repairs to be made, necessary services to be provided, or may contract for such repairs, or services without calling for competitive bids.

Source: Laws 1957, c. 155, art. I, § 8, p. 510.

39-1409 Labor on roads; wages fixed by county board.

Any person performing labor on roads shall receive the wages fixed by the county board in each county for such labor.

Source: Laws 1957, c. 155, art. I, § 9, p. 511.

39-1410 Section lines declared roads; opening; damages, appraisal and allowance; government corners, how perpetuated.

The section lines are hereby declared to be public roads in each county in the state, and the county board may whenever the public good requires it open such roads without any preliminary survey and cause them to be worked in the same manner as other public roads; *Provided*, any damages claimed by reason of any such road shall be appraised and allowed in the manner provided by law. The county board shall cause existing government corners along such line to be perpetuated by causing to be planted monuments of some durable material, with suitable witnesses, and causing a record to be made of the same and, if government corners are lost or obliterated, the county board shall cause the corners to be located in the manner provided in the manual of instruction for government surveys. The county board shall cause such work to be performed by the county surveyor or, if there is no county surveyor in the county, by some other competent land surveyor.

Source: Laws 1957, c. 155, art. I, § 10, p. 511.

A county cannot open a section line road without giving notice to the landowners, hearing the landowners' claim for damages, or appointing appraisers and making provisions for the payment of the landowners' damages; if it attempts to do so

it is trespassing. Olson v. Bonham, 212 Neb. 548, 324 N.W.2d 260 (1982).

39-1411 Road and bridge records, who must keep; carrying capacity posted on bridges.

The county highway superintendent or some other qualified person designated by the county board shall keep in his office a road record which shall include a record of the proceedings in regard to the laying out, establishing, changing, or discontinuing of all roads in the county hereafter established, changed or discontinued, and a record of the cost and maintenance of all such roads. Such person shall record in the bridge record, a record of all county bridges and culverts showing number, location and description of each, and a record of the cost of construction and maintenance of all such bridges and culverts. Such person shall cause to be firmly posted or attached upon each bridge in a conspicuous place at each end thereof a board or metal sign showing the carrying capacity or weight which the bridge will safely carry or bear.

Source: Laws 1957, c. 155, art. I, § 11, p. 511.

Cross References

Road record, duties of county clerk, see section 23-1305.

County held liable for injuries resulting from collapse of weight limit sign. Hansmann v. County of Gosper, 207 Neb. 659, 300 N.W.2d 807 (1981).
bridge where county highway superintendent failed to replace a

39-1412 County bridges; loads exceeding posted capacity; no damage recovery; penalty.

Any person driving across or going upon any county bridge with a greater weight than the carrying capacity or weight posted or attached thereupon as provided in section 39-1411, shall recover no damages from the county because of any accident or injury which may happen to him upon such bridge. Such person shall, for entering upon any such bridge with a greater weight than the carrying capacity or weight posted thereupon as provided in section 39-1411, be guilty of a Class III misdemeanor.

Source: Laws 1957, c. 155, art. I, § 12, p. 512; Laws 1977, LB 40, § 214.

ARTICLE 15

COUNTY ROADS. ORGANIZATION AND ADMINISTRATION

(a) COUNTY HIGHWAY BOARD

- Section
- 39-1501. Highway superintendent or road unit system counties; county boards; general powers and duties.
- 39-1502. Highway superintendent; optional appointment in certain commissioner counties; protests; election.
- 39-1502.01. Highway superintendent; abolition; procedure.
- 39-1503. Highway superintendent or road unit system counties; county boards; duties.
- 39-1504. Commissioner counties; no highway superintendent; county board or designee to perform duties.
- 39-1505. Bridges, numbering; duties of county board; highway history, highway superintendent to keep.

(b) COUNTY HIGHWAY SUPERINTENDENT

- 39-1506. County highway superintendent; qualifications.
- 39-1507. Highway superintendent; powers; bond; annual inventory.

§ 39-1501

HIGHWAYS AND BRIDGES

Section

- 39-1508. Highway superintendent; duties.
- 39-1509. Highway superintendent; interest in public contracts prohibited; reports to county board; neglect of duty; removal from office.
- 39-1510. Highway superintendent; office; plat records of public roads.
- 39-1511. Highway superintendent; construction work, duty to superintend; road claims; approval.
- 39-1512. Highway superintendent; annual report; contents.

(c) COUNTY ROAD UNIT SYSTEM

- 39-1513. County road unit system; optional for township counties; procedure for adoption.
- 39-1514. County road unit system; abandonment; outstanding contracts.
- 39-1515. County road unit system; abandonment; election.
- 39-1516. County road unit system; adoption; transfer of township funds.
- 39-1517. County road unit system; adoption; township equipment and material, transfer and appraisal; outstanding township contracts.
- 39-1518. County road unit system; adoption; settlements with townships; warrants and tax levy.

(d) ROADS IN COUNTIES UNDER TOWNSHIP ORGANIZATION

- 39-1519. Township counties without county road unit system; sections applicable.
- 39-1520. Township highway superintendent; powers; compensation; failure of overseer to obey.
- 39-1520.01. Township counties without county road unit system; road districts; creation.
- 39-1521. Bridges over streams; construction; maintenance; expense borne by county.
- 39-1522. Township roads; damages for right-of-way; expenses; payment from general road fund; division of tax levy; expenditure.
- 39-1523. Township road contracts; payment from township fund; bond issues for bridge construction or repair.
- 39-1524. Township roads; construction or repair; appropriations from county treasury; how obtained.
- 39-1524.01. Repealed. Laws 1973, LB 75, § 20.
- 39-1525. Repealed. Laws 1973, LB 75, § 20.
- 39-1526. Repealed. Laws 1973, LB 75, § 20.
- 39-1527. Change from commissioner to township form of government; use of county road fund for maintenance of township roads.

(a) COUNTY HIGHWAY BOARD

39-1501 Highway superintendent or road unit system counties; county boards; general powers and duties.

The county board, in commissioner-type counties having a county highway superintendent and in township-type counties having adopted a county road unit system as provided in sections 39-1513 to 39-1518, shall:

(1) Have general supervision over all the duties and responsibilities of the county highway superintendent and shall make necessary policies and regulations to effect an efficient road administration in conformity with the laws of the State of Nebraska;

(2) Appoint and fix the salary of a county highway superintendent in counties having a population of less than one hundred thousand inhabitants according to the most recent official United States census; *Provided*, that in counties having a population of less than eighteen thousand inhabitants and less than five commissioners the appointment of a county highway superintendent shall be optional with the county board unless a petition is filed with the county clerk as provided by section 39-1502; *and provided further*, that the county board

may appoint and fix the salary of a county highway superintendent jointly with one or more other counties and determine the portion of the salary to be paid by the county for its share of the use of a county highway superintendent serving the cooperating counties;

(3) Have authority to coordinate in an effective manner the highway programs and activities of the county with the related activities of the State of Nebraska and all governmental subdivisions thereof;

(4) Have authority to enter into agreements with the federal government or any department or agency of the federal government, the state or any political or governmental subdivision or public corporation of this state, or with a citizen or group of citizens of this state respecting the planning, designating, financing, establishing, constructing, improving, maintaining, using, altering, relocating or vacation of highways, roads, streets, connecting links or bridges, and in such instances may cooperate with the state or with such subdivisions or public corporations on such terms as may be mutually agreed upon; and

(5) Maintain roads in unincorporated areas if such roads are dedicated to the public and are first improved to minimum standards as established by the county board. In a zoning area of a municipality such standards shall be the higher of those established either by the county or the municipality. Future improvements may be undertaken pursuant to the provisions of Chapter 39, article 16.

Source: Laws 1957, c. 155, art. II, § 1, p. 512; Laws 1974, LB 893, § 1.

39-1502 Highway superintendent; optional appointment in certain commissioner counties; protests; election.

The county board, in a county having a population of less than eighteen thousand inhabitants and less than five commissioners, shall appoint and fix the salary of a county highway superintendent whenever a petition for such appointment is signed by ten percent of the legal voters in the county voting for Governor at the last general election and is filed with the county clerk. If a petition protesting such appointment is signed by ten percent of the legal voters in the county and is filed with the county clerk within ninety days from the filing date of the petition for appointment, the county board shall submit the question to the electors. Within ten days from the filing of the petition for appointment, the county board shall publish notice that such petition has been filed, and such notice shall be published once a week for three consecutive weeks in a legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county. If no petition in protest is filed or if a majority of the votes cast are in favor of appointing a county highway superintendent, the county board shall appoint and fix the salary of such superintendent within six months from the filing of the petition for appointment or from the date of balloting as the case may be.

Source: Laws 1957, c. 155, art. II, § 2, p. 513; Laws 1986, LB 960, § 27.

39-1502.01 Highway superintendent; abolition; procedure.

When a county highway superintendent has been appointed following an election held pursuant to section 39-1502, such position may be abolished at

any general election after two years from the date of such election in the same manner as the appointment was approved.

Source: Laws 1961, c. 199, § 1, p. 602.

39-1503 Highway superintendent or road unit system counties; county boards; duties.

It shall be the duty of the county board in commissioner-type counties having a county highway superintendent and in township-type counties having adopted a county road unit system to:

(1) Give notice to the public of the date set for public hearings upon the proposed county highway program of the county highway superintendent for the forthcoming year by publication once a week for three consecutive weeks in a legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county. The notice shall clearly state the purpose, time, and place of such public hearings;

(2) Adopt a county highway annual program no later than March 1 of each year which shall include a schedule of construction, repair, and maintenance projects and the order of priority of such projects to be undertaken and carried out by the county and a list of equipment to be purchased and the priority of such purchases, within the limits of the estimated funds available during the next twelve months;

(3) Adopt standards to be applied in road and bridge repair, maintenance, and construction;

(4) Advertise for and take and let bids for all or any portion of the county road work when letting bids, except that when the Department of Roads takes bids on behalf of the county, the county shall have authority to permit such bids to be taken and let at the offices of the Department of Roads, Lincoln, Nebraska; and

(5) Cause investigations, studies, and inspections to be made, hold public hearings, and do all other things necessary to carry out the duties imposed upon it by law.

Source: Laws 1957, c. 155, art. II, § 3, p. 514; Laws 1969, c. 333, § 3, p. 1190; Laws 1986, LB 960, § 28.

39-1504 Commissioner counties; no highway superintendent; county board or designee to perform duties.

In commissioner-type counties not having a county highway superintendent, the county board, or some other qualified person designated by the county board, shall assume and perform the powers and duties of the county highway superintendent.

Source: Laws 1957, c. 155, art. II, § 4, p. 515.

39-1505 Bridges, numbering; duties of county board; highway history, highway superintendent to keep.

For the purpose of assisting the county highway superintendent in making and keeping the bridge record, the county board shall adopt a system of numbering all county bridges, and place and keep on each bridge a plain and substantial number, and furnish to the county highway superintendent a complete inventory of all bridges so numbered. The superintendent shall keep all

maps, charts, plans, and specifications of such roads and bridges so as to preserve, as nearly as possible, a complete history of the roads of the county.

Source: Laws 1957, c. 155, art. II, § 5, p. 515.

(b) COUNTY HIGHWAY SUPERINTENDENT

39-1506 County highway superintendent; qualifications.

Any person, whether or not a resident of the county, who is a duly licensed engineer in this state, any firm of consulting engineers duly licensed in this state, or any other person who is a competent, experienced, practical road builder shall be qualified to serve as county highway superintendent, except that no member of the county board shall be eligible for appointment. In counties having a population of fifty thousand but less than one hundred fifty thousand inhabitants according to the most recent official United States census, the county surveyor shall perform all the duties and possess all the powers and functions of the county highway superintendent. In counties having a population of one hundred fifty thousand or more inhabitants, the county engineer shall serve as county highway superintendent.

Source: Laws 1957, c. 155, art. II, § 6, p. 515; Laws 1982, LB 127, § 9; Laws 1986, LB 512, § 3.

39-1507 Highway superintendent; powers; bond; annual inventory.

The county highway superintendent shall have control, government, and supervision of all the public roads and bridges in the county under the general supervision and control of the county board. Before entering upon the duties of his office he shall execute to the county a bond in the sum of five thousand dollars, to be approved by the county board, conditioned for the faithful performance of his duties, and to account for all funds and property that may come into his possession. The county highway superintendent shall prepare and file an annual inventory statement of county personal property in his custody or possession as provided in sections 23-346 to 23-350.

Source: Laws 1957, c. 155, art. II, § 7, p. 515.

39-1508 Highway superintendent; duties.

It shall be the duty of the county highway superintendent to:

(1) Submit to the county board no later than February 1 of each year a proposed annual program, to be known as the county road annual program, proposing a schedule of construction, repair, maintenance and supervision of county roads and bridges, including federal-aid secondary road projects and a list of equipment and material purchases to be undertaken and carried out by the county within the limits of the estimated funds of the county during the next twelve months;

(2) File with the county clerk no later than February 1 of each year a revised and current map of the county roads clearly distinguishing the primary and secondary roads and indicating the past year's improvements thereon; and

(3) Undertake the projects contained in the county road annual program in the order therein stated, and when requested by the county board report the projects completed, the projects in construction, and equipment and material purchased, the amounts expended upon roads and bridges and the sum remain-

ing to be expended; *Provided*, that in case of an emergency deviations from the adopted program may be authorized by the unanimous vote of the county board.

Source: Laws 1957, c. 155, art. II, § 8, p. 516.

39-1509 Highway superintendent; interest in public contracts prohibited; reports to county board; neglect of duty; removal from office.

The county highway superintendent shall not be interested directly or indirectly in any contract with the county, and shall render at any time an accounting of his acts and doings to the county board when requested by it so to do; and he may be removed from office by such board at any time upon failure to perform the duties of his office.

Source: Laws 1957, c. 155, art. II, § 9, p. 516.

39-1510 Highway superintendent; office; plat records of public roads.

The county highway superintendent shall be provided by the county with a suitable office which may be in the office or room occupied by the county board or elsewhere, as the board may choose, and he shall keep in his office plat records showing accurately all public roads and highways established in the county.

Source: Laws 1957, c. 155, art. II, § 10, p. 517.

39-1511 Highway superintendent; construction work, duty to superintendent; road claims; approval.

The county highway superintendent shall be the superintendent of construction of all roads, bridges, culverts, road ditch improvements, and their maintenance, and make or cause to be made plans and specifications, when requested by the county board, for all road improvements, bridges, and culverts. All bills for payment of work on the county roads, bridges, culverts, or ditches shall be approved by the county highway superintendent before being allowed by the county board, and charged against the road or bridge to which it belongs and upon which it was expended, in the bridge and road records kept in the office of the superintendent.

Source: Laws 1957, c. 155, art. II, § 11, p. 517.

39-1512 Highway superintendent; annual report; contents.

The county highway superintendent prior to February 1 of each year shall file a written annual report with the county board of all work performed in constructing, improving and maintaining the public roads, bridges, culverts, and ditches of the county, showing the amount of funds available for road work during the year, the amount expended and the balance; the amount of funds available from the state as federal matching funds, if any, the amount thereof used by the county; the number of miles of road established during the year and the location thereof; and the equipment and material purchased or otherwise obtained or disposed of.

Source: Laws 1957, c. 155, art. II, § 12, p. 517.

(c) COUNTY ROAD UNIT SYSTEM

39-1513 County road unit system; optional for township counties; procedure for adoption.

In the event of the filing with the county clerk of a petition signed by ten percent of the qualified electors in the county, the board of county supervisors shall adopt the provisions of the county road unit system by resolution at the next regular meeting of the board. The resolution shall be published once a week for three consecutive weeks in a legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county. The adoption of the county unit plan shall take effect ninety days after the date of the first publication of the resolution providing for such adoption or any later date designated by the resolution, but not later than one year after the date of the first publication of the resolution unless before the effective date of adoption there is filed with the county clerk a petition signed by ten percent of the qualified electors in the county protesting such adoption. In that event, the board of county supervisors shall submit the question of a county road unit system to the electors of the respective counties.

Source: Laws 1957, c. 155, art. II, § 13, p. 517; Laws 1959, c. 167, § 4, p. 610; Laws 1986, LB 960, § 29.

39-1514 County road unit system; abandonment; outstanding contracts.

Any county which adopts the county road unit system may at any general election after two years from the date of such adoption abandon the county road unit system and return to the county and township system; *Provided*, that every outstanding contract made by such county while operating under the provisions of the county road unit system be fully satisfied and complied with.

Source: Laws 1957, c. 155, art. II, § 14, p. 518.

39-1515 County road unit system; abandonment; election.

The election to determine whether the county road unit system shall be abandoned shall be called by the board of county supervisors upon the presentation of a petition signed by at least ten percent of the qualified electors of the county. Such petition shall be filed by the petitioners with the county clerk. At any such election, the votes shall be taken for and against the county road unit system and if the majority of the votes cast at such election be against the county road unit system, then the county shall be restored to the county and township road system.

Source: Laws 1957, c. 155, art. II, § 15, p. 518.

39-1516 County road unit system; adoption; transfer of township funds.

Upon the adoption of the county road unit system in any county, the township board of any township in such county shall forthwith pay over to the county treasurer of such county any and all unused money or funds or surplus funds in the hands of such township board which have been received or acquired by such township from any source for road purposes or for the purchase of machinery, equipment, or material for the construction and maintenance of roads. Upon receipt of said funds and money, the county treasurer shall credit the same to a special fund for each such township and the board of county supervisors shall expend the special fund for the construction and

maintenance of roads in the township from which it was received, which expenditure shall be in addition to funds expended by the county in such township from the regular county road and bridge fund. The county treasurer shall likewise credit and transfer to the special fund of each township all tax money in his hands on the date the county road unit system is adopted which were received by him in payment of taxes levied by such township for road purposes and all such taxes thereafter collected by him, and he shall likewise credit and transfer to the special fund all other money in his hands on the date of adoption of the county road unit system which were received by him for the use of such township for road purposes.

Source: Laws 1957, c. 155, art. II, § 16, p. 518.

39-1517 County road unit system; adoption; township equipment and material, transfer and appraisal; outstanding township contracts.

Upon the adoption of the county road unit system in any county, the township board of any township in such county shall forthwith turn over and deliver to the board of county supervisors of such county any and all road machinery, equipment, and material which such township has acquired for the purpose of construction and maintaining township roads. Upon making such delivery, the township board shall file with the county clerk the name of some qualified elector of such township who shall be an appraiser on behalf of the township of such machinery, equipment, or material. Within ten days, after the filing of the name of the township elector with the county clerk, the board of county supervisors shall file with the county clerk the name of a qualified elector of the county who does not reside in such township who shall be the representative of the county as an appraiser of such machinery, equipment, or material. Within five days thereafter, the township appraiser and county appraiser shall meet and select a third appraiser. The three appraisers shall constitute a board of appraisers for the purpose of fixing the value of the road machinery, equipment, and material so delivered to the county by the township and they shall forthwith make such appraisal. In making such appraisal, the board of appraisers shall deduct the amount, if any, which the township board owes for any such machinery, equipment, and material to any person from whom leased or purchased. The report of such appraisal shall be certified by the board of appraisers and filed in the office of the county clerk and the county treasurer. Each of such appraisers shall receive the sum of fifteen dollars for making such appraisal which shall be paid by the board of supervisors from the county road and bridge fund. Within two years after the filing of such appraisal, the board of supervisors shall expend for the construction and maintenance of roads in the township from which such road machinery, equipment, and material was received an amount of money equivalent to the appraised value of such machinery, equipment, and material which expenditure shall be in addition to funds expended by the county in such township from the regular county road and bridge fund. If any of such machinery, equipment, and material so delivered to the county was purchased or leased by the township under a contract of purchase or lease and such contracts provide that the township upon making further payments would receive title to the machinery, equipment, and material, the county shall assume the contracts as to future payments and be liable therefor, which payments shall be made from the county road and bridge fund. Upon the adoption of the county road unit system all copies of

such contracts in the hands of the township board shall forthwith be delivered by the township clerk to the county clerk.

Source: Laws 1957, c. 155, art. II, § 17, p. 519.

39-1518 County road unit system; adoption; settlements with townships; warrants and tax levy.

If the county board of supervisors determines that there are insufficient funds in the county road and bridge fund to compensate a township for the transfer of road machinery, equipment, and material for the construction and maintenance of roads within that township or to pay the cost of making payments on the contracts of purchase or lease of road machinery, equipment, and material assumed by the county under section 39-1517, the board may issue registered warrants for the purpose of paying such costs. The total amount of such warrants issued shall not exceed the total appraised value of all such road machinery and equipment received from all townships plus the amount necessary to make such payments on the contracts of purchase or lease of road machinery, equipment, and material assumed by such county. The proceeds received from the sale of the warrants shall only be used for the purpose for which the warrants are authorized to be issued. Whenever any county board of supervisors issues warrants under this section, the board shall levy a tax upon the taxable value of the taxable property in such county at the first tax-levying period after such warrants are issued sufficient to pay the warrants and the interest on such warrants. If the board deems it advisable not to make all of such levy in any one year, then the board may make an annual tax levy at not more than the next three tax-levying periods occurring after the issuance of the warrants, the total of which levies shall be sufficient to pay the warrants and the interest.

Source: Laws 1957, c. 155, art. II, § 18, p. 520; Laws 1992, LB 1063, § 35; Laws 1992, Second Spec. Sess., LB 1, § 35.

(d) ROADS IN COUNTIES UNDER TOWNSHIP ORGANIZATION

39-1519 Township counties without county road unit system; sections applicable.

The provisions of sections 39-1519 to 39-1527 shall relate only to those counties under the township organization not operating under a county road unit system as provided in sections 39-1513 to 39-1518.

Source: Laws 1957, c. 155, art. II, § 19, p. 521; Laws 1959, c. 167, § 5, p. 610.

Cross References

For other applicable provisions in township counties not having road unit system, see sections 23-228 and 23-265.

39-1520 Township highway superintendent; powers; compensation; failure of overseer to obey.

All township road and culvert work shall be under the general supervision of the township board, except as hereinafter provided in this section. At the first regular board meeting in each year the board shall select one of its number to be township highway superintendent, under whose direction all township road and culvert work shall be done. Compensation for directing road and culvert

work shall be fixed at the annual town meeting. If any overseer shall neglect or refuse to obey the directions of the township highway superintendent, he shall be subject to removal by the township board, and his office may be declared vacant and be filled by appointment by the township board, which appointee shall hold office until his successor is elected.

Source: Laws 1957, c. 155, art. II, § 20, p. 521; Laws 1959, c. 181, § 10, p. 657.

39-1520.01 Township counties without county road unit system; road districts; creation.

The county board under township organization in counties not operating under the county road unit system shall divide the county, except the portion occupied by the cities and incorporated villages, into as many road districts as may be necessary, and alter the boundaries thereof as may seem proper; *Provided*, in no case shall any road district be so constituted as to be within the limits of two distinct voting precincts or townships.

Source: Laws 1959, c. 181, § 11, p. 658; Laws 1973, LB 75, § 19.

Cross References

For road districts in commissioner counties having seven or more commissioners, see section 39-1637.

39-1521 Bridges over streams; construction; maintenance; expense borne by county.

In counties under township organization the expense of building, maintaining, and repairing bridges over streams on all public roads of the county or township shall be borne exclusively by the county within which such bridges are located.

Source: Laws 1957, c. 155, art. II, § 21, p. 522.

39-1522 Township roads; damages for right-of-way; expenses; payment from general road fund; division of tax levy; expenditure.

The payment of damages for the right-of-way of any public road and the payment for services of county highway superintendent, surveyor, chainmen, and other persons engaged in locating, establishing, or altering any public road, if the road be finally established or altered as provided by law, shall be paid by the county treasurer out of the general road fund of the county upon warrants drawn thereon in the manner provided by law for the other payments out of such fund. Where cities and villages are located within the boundaries of any township, one-half of all money collected from the levy, except that part of the levy raising funds for township library or cemetery purposes, provided in section 23-259 on property within the corporate limits of such cities and villages, shall be paid by the county treasurer to the treasurer of such city or village, and such money when paid to the treasurer thereof shall be expended by the proper officers thereof for maintenance and repair of the streets and alleys of such city or village.

Source: Laws 1957, c. 155, art. II, § 22, p. 522; Laws 1959, c. 181, § 12, p. 658; Laws 1965, c. 226, § 1, p. 650.

39-1523 Township road contracts; payment from township fund; bond issues for bridge construction or repair.

Where any contract is let by the township board, the expense of which is to be borne exclusively by the township, it shall be paid from the township fund; *Provided*, if, under any law of this state, bonds are voted to aid in the building or repairing of any bridge, the expense shall be paid by such bonds or the proceeds thereof.

Source: Laws 1957, c. 155, art. II, § 23, p. 522.

39-1524 Township roads; construction or repair; appropriations from county treasury; how obtained.

When it shall be necessary to build, construct, or repair any road in any township, which would be an unreasonable burden to the same, the cost of which will be more than can be raised in one year by the levy provided in section 23-259, the township board shall present a petition to the county board of the county in which such township is situated, praying for an appropriation from the county treasury to aid in the building, constructing, or repairing of such road, and such county board may, by a majority vote of all the elected members thereof, make an appropriation of so much for that purpose as in its judgment the nature of the case requires and the funds of the county will justify; such appropriation to be expended under the supervision of an authorized agent or agents of the county, if the county board shall so order. In such case, where the county grants aid as provided in this section, the contract shall be let by the township board, under the provisions of law relating to letting contracts by county boards.

Source: Laws 1957, c. 155, art. II, § 24, p. 522.

39-1524.01 Repealed. Laws 1973, LB 75, § 20.

39-1525 Repealed. Laws 1973, LB 75, § 20.

39-1526 Repealed. Laws 1973, LB 75, § 20.

39-1527 Change from commissioner to township form of government; use of county road fund for maintenance of township roads.

It shall be lawful in all counties changing from the commissioner form of government to township organization, for such counties to continue for a period of one year after adoption of township organization to use funds from the county road fund to maintain township roads.

Source: Laws 1957, c. 155, art. II, § 27, p. 523.

ARTICLE 16

COUNTY ROADS. ROAD IMPROVEMENT DISTRICTS

Cross References

Municipal annexation of special improvement districts, see sections 31-763 to 31-766.
Refunding bonds, procedure for issuance, see sections 10-615 to 10-617.

(a) SPECIAL IMPROVEMENT DISTRICTS

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(b) ROAD DISTRICTS

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(a) SPECIAL IMPROVEMENT DISTRICTS

39-1601 Special improvement districts; petition for organization; dissolution; procedure; disposition of funds.

(1) Whenever a petition, (a) containing a definite description of the territory to be embraced, (b) designating the name of the proposed district, and (c) signed by ten percent of the landowners within the limits of a proposed road improvement district is presented and filed with the county board of the county in which the greater portion of the area of the proposed district is located, the county board of any such county shall cause the question to be submitted to the legal voters of such proposed road improvement district as provided in section 39-1605. If fifty-five percent of those voting on the question are in favor of the proposition, the district shall be organized. No lands included within any municipal corporation shall be included in any road improvement district.

(2) Any road improvement district can be dissolved, if there are no outstanding debts, by the board of trustees of any such district, on its own motion or on the request in writing of ten electors, submitting at a special election, after due notice by publication in the manner provided for in subsection (1) of section 39-1604, the question of dissolution of the road improvement district. The special election shall be conducted by mail as provided in sections 32-953 to 32-959. If fifty-one percent of the votes cast on the question at such election are in favor of such dissolution, the board of trustees shall cause a record of such election and the vote thereon to be made in the office of the county clerk in the county in which the election was held to create the district, and the district shall thereupon stand dissolved. An election shall not be required for the dissolution of the district if a petition requesting the district be dissolved, signed by fifty percent of the owners of property located within the district, is presented to the county board of the county. The county board shall determine the sufficiency of the petition and dissolve the district by an order of such board.

(3) In case a district is dissolved pursuant to this section, the funds on hand or to be collected shall be held by the county treasurer in a separate fund, and the trustees of the district shall petition the district court of the county in which the election to form the district was held, for an order approving the distribution of funds to the landowners or easement owners as a dividend on the same basis as collected.

Source: Laws 1957, c. 155, art. III, § 1, p. 523; Laws 2007, LB248, § 1.

39-1602 Organization with temporary board of trustees; procedure; contracts of temporary board; duties of county board.

Whenever the petition mentioned in subsection (1) of section 39-1601 shall (1) be signed by twenty percent of the landowners within the proposed limits of any such district, (2) contain a list of five legal voters who are owners of property and reside in the proposed district, (3) contain a request that the county board appoint from this list a temporary board of three trustees, and (4) authorize the board to (a) consult with and employ competent independent engineers as to the cost and feasibility of the construction of improvements, (b) consult with other firms or authorities on the feasibility of financing such improvements, and (c) enter into such contracts with attorneys and others which, in the judgment of the temporary board, are necessary in order to properly present the question of formation of the district to the voters therein, the county board shall give notice, by posting such notice in three conspicuous places in the district, that such a petition has been filed and that a temporary board will be appointed as requested. Such notice shall remain posted for ten days, contain the entire wording of the petition, and advise that if fifty percent of the property owners within the proposed district shall file written objections within ten days from the date the notice is first posted, objecting to the appointment of such a temporary board, no board shall be appointed; *Provided*, any such contract entered into by the temporary board shall be binding upon the board of trustees subsequently elected, in accordance with sections 39-1605 and 39-1606, but shall not be binding on the county or counties wherein the district is located if the district is not created. On the date recommended by the temporary board of trustees, the county board of the county, where the petition was filed, shall call a special election as provided in section 39-1605.

Source: Laws 1957, c. 155, art. III, § 2, p. 525.

39-1603 Engineering services; duties of county board; estimate of cost.

Upon the filing of such petition in the office of the county board wherein the greater portion of the area of the proposed district is located, such county board shall engage the professional engineers, who have furnished engineering to the resident petitioners, who shall prepare an estimate of the cost of paving or improving certain road or roads within the district and file such estimate with the county board.

Source: Laws 1957, c. 155, art. III, § 3, p. 525; Laws 1997, LB 622, § 60.

39-1604 No temporary board; petition; notice; hearing; order.

(1) If no temporary board of trustees is appointed, then not later than four weeks after the filing of such petition in the office of the county board of the county wherein the greater portion of the area of the proposed district is located, such county board shall give notice by publication, in one or more newspapers having a general circulation in the proposed district, once each week during the two weeks prior to such meeting of the time and place where the petition will be heard.

(2) At the time and place so fixed in accordance with subsection (1) of this section, the county board of such county shall meet for a hearing in regard to the formation of such a district as proposed. All persons in such proposed road improvement district shall have an opportunity to be heard touching the location and boundary of the proposed district. Within one week after said meeting, the county board, referred to in subsection (1) of this section, shall by an order determine as to the formation of the district and the boundaries

thereof, whether the same way such boundaries are described in such petition or otherwise. If a majority of the resident property owners of such proposed road improvement district shall file written protests, within ten days after the first publication of the notice, the county board shall abandon all such proceedings.

Source: Laws 1957, c. 155, art. III, § 4, p. 526.

39-1605 Organization; special election; ballot form; first board of trustees.

After the determination by the county board, or a majority thereof, as provided by subsection (2) of section 39-1604, it shall call a special election and submit to the legal voters of the proposed road improvement district the question of the organization of such district and the election of a board of trustees who shall be resident taxpayers. Notice of such election shall be given as provided in subsection (1) of section 39-1604. At such election each legal voter resident within the proposed road improvement district shall have a right to cast a ballot with the words thereon, For road improvement district, or Against road improvement district. The special election shall be conducted by mail as provided in sections 32-953 to 32-959. The result of such election shall be entered of record. If fifty-five percent of the votes cast are in favor of the proposed district, such proposed district shall be deemed an organized road improvement district. At the same election there shall be elected three members of a board of trustees. Such members so elected shall be the first board of trustees of such district if the formation of the district is so approved at such election. Such board of trustees shall hold office until their successors are elected and qualified under the provisions of section 39-1606. It shall elect a president and clerk substantially as is provided for in sections 39-1606 and 39-1609.

Source: Laws 1957, c. 155, art. III, § 5, p. 526; Laws 2007, LB248, § 2.

39-1606 Board of trustees; members; election; filing fee; term; compensation; district; name.

(1) Any resident property owner desiring to file for the office of trustee of a road improvement district may file for such office with the county clerk or election commissioner of the county in which the greater proportion in area of the district is located, not later than forty-five days before the election, by paying a filing fee of five dollars.

(2)(a) The term of office of every member of a board of trustees of a road improvement district existing on January 1, 2008, shall be extended to the first Monday in October following the expiration of the original term. Their successors shall be elected for terms of six years at elections held on the first Tuesday after the second Monday in September of odd-numbered years. The term of office shall begin on the first Monday in October after the election.

(b) The successors to the initial board of trustees of a road improvement district shall be elected on the first Tuesday after the second Monday in September of the first odd-numbered year which is at least fifteen months after the organization of the district pursuant to section 39-1605. One trustee shall be elected for a term of two years, one trustee for a term of four years, and one trustee for a term of six years, and thereafter their respective successors shall be elected for terms of six years at succeeding elections held on the first

Tuesday after the second Monday in September of odd-numbered years. The term of office shall begin on the first Monday in October after the election.

(c) Elections under this subsection shall be conducted by mail as provided in sections 32-953 to 32-959.

(3) At the first meeting of the trustees of such district after the election of one or more members, the board shall elect one of their number president. Such district shall be a body corporate and politic by name of Road Improvement District No. of County or Counties, as the case may be, with power to sue, be sued, contract, acquire and hold property, and adopt a common seal. Each trustee shall receive as his or her salary the sum of five dollars for each meeting.

Source: Laws 1957, c. 155, art. III, § 6, p. 527; Laws 1994, LB 76, § 552; Laws 2007, LB248, § 3.

39-1607 Trustees; failure to qualify; vacancy; how filled.

If any trustee fails to qualify within sixty days after receipt of the certificate of election, the office to which he or she was elected shall be declared vacant. Any vacancy in the board of trustees from any cause may be filled by the remaining trustees until the next election pursuant to section 39-1606. At such election a trustee shall be elected by the voters of the district for the balance of the unexpired term of such trustee, if any.

Source: Laws 1957, c. 155, art. III, § 7, p. 528; Laws 2007, LB248, § 4.

39-1608 Trustees; bond; amount; conditions; premium; suit on bond.

Each trustee of any such district shall, prior to entering upon his office, execute and file with the county clerk of the county in which said district, or the greater portion of the area thereof, is located, his bond with one or more sureties, to be approved by the county clerk, running to the district in the penal sum of five thousand dollars, conditioned for the faithful performance by said trustee of his official duties and the faithful accounting by him for all funds and property of the district that shall come into his possession or control during his term of office. The premium, if any, on any such bond shall be paid out of the funds of the district. Suit may be brought on such bonds by any person, firm, or corporation that has sustained loss or damage in consequence of the breach thereof.

Source: Laws 1957, c. 155, art. III, § 8, p. 528.

39-1609 Trustees; clerk; engineer; rules and regulations; publication of proceedings.

The board of trustees shall elect one of their members clerk and have the power to appoint, employ, and pay an engineer, who shall be removable at the pleasure of the board. The clerk may be paid not to exceed twelve hundred dollars per year by said board. The board shall have the power to pass all necessary ordinances, resolutions, orders, rules and regulations for the necessary conduct of its business and to carry into effect the objects for which such road improvement district is formed. Immediately after each regular and special meeting of the board, it shall cause to be published, in one newspaper of general circulation in the district, a brief statement of its proceedings including an itemized list of bills and claims allowed, specifying the amount of each, to

whom paid, and for what purpose; *Provided*, no publication shall be required unless the same can be done at an expense not exceeding one-third of the rate of the publication of legal notices.

Source: Laws 1957, c. 155, art. III, § 9, p. 528.

39-1610 Trustees; powers.

The board of trustees of any road improvement district, created by sections 39-1601 to 39-1609, shall have the power to grade, establish grade, change grade, pave, repave, gravel, regravels, macadamize, remacadamize, widen or narrow roads, resurface or relay existing pavement, or otherwise improve any road or roads, or parts thereof, at public cost or by levy of special assessment on the property especially benefited thereby, proportionate to benefits; *Provided*, that none of the improvements hereinbefore named shall be ordered, except as provided in section 39-1611 or 39-1612.

Source: Laws 1957, c. 155, art. III, § 10, p. 529.

39-1611 Trustees; improvements; petition of abutting landowners.

Whenever a petition signed by sixty percent of the resident landowners abutting on or adjacent to any road, highway, or street in the district shall be presented and filed with the clerk of the board of trustees, petitioning therefor, the board of trustees shall (1) by resolution cause such work to be done or such improvement to be made, (2) contract therefor, and (3) levy assessments as provided in sections 39-1623 to 39-1625.

Source: Laws 1957, c. 155, art. III, § 11, p. 529.

39-1612 Trustees; improvements without petition; notice; protests.

Whenever the board of trustees shall deem it necessary to make any of the improvements of any road, highway, or street named in section 39-1610, without the filing of the petition referred to in section 39-1611, it shall so determine by resolution of the board. The board shall thereupon publish a notice of the improvements to be made in one or more newspapers having a general circulation in the district once each week during two consecutive weeks. If a majority of the resident owners of land abutting on or adjacent to such road, highway, or street in the district shall file with the clerk of the board of trustees, within twenty days after the first publication of said notice, written objections to the making of said improvements, said improvements shall not be made as provided in said resolution, referred to in section 39-1611, and the resolution shall be repealed. If the objections are not filed against the improvement in the time and manner provided by this section, the board of trustees shall forthwith cause such work to be done or such improvement to be made, contract therefor, and levy assessments, as set forth in sections 39-1623 to 39-1625 to pay the cost thereof.

Source: Laws 1957, c. 155, art. III, § 12, p. 529.

39-1613 Protests or petitions; determination of sufficiency.

The sufficiency of the protests or petitions, referred to in sections 39-1611 and 39-1612 as to the ownership of land, shall be determined by the record in the office of the county clerk or register of deeds, of the county or counties where the lands of the district are located, at the time of the adoption of said

resolution. In determining the sufficiency of the petitions or objections, intersections shall be disregarded, and any lot of ground owned by the county shall not be counted for or against such improvement.

Source: Laws 1957, c. 155, art. III, § 13, p. 530.

39-1614 Assessments; lien; certification.

All assessments shall be a lien on the property on which levied from the date of levy. The board of trustees of such road improvement district shall cause such assessments, or portion thereof remaining unpaid, to be certified to the county clerk of the county or counties for entry upon the proper tax lists as more particularly set forth in section 39-1625.

Source: Laws 1957, c. 155, art. III, § 14, p. 530.

39-1615 Assessment; payment; delinquency; interest.

One-tenth of the total amount assessed against each lot or parcel of land shall become delinquent in fifty days after the date of such levy; one-tenth in one year; one-tenth in two years; one-tenth in three years; one-tenth in four years; one-tenth in five years; one-tenth in six years; one-tenth in seven years; one-tenth in eight years; and one-tenth in nine years, unless a different number of yearly payments shall be fixed by the board of trustees as permitted under section 39-1626. Each of such installments, except the first, shall draw interest at a rate not exceeding the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, payable annually, from the time of the levy, provided for by sections 39-1601 to 39-1636, until the same shall become delinquent; and after the same becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon from the date the same is delinquent until paid; *Provided*, all of the installments may be paid at one time on any lot or land within fifty days from the date of such levy without interest. If so paid within fifty days, such lot or land shall be exempt from any lien or charge therefor.

Source: Laws 1957, c. 155, art. III, § 15, p. 530; Laws 1961, c. 200, § 1, p. 602; Laws 1980, LB 933, § 28; Laws 1981, LB 167, § 29.

39-1616 Bonds; issuance; payment; interest.

For the purpose of paying the cost of grading, paving, repaving, graveling, regravelling, macadamizing, remacadamizing, or improving the road or roads in any road improvement districts, the board of trustees shall have the power and may, by resolution, cause to be issued bonds of the road improvement district to be called Assessment Paving Bond of Road Improvement District No. ... of County or Counties, as the case may be. Such paving bonds shall be payable within the time provided by section 39-1627. They shall bear interest payable annually or semiannually, with interest coupons attached, payable serially, to be issued in such denominations as may be deemed advisable.

Source: Laws 1957, c. 155, art. III, § 16, p. 531; Laws 1969, c. 51, § 105, p. 338.

39-1617 Sinking fund; investments authorized.

Pending final redemption of bond or bonds for improving the road, roads, highway, or street, the county treasurer is hereby authorized to invest such sinking fund in interest-bearing time certificates of deposit in depositories approved and authorized to receive county money, but in no greater amount in any depository than the same is authorized to receive deposits of county funds; and the interest arising from such certificate of deposit shall be credited to its respective sinking fund as provided by sections 39-1601 to 39-1636.

Source: Laws 1957, c. 155, art. III, § 17, p. 531.

39-1618 Assessments; school district, county, or quasi-municipal corporation; lands subject to.

If, in any road improvement district, there shall be any real estate belonging to any county, school district, or other quasi-municipal corporation, adjacent to or abutting upon the road, roads, highways, or street upon which the improvement has been ordered it shall be the duty of the county board, board of education, or other proper officers to provide for the payment of such special assessments or taxes as may be assessed against the real estate so adjacent or abutting, or within such road improvement district, belonging to the county, school district, or quasi-municipal corporation. In the event of a neglect or refusal to do so, the road improvement district may recover the amount of such special taxes or assessments in any proper action. Any such judgment so obtained may be enforced in the usual manner.

Source: Laws 1957, c. 155, art. III, § 18, p. 532.

39-1619 Intersections; roads adjacent to federal or state lands; assessments; intersection paving bonds; term; interest; warrants.

(1) For the payment of all improvements of the intersections and areas formed by the crossing of roads or alleys and one-half of the roads adjacent to real estate owned by the United States or the State of Nebraska, the assessment shall be made upon the taxable value of all the taxable property in such road improvement district and shall be levied in the manner referred to in subsection (1) of section 39-1621, and for the payment of such improvements, the board of trustees is hereby authorized to issue paving bonds of the road improvement district, in such denominations as it deems to be proper, to be called Intersection Paving Bonds, payable over the life of the improvements and in no event exceeding twenty years from date. Such bonds shall bear interest payable annually or semiannually, with interest coupons attached. For the prompt payment of such bonds, the full faith and credit of all the property in the district is pledged. Such bonds shall not be issued until the work is completed and then not in excess of the cost of the improvements.

(2) For the purpose of making partial payments as the work progresses, warrants may be issued by the board of trustees upon certificates of the engineer in charge showing the amount of the work completed and materials necessarily purchased and delivered for the orderly and proper continuation of the project, in a sum not exceeding ninety-five percent of the cost thereof, which warrants shall be redeemed and paid upon the sale of the bonds referred to in subsection (1) of this section and in section 39-1616 when issued and sold. The bonds may be sold or delivered to the contractor in payment at not less than par. The district shall pay to the contractor interest at the rate of eight percent per annum on the amounts due on partial and final payments, begin-

ning forty-five days after the certification of the amounts due by the engineer in charge and approval by the governing body and running until the date that the warrant is tendered to the contractor.

Source: Laws 1957, c. 155, art. III, § 19, p. 532; Laws 1969, c. 51, § 106, p. 339; Laws 1975, LB 112, § 8; Laws 1979, LB 187, § 158; Laws 1992, LB 719A, § 139.

39-1620 Contracts; letting of bids; notice.

All contracts for work to be done, the expense of which is more than five hundred dollars, shall be let to the lowest responsible bidder, upon notice of not less than twenty days of the terms and conditions of the contract to be let. The board of trustees shall have power to reject any and all bids and readvertise for the letting of such work.

Source: Laws 1957, c. 155, art. III, § 20, p. 533.

39-1621 Budget; taxes; levy; limitation; certification; collection; disbursement.

(1) The board of trustees may, after adoption of the budget statement for such district, annually levy and collect the amount of taxes provided in the adopted budget statement of the district to be received from taxation for corporate purposes upon property within the limits of such road improvement district to the amount of not more than three and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property in such district for general maintenance and operating purposes subject to section 77-3443. The board shall, on or before September 20 of each year, certify any such levy to the county clerk of the counties in which such district is located who shall extend the levy upon the county tax list.

(2) The county treasurer of the county in which the greater portion of the area of the district is located shall be ex officio treasurer of the road improvement district and shall be responsible for all funds of the district coming into his or her hands. The treasurer shall collect all taxes and special assessments levied by the district and collected by him or her from his or her county or from other county treasurers if there is more than one county having land in the district and all money derived from the sale of bonds or warrants. The treasurer shall not be responsible for such funds until they are received by him or her. The treasurer shall disburse the funds of the district only on warrants authorized by the trustees and signed by the president and clerk.

Source: Laws 1957, c. 155, art. III, § 21, p. 533; Laws 1969, c. 145, § 35, p. 694; Laws 1979, LB 187, § 159; Laws 1992, LB 1063, § 36; Laws 1992, Second Spec. Sess., LB 1, § 36; Laws 1993, LB 734, § 39; Laws 1995, LB 452, § 12; Laws 1996, LB 1114, § 57.

39-1622 Assessments; special benefits; general benefits; levy; lien.

The board of trustees of the road improvement district shall, in addition to its other powers, assess to the extent of special benefits conferred the cost of such portion of such improvements as are local improvements upon property found especially benefited thereby which shall be a lien as provided by section 39-1614 when properly levied and certified as required by sections 39-1601 to 39-1636. The board of trustees of such district may find the remainder of the cost of such improvements made are of general benefit to the district and the

costs thereof shall be paid from taxes levied against all the property in the district in the manner provided for by subsection (1) of section 39-1621.

Source: Laws 1957, c. 155, art. III, § 22, p. 534; Laws 1959, c. 182, § 1, p. 663.

39-1623 Improvements; plat; benefits; schedule of proposed assessments; notice; hearing.

After the completion of any improvements, the engineer shall file with the clerk of the district a complete statement of all the costs of such improvement, a plat of the property in the district especially benefited thereby, and a schedule of the amount proposed to be assessed against each separate piece of property. A copy of the plat and schedule of proposed assessment shall be filed in the office of the county clerk of the county in which the greater portion of the area of the district is located for public inspection. The trustees of the district shall then order the clerk of the district to give notice that the plat and schedule are on file with the county clerk where the same are kept for examination, and that all objections thereto or to prior proceedings on account of errors, irregularities, or inequalities not made in writing and filed with the clerk of the district within twenty days after first publication of the notice shall be deemed to have been waived. Such notice shall be given by publication, once each week during two consecutive weeks, in a newspaper of general circulation in the district and whenever possible by giving notice in writing by either registered or certified mail to the owner of each separate piece of property against which an assessment is proposed. The notice shall state the time and place where objections are to be filed. The time of such hearing shall be determined in the manner stated in section 39-1624. Any objections so filed shall be considered by the trustees of the district.

Source: Laws 1957, c. 155, art. III, § 23, p. 534.

39-1624 Proposed special assessments; hearing; equalization; consent.

The hearing on the proposed assessment shall be held by the trustees of the district sitting as a board of adjustment and equalization at the time and place specified in the notice provided for by section 39-1623. Such date of hearing shall not be less than twenty days nor more than thirty days after the first publication of the notice thereof, unless such session be adjourned with provisions for proper notice of such adjournment. At such meeting the proposed assessment shall be adjusted and equalized with reference to benefits resulting from the improvement and shall not exceed such benefits. If the owners of all properties on which special assessments are proposed to be assessed file a consent in writing with the clerk of the district to the proposed assessment, the notice and meeting for adjustment, as provided in this section and section 39-1623, need not be given or had.

Source: Laws 1957, c. 155, art. III, § 24, p. 535.

39-1625 Special assessments; levy; relevy; certification.

After the equalization of such special assessments, as herein required, the same shall be levied by the trustees of the district upon all lots or parcels of ground within the district which are especially benefited by reason of the improvement, as set forth in sections 39-1601 to 39-1636. The same may be relevied if, for any reason, the levy thereof is void, or not enforceable, and in an

amount not exceeding the previous levy. Such levy shall be enforced as other special assessments and any payments thereof under any previous levies shall be credited to the person or property making the same. The levy when made shall be certified by the clerk of the district to the county clerk of the county in which the property to be assessed is located and collected by the county treasurer in the same manner as general taxes and shall be subject to the same penalties.

Source: Laws 1957, c. 155, art. III, § 25, p. 535.

39-1626 Special assessments; when delinquent; interest.

All special assessments provided for by sections 39-1601 to 39-1636 shall become due fifty days after date of levy and may be paid within that time without interest, but if not so paid shall bear interest as provided in section 39-1615. Such assessments shall become delinquent as stated in section 39-1615, or otherwise in equal annual installments over such period of years as the board of trustees may determine at the time of making the levy.

Source: Laws 1957, c. 155, art. III, § 26, p. 536.

39-1627 Assessment paving bonds; amount; term; sinking fund.

For the purpose of paying the costs of the assessment portion of the work, the district shall issue its negotiable assessment paving bonds, referred to in section 39-1616, in an amount determined by deducting the special assessments paid within the period provided in section 39-1626 from the total assessment costs. The bonds shall mature in not more than twenty years as determined by the board of trustees of the district. The assessments plus interest collected after the fifty-day waiting period shall be deposited in an assessment bond sinking fund and, if for any reason, the assessments so collected are not sufficient to pay the assessment bonds when due, it shall be the mandatory duty of the board of trustees of the district to cause to be collected as a tax in the manner referred to in subsection (1) of section 39-1621 against all the property in the district sufficient to make good such deficiencies so that the assessment bonds shall be paid promptly at their respective due dates.

Source: Laws 1957, c. 155, art. III, § 27, p. 536.

39-1628 Bonds; issuance; approval by district court.

The board of trustees of a road improvement district organized under the provisions of sections 39-1601 to 39-1636 shall, before issuing any bonds of such district, commence special proceedings, as provided for by section 39-1629, in and by which the proceedings of the board and of the district providing for and authorizing the issuance of the bonds of the district shall be judicially examined, approved, and confirmed, or disapproved and disaffirmed.

Source: Laws 1957, c. 155, art. III, § 28, p. 536.

39-1629 Bonds; approval by district court; petition; contents.

The board of trustees of the district shall, as directed in section 39-1628, file in the district court of the county in which the lands of the district, or the greater portion thereof, are situated, a petition praying in effect that the proceedings may be examined, approved, and confirmed by the court. The petition shall state the facts showing the proceedings had for issuance of the

bonds, and shall state generally that the road improvement district was duly organized, and that the first board of trustees was duly elected. The petition need not state the facts showing such organization of the district or the election of the first board of trustees. A person or persons owning or desirous of purchasing such bonds when issued may bring such action, if the board shall fail to do so, or may become a party to any such action commenced by the board of trustees of such a district.

Source: Laws 1957, c. 155, art. III, § 29, p. 537.

39-1630 Bonds; approval by district court; hearing; notice.

The court shall fix the time for the hearing of the petition, and shall order the clerk of the court to give and publish a notice of the filing of the petition. The notice shall be given as is provided by subsection (1) of section 39-1604, unless other or different notice is fixed by the court. The notice shall state the time and place fixed for the hearing of the petition, the prayer of the petition, and that any person interested in the organization of the district, or in the proceedings for the issuance of the bonds, may, on or before the day fixed for the hearing of the petition, move to dismiss the petition or answer thereto. The petition may be referred to and described in the notice as the petition of (giving its name) praying that the proceedings for the issuance of such bonds of such district may be examined, approved, and confirmed by the court.

Source: Laws 1957, c. 155, art. III, § 30, p. 537; Laws 1959, c. 167, § 6, p. 611.

39-1631 Bonds; approval by district court; interested parties; pleadings.

Any person, interested in the district or in the issuance of the bonds thereof, may move to dismiss the petition or answer thereto. The provisions of the Code of Civil Procedure respecting motions and answer to a petition shall be applicable to motions and answer to the petition in such special proceedings. The persons filing motions or answering the petition shall be the defendants to the special proceedings, and the board of trustees shall be the plaintiff. Every material statement of the petition not specially controverted by the answer must, for the purpose of such special proceedings, be taken as true. Each person failing to answer the petition shall be deemed to admit as true all the material statements of the petition. The rules of pleading and practice provided by the Code of Civil Procedure, which are not inconsistent with the provisions of sections 39-1601 to 39-1636, are applicable to the special proceedings herein provided for.

Source: Laws 1957, c. 155, art. III, § 31, p. 537.

39-1632 Bonds; jurisdiction of district court; trial; judgment; costs; determination of validity.

Upon the hearing of such special proceedings, the court shall have power and jurisdiction to examine and determine the legality and validity of, and approve and confirm, or disapprove and disaffirm, each and all of the proceedings for the organization of such district under sections 39-1601 to 39-1636 from and including the petition for the organization of the district and all other proceedings which may affect the legality or validity of the bonds. The court, in inquiring into the regularity, legality, or correctness of such proceedings, must disregard an error, irregularity, or omission which does not affect the substan-

tial rights of the parties to such special proceedings. It may approve and confirm such proceedings in part and disapprove and declare illegal or invalid other and subsequent parts of the proceedings. The court shall, among other things, find and determine whether the notice of the filing of the petition has been duly given and published for the time and in the manner prescribed in sections 39-1601 to 39-1636. The costs of the special proceedings may be allowed and apportioned between the parties in the discretion of the court. If the court shall determine the proceedings for the organization of the district and the issuing of the bonds legal and valid, the board of trustees shall then prepare a written statement beginning with the filing of the petition for the organization of the district, including all subsequent proceedings for the organization of the district and the issuing of the bonds, and ending with the decree of the court finding the proceedings for the organization of the district and the proceedings for the voting and issuing of the bonds legal and valid. The written statement shall be certified under oath by the board of trustees of the district.

Source: Laws 1957, c. 155, art. III, § 32, p. 538; Laws 2001, LB 420, § 28.

39-1633 Agreements with county, state, and federal governments; proration of costs; application of payments and contributions.

The district may enter into agreements with the State of Nebraska, the federal government, or the county or counties in which the district is located, whereby certain portions of the costs will be assumed and paid by any or all of such agencies and such payments or contributions shall be applied by the board of trustees to reduce such costs and assessments to the property owners of the district.

Source: Laws 1957, c. 155, art. III, § 33, p. 539.

39-1634 Maintenance of improvements; county responsibility; reimbursement by district.

The maintenance and care of the improvements shall be performed by the county or counties in which such district is located but the district shall reimburse the county or counties for such costs up to the limits of funds provided for in the adopted budget statement which are available from the maintenance tax, after paying other costs of operation of the district from such tax.

Source: Laws 1957, c. 155, art. III, § 34, p. 539; Laws 1969, c. 145, § 36, p. 695; Laws 1979, LB 187, § 160.

39-1635 Repealed. Laws 1959, c. 130, § 5.

39-1636 Improvements; plans and specifications; court validation proceedings and decree; filing.

Each time any improvement is made to any road, street, or highway in the district, a copy of the plans and specifications shall be filed in the office of the county highway superintendent of the county or counties in which such district is located. After the court decree of validation has been entered, a copy of the pleadings and showings, as well as the final decree of the court, shall be filed in

the office of the county clerk and the county engineer in the county or counties in which the road improvement district is located.

Source: Laws 1957, c. 155, art. III, § 36, p. 539.

39-1636.01 Road lighting system; petition; assessment; limitation.

Whenever a petition signed by sixty percent of the electors of any district is filed with the county clerk of the county in which such district is located, the board of trustees of any road improvement district shall have power and authority to contract for the installment, maintenance, and operation of road lighting systems sufficient to light any road in the district or any portion thereof when, in the judgment of the board of trustees, the lighting of such road or any portion thereof is in the interest of public safety. The cost of installing, maintaining, and operating such road lighting systems shall be assessed against the real property specially benefited thereby in proportion to the benefit received, but no such assessment shall exceed thirty-five cents on each one hundred dollars upon the taxable valuation of such property.

Source: Laws 1961, c. 201, § 1, p. 604; Laws 1979, LB 187, § 161; Laws 1992, LB 719A, § 140.

(b) ROAD DISTRICTS

39-1637 Road districts; commissioner counties; seven or more commissioners; assessment; levy; limitation; fund; use.

In counties under a seven or more commissioner form of government, each former township shall be a road district and fifty-one percent of the resident freeholders of such district may petition the county board of the county in which such district is located to levy an assessment of not to exceed two and one-tenth cents on each one hundred dollars upon the taxable value of all the taxable property in such district subject to section 77-3443. Upon receipt of the petition, the board of county commissioners shall make the assessment as requested on the taxable value of all the taxable property in such district at the valuation fixed by the assessor or board of equalization, to be levied and collected the same as other taxes. Such taxes shall (1) be and become a part of the district road fund in which the same are levied, (2) be used exclusively in improving the public highways in such district, and (3) not be transferred to any other fund. The board of county commissioners shall designate the road or roads in such district where such levy shall be expended.

Source: Laws 1957, c. 155, art. III, § 37, p. 540; Laws 1979, LB 187, § 162; Laws 1992, LB 719A, § 141; Laws 1996, LB 1114, § 58.

Cross References

Road districts in township counties without road unit system, see section 39-1520.01.

(c) RURAL ROAD IMPROVEMENT DISTRICT

39-1638 Rural road improvement district; terms, defined.

For purposes of the Rural Road Improvement District Act, unless the context otherwise requires:

(1) Persons shall include individuals, corporations, partnerships, and limited liability companies;

(2) Board, board of county commissioners, or board of county supervisors shall mean the governing body of the county; and

(3) Improvement shall mean the completed road and all work incidental thereto.

Source: Laws 1963, c. 213, § 1, p. 680; Laws 1981, LB 200, § 1; Laws 1993, LB 121, § 212.

39-1639 Resolution; contents.

Any county may establish and construct new roads, change or extend existing roads, and improve such roads by grading, surfacing, draining and incidental work by the board on its own initiative declaring the advisability or necessity therefor in a proposed resolution, which resolution shall state (1) the road or roads to be improved, (2) if a new road is contemplated, the general location of the new road or changes in location of an existing road, (3) the general description of the proposed improvement, and if the road is to be surfaced, the materials to be used therefor, (4) a rough estimate of the total cost of the improvement, which may be made by the county surveyor or any engineer or competent person and need not be based on detailed plans and specifications, (5) proposed method of financing, and (6) the outer boundaries of the district in which it is proposed to levy special assessments.

Source: Laws 1963, c. 213, § 2, p. 680; Laws 1981, LB 200, § 2.

39-1640 Petition; filing; contents.

When a petition is filed with the county clerk signed by persons owning not less than twenty-five percent of the area in the proposed district requesting the formation of a district, the governing body of the county in which the proposed district is located shall prepare and propose the resolution as provided in section 39-1639. The petition shall state the improvements desired and the property to be included in the district.

Source: Laws 1963, c. 213, § 3, p. 681.

39-1641 Petition; hearing; notice.

The board shall set a time and place for hearing on the proposed resolution and give notice thereof by publication in a newspaper of general circulation in the county on the same day each week during two successive weeks immediately prior to such meeting and posting such notice in three conspicuous places in the proposed district.

Source: Laws 1963, c. 213, § 4, p. 681.

39-1642 Petition; hearing; objections; resolution of county board; contents.

If persons owning more than fifty percent in area of the real property in the proposed district file with the county clerk prior to the time set for hearing written objections to the formation of the district stating the reasons for their objections, the resolution shall not be passed. At the hearing, all persons interested in the proposed improvement shall be given an opportunity to be heard on any matters affecting the formation of the district or the improvements to be made therein. The hearing may be continued from time to time to give opportunity to ascertain all pertinent information. At or following said hearing the board may pass the resolution as proposed, amend the resolution

and pass the amended resolution, or deny passage of the resolution. The amendments may, among other things, exclude any tracts included in the proposed resolution, include additional property in the district, or change the boundaries of the proposed district.

Source: Laws 1963, c. 213, § 5, p. 681; Laws 1981, LB 200, § 3.

39-1643 Advisory committee; appointment; compensation; expenses.

The board on passing the resolution creating the district shall appoint an advisory committee of not less than three persons residing in the district to advise with the board on all matters affecting the road improvement in the district, financing the cost thereof, and the levy of special assessments. The board may from time to time replace any person who resigns or refuses to act or appoint additional members to the advisory committee. The members of the committees shall receive no compensation for their services, but may be reimbursed for expenses incurred by them in performing their duties, with reimbursement for mileage to be computed at the rate provided in section 81-1176, and the amount thereof shall be included in the cost of the improvement.

Source: Laws 1963, c. 213, § 6, p. 681; Laws 1981, LB 204, § 60; Laws 1996, LB 1011, § 24.

39-1644 District; name; improvements; contract; county board; gifts and contributions; letting of bids.

The district when formed shall be known as Rural Road Improvement District No. of County. The district shall not include any lands located within a village or city. The board shall proceed as expeditiously as possible to make detailed plans for the improvement and improve the roads as generally outlined in the resolution, but may make such changes in the general plan of improvement found necessary to make the improvement more adequate. The improvement may include culverts, bridges and other drainage work and the county may construct fences along the right-of-way or contract with the adjoining owners to move any existing fences or construct new fences. The county may obtain any property necessary for the improvement by gift, purchase or by eminent domain. The county may accept gifts or contributions to assist in the costs of the improvement and may contract with the state or federal government for assistance in making said improvement and defraying the cost thereof. The county may contract for the entire improvement or any part thereof or may purchase the materials and do part of the work with its own equipment and employees. If the work is done by contract, bids shall be taken and the contract let in the same manner as letting other contracts for county work. The county may employ special engineers and special counsel to assist in the improvement and their compensation shall be considered as a part of the cost of the improvement.

Source: Laws 1963, c. 213, § 7, p. 682.

Authority of county commissioners to establish or extend roads, under the provisions of this act, depends not only upon following the provisions of the act but also upon their acquisition of the necessary right-of-way. State ex rel. Stansbery v. Schwasinger, 205 Neb. 457, 289 N.W.2d 506 (1980).

39-1645 Improvements; cost; partial payment; warrants; interest.

To pay the cost of the improvement as the work progresses the county may issue progress warrants drawn against the rural road improvement fund for the

total cost of materials purchased on receipt of the materials, for the right-of-way acquired, for engineering and legal expense, and other incidental expenses, and ninety-five percent of the cost of the work completed and materials necessarily purchased and delivered for the orderly and proper continuation of the project by the contractor as certified by the engineer in charge. On completion of the contract and the acceptance of the improvement by the county, a warrant may be drawn for the balance due the contractor. The warrants shall draw interest at the rate set by the county board. The county shall pay to the contractor interest, at the rate of eight percent per annum on the amounts due on partial and final payments, beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the governing body and running until the date that the warrant is tendered to the contractor.

Source: Laws 1963, c. 213, § 8, p. 682; Laws 1969, c. 51, § 107, p. 339; Laws 1975, LB 112, § 9.

39-1646 Rural road improvement fund; establish; county board.

The county shall establish a special fund for each district to be known as rural road improvement district No. fund, and credit to said fund all contributions including money transferred from the county's general fund, all money collected as special assessments, or special levies against the property in the district, and all money received from the sale of the bonds issued under the provisions of section 39-1648. All expenses incurred in connection with the improvement and not paid out of the general funds of the county shall be paid by warrants drawn on said rural road improvement fund.

Source: Laws 1963, c. 213, § 9, p. 683.

39-1647 Assessments; equalization; hearing; notice; publication; lien; interest.

On completion and acceptance of the improvement the engineer in charge shall make and file with the county clerk a statement of the complete cost of the improvements, including interest accruing on the progress warrants. The board with the assistance of the advisory committee and special counsel and engineer in charge shall determine what part of the costs shall be specially assessed to the property in the district and shall prepare a proposed schedule of assessments against all properties in the district deemed specially benefited by the improvements. Any land in the district may be specially assessed for the amount it is specially benefited even though the property does not adjoin the road improved. The board shall fix a time and place when it will sit as a board of adjustment and equalization and give notice thereof by publication on the same day of each week for two consecutive weeks immediately prior to the meeting in a newspaper of general circulation in the county and by mailing a copy of the notice to each record owner of property proposed to be specially assessed. At the meeting the board shall equalize and levy the special assessments. All special assessments provided for in this section shall be a lien on the property from date of levy and shall become due fifty days after date of levy and may be paid within that time without interest but if not so paid they shall bear interest thereafter at a rate established by the board not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, until delinquent. Such assessments shall become

delinquent in equal annual installments over a period of not to exceed ten years as the board may determine at the time of making the levy. Delinquent installments shall bear interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, until paid and shall be collected in the usual manner for the collection of taxes.

Source: Laws 1963, c. 213, § 10, p. 683; Laws 1981, LB 167, § 30; Laws 1991, LB 63, § 1.

39-1648 Bonds; issuance; sale; maturity; interest; general obligation of county.

On completion and acceptance of the improvement, the county shall issue and sell at not less than par bonds of the county in an amount sufficient to pay the balance of the costs of the improvements, taking into account the amounts collected on special assessments and any funds contributed to the district. The bonds shall mature in not to exceed ten years from their date and bear interest payable annually or semiannually. The bonds shall constitute a general obligation of the county, but all special assessments, special taxes, or contributions made to the district shall constitute a sinking fund for the payment of the bonds. The county shall collect all special assessments and special taxes and levy and collect annually a tax on all taxable property in the county sufficient in rate and amount to pay any deficiency on the amount required to pay both principal and interest on the bonds as the same fall due. The bonds and tax authorized in this section shall be in addition to all other bonds and taxes authorized by law and shall not be included in computing any statutory limitation on the amount of bonds or tax which may be issued or levied by the county.

Source: Laws 1963, c. 213, § 11, p. 684; Laws 1969, c. 51, § 108, p. 340; Laws 1992, LB 719A, § 142.

39-1649 Roads of district; part of county road system; special levy; limitation; receipts; rural road improvement district fund.

When the road improvements have been completed and accepted, the roads shall constitute a part of the county road system and shall be maintained by the county. If the owners of more than fifty percent of the area in the district petition the board for maintenance in excess of that given other similar county roads, the board may levy and collect annually a special levy of not to exceed three and five-tenths cents on each one hundred dollars on all taxable property in the district subject to section 77-3443. The money as collected shall be credited to the rural road improvement district fund and used only for the repair and maintenance of the roads in the district.

Source: Laws 1963, c. 213, § 12, p. 684; Laws 1979, LB 187, § 163; Laws 1992, LB 719A, § 143; Laws 1996, LB 1114, § 59.

39-1650 Advisory committee; enlarge district; proposal filed with county board.

When it shall be deemed advisable by the advisory committee of the district to enlarge the boundaries thereof, and the conditions mentioned in section 39-1639 apply to such enlarged territory, a petition for the enlargement of the district, signed by persons owning not less than twenty-five percent of the territory proposed to be added to the district, may be filed with the county clerk

and thereupon the board shall proceed in all respects as provided in sections 39-1640 to 39-1643, so far as applicable.

Source: Laws 1963, c. 213, § 13, p. 685.

39-1651 District; withdrawal; petition; signatures required; hearing; notice; resolution of county board; obligation of district; effect.

A petition seeking the withdrawal of real property from such district, signed by persons owning not less than twenty-five percent of the territory proposed to be withdrawn may be filed with the county clerk. The board shall set a time and place for hearing as set forth in sections 39-1641 and 39-1642. At the hearing the board may pass a resolution permitting the withdrawal of the proposed territory. Any area withdrawn from the district shall be subject to assessment and be otherwise chargeable for the payment and discharge of all the obligations outstanding at the time of filing the petition for withdrawal. An area withdrawn from a district shall not be subject to assessment or otherwise chargeable for any obligations of any nature or kind incurred after the withdrawal of the area from the district.

Source: Laws 1963, c. 213, § 14, p. 685.

39-1652 District; consolidation; petition; hearing; notice; resolution of county board.

Upon the filing of a petition with the county clerk by persons owning not less than twenty-five percent of the territory of each district of the county proposing a consolidation of the districts, the board shall set a time and place for hearing as set forth in sections 39-1641 and 39-1642. At the hearing the board may pass a resolution consolidating the districts petitioning to be consolidated.

Source: Laws 1963, c. 213, § 15, p. 685.

39-1653 District; dissolution; petition; hearing; notice; resolution of county board; funds; disposition.

Upon the filing of a petition for dissolution with the county clerk by persons owning not less than twenty-five percent of the territory of the district, the board shall set a time and place for hearing as set forth in sections 39-1641 and 39-1642. At the hearing the board may pass a resolution dissolving the district. The board shall perform all acts necessary to wind up the affairs of the district. All funds remaining after discharge of the district's indebtedness shall be deposited in the general fund of the county.

Source: Laws 1963, c. 213, § 16, p. 686.

39-1654 Sections, how construed.

Sections 39-1638 to 39-1655 shall constitute a separate and independent act and shall not be considered as an amendment of any existing law.

Source: Laws 1963, c. 213, § 17, p. 686.

39-1655 Act, how cited.

Sections 39-1638 to 39-1655 shall be known as the Rural Road Improvement District Act.

Source: Laws 1963, c. 213, § 18, p. 686.

COUNTY ROADS. LAND ISSUES

ARTICLE 17

**COUNTY ROADS. LAND ACQUISITION, ESTABLISHMENT,
ALTERATION, SURVEY, RELOCATION, VACATION,
AND ABANDONMENT**

Cross References

County board, opening and abandonment, roads, general powers of, see section 23-108.

(a) LAND ACQUISITION

Section

- 39-1701. County road purposes; property acquisition; eminent domain; power of county board.
- 39-1702. County road purposes, defined; property acquisition; gift; purchase; exchange; eminent domain; authority of county board.
- 39-1703. State lands; acquisition for county road purposes; approval of Governor and Department of Roads; damages.

(b) ESTABLISHMENT, ALTERATION, AND SURVEY

- 39-1704. County and township roads; establishment or alteration; survey and marking; county and township boards; duties.
- 39-1705. Survey; boundary lines; how marked.
- 39-1706. Survey; monuments; bearing.
- 39-1707. Survey; plat; field notes; filing.
- 39-1708. Corner markers; perpetuation; duty of county board; notice of destruction.
- 39-1709. Corner markers; loss or destruction; report to county board; liability for failure to report.
- 39-1710. New or altered roads; plats; records; duties of county board.
- 39-1711. Road plat record; contents; entries, when made; duties of county board.
- 39-1712. Resurvey; when ordered.
- 39-1713. Isolated land; access; affidavit; petition; hearing before county board; time; terms, defined.
- 39-1714. Isolated land; access by private road only; affidavit; petition; hearing before county board.
- 39-1715. Isolated land; access; hearing; notice; service; posting.
- 39-1716. Isolated land; access road; damages; powers of county board; costs; maintenance.
- 39-1717. Isolated land; location of access road.
- 39-1718. Isolated land; access road; order of county board; award of damages; payment; filing of order.
- 39-1718.01. Isolated land; changes in law; applicability.
- 39-1719. Isolated land; access road; award; appeal; procedure.
- 39-1720. Roads to bridge on county line; opening; maintenance; closing or vacating.
- 39-1721. County and township roads; portions within cities or villages; subject to municipal regulations.

(c) VACATION AND ABANDONMENT

- 39-1722. Road vacation or abandonment; resolution of county board directing study; report to board; permanent record.
- 39-1723. Road vacation or abandonment; electors' petition; contents; study and report.
- 39-1724. County board resolution ordering public hearing; publication; service of notice on adjacent landowners and municipality.
- 39-1725. Order of county board; contents; conditions and vote required for vacation or abandonment; resolution; disposition.
- 39-1726. County operating roads on a township basis; offer to relinquish; procedure; vacation in metropolitan cities; notice to city planning director.
- 39-1727. County roads; detachment from county road system.
- 39-1728. Barricading of county or township roads by Department of Roads permitted; conditions; procedure.

§ 39-1701

HIGHWAYS AND BRIDGES

Section

- 39-1729. Access to public roads; right assured; landowners may waive; condemnation.
39-1730. Public roads; elimination of railroad crossings; petition; procedure.
39-1731. Roads along or across county line; discontinuance.

(a) LAND ACQUISITION

39-1701 County road purposes; property acquisition; eminent domain; power of county board.

When in the judgment of the county board it is necessary or proper for the safety or convenience of the traveling public that additional property be secured for establishment of new roads or for improvement or maintenance of existing roads within the county, such board may on behalf of the county, take, hold and appropriate such property by the exercise of the power of eminent domain, the procedure therefor to be exercised in the manner set forth in Chapter 76, article 7. All costs, expenses, and damages incurred shall be paid out of the general fund of the county or the county road fund.

Source: Laws 1957, c. 155, art. IV, § 1, p. 540; Laws 1973, LB 493, § 1.

39-1702 County road purposes, defined; property acquisition; gift; purchase; exchange; eminent domain; authority of county board.

(1) The county board is hereby authorized to acquire, either temporarily or permanently, lands, real or personal property or any interest therein, or any easements deemed to be necessary or desirable for present or future county road purposes by gift, agreement, purchase, exchange, condemnation, or otherwise. Such lands or real property may be acquired in fee simple or in any lesser estate.

(2) County road purposes, as referred to in subsection (1) of this section, shall include provisions for, but shall not be limited to, the following: (a) The establishment, construction, reconstruction, relocation, improvement, or maintenance of any county road. The right-of-way for such roads shall be of such width as is deemed necessary by the county board; (b) adequate drainage in connection with any road, cut, fill, channel change, or the maintenance thereof; (c) shops, offices, storage buildings and yards and road maintenance or construction sites; (d) road materials, sites for the manufacture of road materials, and access roads to such sites; (e) the preservation of objects of attraction or scenic value adjacent to, along or in close proximity to county roads and the culture of trees and flora which may increase the scenic beauty of county roads; (f) roadside areas or parks adjacent to or near any county roads; (g) the exchange of property for other property to be used for rights-of-way or other purposes set forth in subsection (1) or (2) of this section if the interest of the county will be served and acquisition costs thereby reduced; (h) the maintenance of an unobstructed view of any portion of a county road so as to promote the safety of the traveling public; (i) the construction and maintenance of stock trails and cattle passes; (j) the erection and maintenance of marking and warning signs and traffic signals; and (k) the construction and maintenance of sidewalks and road illumination.

(3) The county board may (a) designate and establish controlled-access facilities, (b) design, construct, maintain, improve, alter, and vacate such facilities, and (c) regulate, restrict, or prohibit access to such facilities so as to

best serve the traffic for which such facilities are intended. No road, street, or highway shall be opened into or connected with such facility without the consent of the county board. In order to carry out the purposes of this subsection, the county board may acquire, in public or private property, such rights of access as are deemed necessary. Such acquisitions may be by gift, devise, purchase, agreement, adverse possession, prescription, condemnation, or otherwise and may be in fee simple absolute or in any lesser estate or interest; *Provided*, that an adjoining landowner cannot be denied reasonable means of egress and ingress. When a county road adjoins the corporate limits of any city or village, the powers granted in this subsection may be exercised by the governing body of such city or village.

Source: Laws 1957, c. 155, art. IV, § 2, p. 541; Laws 1973, LB 493, § 2.

39-1703 State lands; acquisition for county road purposes; approval of Governor and Department of Roads; damages.

The county board of any county and the governing authority of any city or village may acquire land owned, occupied, or controlled by the state or any state institution, board, agency, or commission, whenever such land is necessary to construct, reconstruct, improve, relocate, or maintain a county road or a city or village street or to provide adequate drainage for such roads or streets. The procedure for such acquisition shall, as nearly as possible, be that provided in sections 72-224.02 and 72-224.03. Prior to taking any land for any of the above purposes, a certificate that the taking of such land is in the public interest must be obtained from the Governor and from the Department of Roads, and be filed in the office of the Department of Administrative Services and a copy thereof in the office of the Board of Educational Lands and Funds. The damages assessed in such proceedings shall be paid to the Board of Educational Lands and Funds, and shall be remitted by that board to the State Treasurer for credit to the proper account.

Source: Laws 1957, c. 155, art. IV, § 3, p. 542; Laws 1969, c. 317, § 10, p. 1149.

(b) ESTABLISHMENT, ALTERATION, AND SURVEY

39-1704 County and township roads; establishment or alteration; survey and marking; county and township boards; duties.

Before establishing a new county or township road or before altering the location of an existing county or township road, the county board or the township board, if a township road is being established or altered, shall cause the line of such road to be accurately surveyed and plainly marked; *Provided*, such county board or township board shall be bound to comply with the provisions of this section only to the extent necessary to accurately determine and mark the location of such road.

Source: Laws 1957, c. 155, art. IV, § 4, p. 542.

39-1705 Survey; boundary lines; how marked.

The centerline of a road being altered or established shall be the centerline of survey. Each angle or change of direction must be accurately determined, and the length of each course carefully measured. The distance shall be ascertained to all watercourses and summits of hills along the line thereof where an

expenditure of public money or labor will be required. The boundary line of each side of the road shall be marked by substantial stakes driven on the summits of hills, crossings of watercourses, and other convenient places, and in the prairie at reasonable intervals. All stakes driven to indicate said boundary lines shall be marked C. R., the initial letters of County Roads, on the sides facing the road and angles thereof.

Source: Laws 1957, c. 155, art. IV, § 5, p. 542.

39-1706 Survey; monuments; bearing.

Monuments of some durable material shall be firmly established on the centerline of survey at each angle or change of direction, and the bearing taken to any permanent natural or artificial object within a reasonable distance. The distance thereof must be accurately measured and, when the bearing is to a tree, the measurement shall be to the middle of the same.

Source: Laws 1957, c. 155, art. IV, § 6, p. 543.

39-1707 Survey; plat; field notes; filing.

A correct plat of the road, together with the field notes of the surveyor, shall be filed in the office of the county surveyor. Where no regular office is maintained in the county courthouse for the county surveyor such plat and field notes shall be filed with the county clerk.

Source: Laws 1957, c. 155, art. IV, § 7, p. 543.

39-1708 Corner markers; perpetuation; duty of county board; notice of destruction.

It shall be the duty of the county board of each county to cause to be perpetuated the existing corners of land surveys along the public roads and highways where such corners are liable to destruction, either by public travel or construction or maintenance. The board shall cause to be established witness corners in at least two directions and cause such work to be recorded after the manner of other surveys. It shall be the duty of every person supervising the construction, improvement or maintenance of the public roads or highways, to notify the county surveyor of the destruction of any corners of land surveys. If there is no county surveyor in the county, then such notice shall be given to the county board.

Source: Laws 1957, c. 155, art. IV, § 8, p. 543.

Cross References

County surveyor, duties, see sections 23-1907 and 23-1908.

39-1709 Corner markers; loss or destruction; report to county board; liability for failure to report.

Any person having knowledge of the loss or destruction of a corner marker of a land survey, who shall fail or neglect to report the same in writing as provided in section 39-1708 shall be liable for the expense of the resurvey and restoration of such corner, and for any damage sustained by landowners by reason of such failure or neglect.

Source: Laws 1957, c. 155, art. IV, § 9, p. 544.

39-1710 New or altered roads; plats; records; duties of county board.

After a new road has been established or an existing road altered, the county board shall cause the plat of such road to be recorded and platted in the road plat record of the county with a proper reference to the files in the office of the county clerk where the papers relating to the same may be found.

Source: Laws 1957, c. 155, art. IV, § 10, p. 544.

39-1711 Road plat record; contents; entries, when made; duties of county board.

The county board shall cause a road plat record to be kept in which every road that is legally laid out must be platted. Each township shall be platted separately, on a scale of not less than four inches to the mile. All changes in or additions to the roads shall be immediately recorded and entered on the proper page of the road plat record with appropriate reference to the files in the office of the county clerk in which the papers relating to the same may be found.

Source: Laws 1957, c. 155, art. IV, § 11, p. 544.

39-1712 Resurvey; when ordered.

When by reason of the loss or destruction of the field notes of the original survey, or in cases of defective surveys or record, or in cases of such numerous alterations of any road since the original survey that its location cannot be accurately defined by the papers on file in the proper office, the county board may, if it deems it necessary, cause such road to be resurveyed, platted and recorded as provided in sections 39-1705 to 39-1707.

Source: Laws 1957, c. 155, art. IV, § 12, p. 544.

39-1713 Isolated land; access; affidavit; petition; hearing before county board; time; terms, defined.

(1) When any person presents to the county board an affidavit satisfying it (a) that he or she is the owner of the real estate described therein located within the county, (b) that such real estate is shut out from all public access, other than a waterway, by being surrounded on all sides by real estate belonging to other persons, or by such real estate and by water, (c) that he or she is unable to purchase from any of such persons the right-of-way over or through the same to a public road or that it cannot be purchased except at an exorbitant price, stating the lowest price for which the same can be purchased by him or her, and (d) asking that an access road be provided in accordance with section 39-1716, the county board shall appoint a time and place for hearing the matter, which hearing shall be not more than thirty days after the receipt of such affidavit. The application for an access road may be included in a separate petition instead of in such affidavit.

(2) For purposes of sections 39-1713 to 39-1719:

(a) Access road means a right-of-way open to the general public for ingress to and egress from a tract of isolated land provided in accordance with section 39-1716; and

(b) State of Nebraska includes the Board of Educational Lands and Funds, Board of Regents of the University of Nebraska, Board of Trustees of the Nebraska State Colleges, Department of Roads, Department of Aeronautics,

Department of Administrative Services, and Game and Parks Commission and all other state agencies, boards, departments, and commissions.

Source: Laws 1957, c. 155, art. IV, § 13, p. 544; Laws 1982, LB 239, § 1; Laws 1999, LB 779, § 4.

Under subsection (2) (now subdivision (1)(b)) of this section, land may be isolated if the land is shut off from all public roads, other than a waterway, by (1) being surrounded on all sides by real estate belonging to other persons or (2) being surrounded on all sides by real estate belonging to others and by water. A writ of mandamus is the proper remedy to compel a county

board, in accordance with this section and section 39-1716, to lay out a public road for access to isolated land. *Young v. Dodge Cty. Bd. of Supervisors*, 242 Neb. 1, 493 N.W.2d 160 (1992).

A road established hereunder is a public road and this section is constitutional. *Moritz v. Buglewicz*, 187 Neb. 819, 194 N.W.2d 215 (1972).

39-1714 Isolated land; access by private road only; affidavit; petition; hearing before county board.

Whenever all the other conditions prescribed by section 39-1713 are present and, instead of being entirely shut off from all public roads, the only access by any owner of real estate to any public road is by an established private road less than two rods in width, the county board shall, upon the filing of an affidavit or affidavit and petition asking that an access road be provided in accordance with section 39-1716, substantially in the manner set forth in section 39-1713, setting forth such facts, appoint a time and place and hold a hearing thereon in the manner set forth in section 39-1713.

Source: Laws 1957, c. 155, art. IV, § 14, p. 545; Laws 1999, LB 779, § 5.

This section provides that whenever the county board finds that such conditions set forth in section 39-1713 are present and, instead of being entirely shut off from all public roads, that the owner has access to any public road only by an established private road less than 2 rods in width, the county board is required, upon the filing of an affidavit or affidavit and petition

to hold a hearing on the matter. *Lewis v. Board of Comrs. of Loup Cty.*, 247 Neb. 655, 529 N.W.2d 745 (1995).

Establishment of a public road upon satisfaction of statutory requirements is a ministerial duty within the power of the county board. *Burton v. Annett*, 215 Neb. 788, 341 N.W.2d 318 (1983).

39-1715 Isolated land; access; hearing; notice; service; posting.

When a hearing is to be held as provided in sections 39-1713 and 39-1714, the county board shall cause notice of the time and place of the hearing to be given by posting notices thereof in three public places in the county at least ten days before the time fixed therefor. At least fifteen days' written notice of the time and place of the hearing shall be given to all of the owners and occupants of the lands through which the access road may pass. The notice shall be served personally or by leaving a copy thereof at the usual place of abode of each occupant of such lands and, whenever possible, by either registered or certified mail to the owners of such lands.

Source: Laws 1957, c. 155, art. IV, § 15, p. 545; Laws 1982, LB 239, § 2; Laws 1999, LB 779, § 6.

39-1716 Isolated land; access road; damages; powers of county board; costs; maintenance.

(1) The county board shall, if it finds (a) that the conditions set forth in section 39-1713 or 39-1714 exist, (b) that the isolated land was not isolated at the time it was purchased by the owner or that the owner acquired the land directly from the State of Nebraska, (c) that the isolation of the land was not caused by the owner or by any other person with the knowledge and consent of the owner, and (d) that access is necessary for existing utilization of the isolated land, proceed to provide an access road and, if it finds that the amount of use and the number of persons served warrants such action, may lay out a public road to such real estate.

(2) The county board shall appraise the damages to be suffered by the owner or owners of the real estate over or through which the access road will be provided. Such damages shall be paid by the person petitioning that the access road be provided. For any real estate purchased or otherwise acquired after January 1, 1982, for which public access is granted pursuant to sections 39-1713 to 39-1719, the person petitioning for such access shall also reimburse the county for all engineering and construction costs incurred in providing such access.

(3) Notwithstanding any other provisions of law, an access road provided in accordance with this section shall not be subject to Chapter 39, article 20 or 21. The designation of such an access road shall not impose on the State of Nebraska or any political subdivision any obligation of design, construction, or maintenance for the access road nor give rise to any cause of action against the state or any political subdivision with respect to the access road.

Source: Laws 1957, c. 155, art. IV, § 16, p. 545; Laws 1982, LB 239, § 3; Laws 1999, LB 779, § 7.

This section provides that the county board may lay out a public road of not more than 4 nor less than 2 rods in width to isolated real estate, if it finds that the amount of use and the number of persons served warrant such action. *Lewis v. Board of Cmrs. of Loup Cty.*, 247 Neb. 655, 529 N.W.2d 745 (1995).

A writ of mandamus is the proper remedy to compel a county board, in accordance with this section and section 39-1713, to lay out a public road for access to isolated land. This section applies prospectively, that is, to real estate acquired after Janu-

ary 1, 1982. *Young v. Dodge Cty. Bd. of Supervisors*, 242 Neb. 1, 493 N.W.2d 160 (1992).

The duty of the board of county commissioners under this section, to lay out a public road upon a showing that the statutory conditions of section 39-1713, R.R.S.1943, exist, is ministerial. *Singleton v. Kimball County Board of Commissioners*, 203 Neb. 429, 279 N.W.2d 112 (1979).

A road established as provided herein is a public road. *Moritz v. Buglewicz*, 187 Neb. 819, 194 N.W.2d 215 (1972).

39-1717 Isolated land; location of access road.

Whenever possible, an access road provided in accordance with section 39-1716 shall be along section lines. When the most practicable route for the access road is adjacent to a watercourse, the land to be taken for the access road shall be measured from the edge of the watercourse.

Source: Laws 1957, c. 155, art. IV, § 17, p. 546; Laws 1982, LB 239, § 4; Laws 1999, LB 779, § 8.

39-1718 Isolated land; access road; order of county board; award of damages; payment; filing of order.

If the county board decides to provide an access road in accordance with section 39-1716, the county board shall make and sign an order describing the same and file it with the county clerk, together with its award of damages which order shall be recorded by the clerk, except that the amount assessed as damages to the owner or owners of the real estate shall be paid to the county treasurer before the order providing for the access road is filed.

Source: Laws 1957, c. 155, art. IV, § 18, p. 546; Laws 1982, LB 239, § 5; Laws 1999, LB 779, § 9.

39-1718.01 Isolated land; changes in law; applicability.

Sections 39-1713 to 39-1719 shall not apply if public access has been granted prior to July 17, 1982.

Source: Laws 1982, LB 239, § 6; Laws 1999, LB 779, § 10.

39-1719 Isolated land; access road; award; appeal; procedure.

Any party to an award as provided by section 39-1718 may, within sixty days after the filing thereof, appeal therefrom to the district court of the county where the lands lie. The appeal shall be taken by serving upon the adverse party a notice of such appeal and filing such notice and proof of service thereof with the clerk of the court within the sixty days. Thereupon the appeal shall be set down for hearing at the next term of the court. It shall be heard and determined in like manner as appeals from awards in condemnations as provided in sections 76-704 to 76-724. Such appeal shall not affect the right or authority of the petitioner to the use of the access road under the award of the appraisers.

The applicant shall in case of appeal file such additional security as may be required by the county board for such costs and damages as may accrue against him or her by reason of such appeal. If on appeal the appellant does not obtain a more favorable judgment and award than was given by the appraisers, such appellant shall pay all the costs of such appeal. Either party to such suit may appeal from the decision of the district court to the Court of Appeals, and the sum deposited as provided in this section shall remain in the hands of the county treasurer until a final decision is had.

Source: Laws 1957, c. 155, art. IV, § 19, p. 546; Laws 1961, c. 189, § 8, p. 583; Laws 1991, LB 732, § 99; Laws 1999, LB 779, § 11.

39-1720 Roads to bridge on county line; opening; maintenance; closing or vacating.

Where there is, or may be hereafter constructed, a public bridge across a stream dividing two counties, it shall be the duty of the county boards of such counties to open and keep open within their respective counties a public road leading from such bridge to the most convenient public road. Each county shall bear the expense necessary to open and maintain such roads in good condition for travel. Such roads shall not be closed or vacated except by concurrent action of the county boards of both counties.

Source: Laws 1957, c. 155, art. IV, § 20, p. 547.

39-1721 County and township roads; portions within cities or villages; subject to municipal regulations.

Such portions of all public roads of the counties and townships as lie within the limits of any incorporated city or village shall conform to the direction and grade and be subject to all the regulations of other streets in such city or village.

Source: Laws 1957, c. 155, art. IV, § 21, p. 547.

(c) VACATION AND ABANDONMENT

39-1722 Road vacation or abandonment; resolution of county board directing study; report to board; permanent record.

The county board of any county may by resolution, when it deems the public interest may require vacation or abandonment of a public road of the county, direct the county highway superintendent or in counties having no highway superintendent then such person as the board may direct to study the use being made of such public road and to submit in writing to the county board within

thirty days, a report upon the study made and his or her recommendation as to the vacation or abandonment thereof. Said resolution and report shall be retained in the office of the county clerk as a part of the permanent public records of the county board; *Provided*, that the county board shall not require vacation or abandonment of any public road or any part thereof which is within the area of the zoning jurisdiction of a city of the metropolitan, primary, or first class without the prior approval of the governing body of such city.

Source: Laws 1957, c. 155, art. IV, § 22, p. 547; Laws 1971, LB 192, § 2; Laws 1980, LB 607, § 1.

Statute providing for limited access to interstate highway was not limited or controlled by general road laws. *Fougeron v. County of Seward*, 174 Neb. 753, 119 N.W.2d 298 (1963).

39-1723 Road vacation or abandonment; electors' petition; contents; study and report.

Any person desiring the vacation or abandonment of any public road of the county shall file in the office of the county clerk of the proper county, a petition signed by ten or more electors residing within ten miles of the road proposed to be vacated or abandoned, which petition shall contain (1) the names and addresses of said electors, (2) a clear and unambiguous description of the road proposed to be vacated or abandoned, (3) the reason or reasons why said road should be vacated or abandoned, and (4) a request that a time and date be set for public hearing before the county board. The county board shall within two weeks thereafter direct the county highway superintendent, or in counties having no highway superintendent then such person as the board may direct, to proceed in the manner set forth in section 39-1722.

Source: Laws 1957, c. 155, art. IV, § 23, p. 547; Laws 1961, c. 189, § 9, p. 583; Laws 1980, LB 607, § 2.

39-1724 County board resolution ordering public hearing; publication; service of notice on adjacent landowners and municipality.

Upon receipt of the report, as provided in section 39-1722, the county board shall adopt a resolution fixing the time, date, and place for public hearing. Such resolution shall contain a clear and unambiguous description of the road to be vacated or abandoned. The county board shall cause such resolution to be published once a week for three consecutive weeks in a legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county. Whenever possible the board shall cause copies to be served by either registered or certified mail upon the owners of land abutting on or adjacent to the road to be vacated or abandoned and upon the planning and public works directors of a city of the metropolitan, primary, or first class when such road or any part thereof is within the area of the zoning jurisdiction of such city by mailing the same to the last-known address of each owner not less than two weeks in advance of the hearing.

Source: Laws 1957, c. 155, art. IV, § 24, p. 548; Laws 1971, LB 192, § 3; Laws 1980, LB 607, § 3; Laws 1986, LB 960, § 30.

39-1725 Order of county board; contents; conditions and vote required for vacation or abandonment; resolution; disposition.

After the public hearing the county board shall by resolution at its next meeting or as soon thereafter as may be practicable vacate or abandon or refuse vacation or abandonment, as in the judgment of the board the public good may require. Vacation and abandonment shall not be ordered except upon vote of two-thirds of all members of the board and the prior approval of the governing body of a city of the metropolitan, primary, or first class has been obtained when any public road or any part thereof is within the area of the zoning jurisdiction of such city. If such road lies within a township in a county operating roads on a township basis the road shall not be vacated or abandoned unless an offer has been made to relinquish to the township in the manner provided in section 39-1726.

In the event that the county board decides to vacate or abandon, its resolution shall state upon what conditions, if any, the vacation or abandonment shall be qualified and particularly whether or not the title or right-of-way to any vacated or abandoned fragment or section of road shall be sold, revert to private ownership, or remain in the public. If the county board fails to specify in a resolution as to the disposition of right-of-way, and if there shall be nonuse of such right-of-way for any public purpose for a continuous period of not less than ten years, the right-of-way shall revert to the owners of the adjacent real estate, one-half on each side thereof. When the county vacates all or any portion of a road, the county shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating resolution with the register of deeds for the county to be indexed against all affected lots.

Source: Laws 1957, c. 155, art. IV, § 25, p. 548; Laws 1959, c. 167, § 7, p. 611; Laws 1971, LB 192, § 4; Laws 1972, LB 1277, § 1; Laws 1980, LB 607, § 4; Laws 2001, LB 483, § 7.

Cross References

Effect of conveyances of tracts adjacent to vacated streets or alleys, see section 76-275.03.

County board's decision not to rebuild bridge upheld where no showing that such discretionary decision was arbitrary or capricious. *State ex rel. Goossen v. Board of Supervisors*, 198 Neb. 9, 251 N.W.2d 655 (1977).

Constitutionality of this section sustained. *Emry v. Lake*, 181 Neb. 568, 149 N.W.2d 520 (1967).

Title to abandoned road remained in county until a period of ten years of non-use had elapsed. *Plischke v. Jameson*, 180 Neb. 803, 146 N.W.2d 223 (1966).

39-1726 County operating roads on a township basis; offer to relinquish; procedure; vacation in metropolitan cities; notice to city planning director.

(1) No fragment of a county road lying within a township in a county operating roads on a township basis shall be vacated or abandoned without first offering to relinquish it to the township. The county board shall offer to relinquish such county road by written notification to such township. Such offer to relinquish may be conditional or subject to the reservation of any right which the county board deems necessary and proper. Four months after sending the written notification, the county board may proceed to abandon such county road unless a petition from a notified township has been filed with the county board setting forth that the township desires to maintain such road, or portion thereof, subject to the reservations contained in the notice. The county board may reject any petition which does not accept the conditions or reservations set forth in the notice. The petition and the acceptance or rejection thereof by the county board shall be placed upon public record in the office of the county clerk. In the event the petition is accepted, the county board shall by resolution relinquish the county road to the township. From the date of the

resolution the county shall be relieved of all responsibility in relation to the road. In the event a petition for relinquishment is not received within four months or in the event that the petition for relinquishment is not accepted, the county board shall, by resolution, state whether the vacated or abandoned road shall be retained or disposed of by sale, or by reverter to the adjacent property or otherwise.

(2) In any county in which is located a city of the metropolitan class, written notification of the proposed vacation or abandonment shall be given to the planning director of the city, and any recommendations which the officer shall make shall be received and considered before such vacation or abandonment is effected.

(3) When the county vacates or abandons all or any portion of a county road, the county shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating resolution with the register of deeds for the county in which the vacated property is located to be indexed against all affected lots.

Source: Laws 1957, c. 155, art. IV, § 26, p. 549; Laws 1963, c. 237, § 1, p. 727; Laws 1980, LB 607, § 5; Laws 2001, LB 483, § 8.

39-1727 County roads; detachment from county road system.

Whenever a county road has been designated and established as provided by sections 39-2001 to 39-2003, the county board may detach the same, or any part thereof, from the county road system, and cause the same to revert back as a township road. The county board shall no longer be obliged to maintain the same and the maintenance and improvement of the road shall thereafter devolve upon the township.

Source: Laws 1957, c. 155, art. IV, § 27, p. 550.

39-1728 Barricading of county or township roads by Department of Roads permitted; conditions; procedure.

A county or township road may be barricaded by the road department of the state for the purpose of regulating, restricting, or prohibiting ingress and egress to a state highway upon which the department has established a limited- or controlled-access facility; *Provided*, that prior thereto the written notice has been given by the department to the county or township board having jurisdiction of the road to be barricaded and that within thirty days from the date such notice was given, the county or township board, as the case may be, has not adopted by unanimous vote of all its members and delivered to the department a resolution opposing the barricading of such road; *and provided further*, that road crossings shall be provided along such controlled- or limited-access facilities at intervals of not to exceed five miles unless the consent of the county board has been obtained for the establishment of fewer crossings.

Source: Laws 1957, c. 155, art. IV, § 28, p. 550.

This section is not special legislation and does not operate to deprive landowner of property without due process of law. Fougerson v. County of Seward, 174 Neb. 753, 119 N.W.2d 298 (1963).

39-1729 Access to public roads; right assured; landowners may waive; condemnation.

The right of reasonable convenient egress and ingress from lands or lots, abutting on an existing street or road, may not be denied except with the

consent of the owners of such lands or lots, or with the condemnation of such right of access to and from such abutting lands or lots.

Source: Laws 1957, c. 155, art. IV, § 29, p. 550.

39-1730 Public roads; elimination of railroad crossings; petition; procedure.

Upon the petition of the owner or operator of any railroad, the county board is authorized to vacate such part of a public road, outside of incorporated cities and villages, lying within the right-of-way of such railroad, and not part of a state highway, if it appears that such crossing should be eliminated in the interest of public safety. Such petition shall be filed with the county clerk of the county in which such part of a public road is located. The same procedure shall be followed in the elimination of railroad grade crossings as is provided for the relocation, vacation, and abandonment of public roads as set forth in sections 39-1722 to 39-1725.

Source: Laws 1957, c. 155, art. IV, § 30, p. 551.

39-1731 Roads along or across county line; discontinuance.

Roads established by the concurrent action of the county boards of two or more counties can be discontinued only by the concurrent action of the county boards of the several counties in which the same may be situated; but such roads shall be treated in all other respects as other public roads.

Source: Laws 1957, c. 155, art. IV, § 31, p. 551.

ARTICLE 18

COUNTY ROADS. MAINTENANCE

Section

- 39-1801. County and township roads; temporary closing; detours; authority of county and township board; barricades; violation; penalty.
- 39-1802. Public roads; drainage facilities; construction and maintenance; authority of county board; damage to property outside of right-of-way.
- 39-1803. Public road within city limits; maintenance by county; when authorized.
- 39-1804. Main thoroughfare through cities and villages of 1,500 inhabitants or less; graveling by county; when authorized; chargeable to Highway Allocation Fund.
- 39-1805. Snow fences; access to adjacent property authorized; damages; payment.
- 39-1806. Snow fences; refusal of access to lands; willful or malicious damage; other violations; penalty.
- 39-1807. Road lighting system; installation, maintenance, operation; powers of county board.
- 39-1808. Livestock lanes; when provided by county board.
- 39-1809. Livestock lanes; establishment; maintenance; powers of county board.
- 39-1810. Livestock lanes; driving livestock on adjacent highway; penalty.
- 39-1811. Weeds; mowing; duty of landowner; neglect of duty; obligation of county board; cost; assessment and collection.
- 39-1812. Hedges and trees; trimming; duties of landowners.
- 39-1813. Hedges and trees; failure of landowner to trim; procedure; notice; hearing; order.
- 39-1814. Road over private property; when authorized; fences; auto gates.
- 39-1815. Road over private property; leaving gates open; penalty.
- 39-1816. Parking motor vehicles on right-of-way; county board; power to prohibit or restrict; violation; penalty.
- 39-1817. Roads; water impoundment structure; when permitted; liability.
- 39-1818. Water impoundment structure; approval; criteria considered.

Section

- 39-1819. Water impoundment structure; county board; erect warning devices; form; maintenance.
- 39-1820. Existing water impoundment structure; liability; relieved from; when.

39-1801 County and township roads; temporary closing; detours; authority of county and township board; barricades; violation; penalty.

Whenever a county or township road or a part of such road is impassable or unusually dangerous to travel, whenever it becomes necessary because of construction or maintenance work to suspend all or part of the travel on such road, or whenever justified by necessity in order to provide for the public safety, such road or part of a road may be temporarily closed, and when feasible a suitable detour provided, or the weight limitations of wheel and axle loads as defined in subsections (2) through (4) of section 60-6,294 may be restricted to the extent deemed necessary for a reasonable period where the subgrade or pavement of such roads is weak or materially weakened by climatic conditions, by the county board as to county roads within the county and by the township board as to township roads within the township or by the person to whom the county board or township board has delegated the authority to temporarily close roads within the particular county or township.

Whenever such road or part of a road is temporarily closed, the person, board, or contractor therefor shall erect, at both ends of the portion of the road so closed, suitable barricades, fences, or other enclosures and shall post signs warning the public that the road is closed by authority of law. Such barricades, fences, enclosures, and signs shall serve as notice to the public that such road is unsafe and that anyone entering such closed road, without permission, does so at his or her own peril.

Whenever a road or part of a road is undergoing construction, repair, or maintenance, while the public use thereof is permitted, traffic thereon may be regulated, limited, or controlled under the same authority as such road may be temporarily closed.

Any person who violates any provision of this section or who removes or interferes with any barricade, fence, enclosure, or warning sign required by this section shall be guilty of a Class V misdemeanor.

Source: Laws 1957, c. 155, art. V, § 1, p. 551; Laws 1961, c. 181, § 9, p. 541; Laws 1977, LB 40, § 215; Laws 1993, LB 370, § 41.

39-1802 Public roads; drainage facilities; construction and maintenance; authority of county board; damage to property outside of right-of-way.

The county board shall have the authority to construct, maintain and improve drainage facilities on the public roads of the county. The county board also shall have the authority to make channel changes, control erosion, and provide stream protection or any other control measures beyond the road right-of-way limits wherever it is deemed necessary in order to protect the roads and drainage facilities from damage. The county board and any person acting in its behalf shall have the authority to enter upon private or public property for the above purposes. In case of any damage to the premises, the county board shall pay the owner of the premises the amount of the damages. Upon failure of the landowner and county board to agree upon the amount of damages, the

landowner, in addition to any other available remedy, may file a petition as provided for in section 76-705.

Source: Laws 1957, c. 155, art. V, § 2, p. 552.

39-1803 Public road within city limits; maintenance by county; when authorized.

(1) In any case in which the boundary line of an incorporated city extends in and along a public road, which road has not been paved or macadamized, then the county board of any county in which such road lies is hereby authorized and empowered to maintain and keep in repair and proper condition for travel the full width of such road, including the portion which lies within the corporate limits as well as the portion which lies outside of the corporate limits, and to pay the cost and expense of such maintenance, repair, and upkeep, so long as the road remains unpaved.

(2) A county may enter into an agreement under the Interlocal Cooperation Act with a city or village located in such county to appropriate and use county road funds for the improvement, maintenance, or repair of a road or street that is:

(a) Located within the corporate limits of the city or village if the street is classified as other arterial, collector, or local under subdivisions (4) through (6) of section 39-2104 and such street acts as a direct link or extension of an other arterial as described in subdivision (5) of section 39-2103;

(b) Located on the boundary between the corporate limits of the city or village and the county; or

(c) A city or village road or street directly impacted by county operations or through traffic.

Source: Laws 1957, c. 155, art. V, § 3, p. 552; Laws 2002, LB 616, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.

39-1804 Main thoroughfare through cities and villages of 1,500 inhabitants or less; graveling by county; when authorized; chargeable to Highway Allocation Fund.

The county board may, with the approval of the mayor and council or the chairperson and board of trustees, as the case may be, whenever conditions warrant, furnish, deliver, and spread gravel of a depth not exceeding three inches on certain streets in cities of the second class and villages having a population of not more than fifteen hundred inhabitants and shall charge the cost of such improvement to that portion of the Highway Allocation Fund allocated to such counties from the Highway Trust Fund under section 39-2215. No improvement of any street or streets in cities of the second class or villages having a population of not more than fifteen hundred inhabitants shall be made under the provisions of this section unless the street or streets, when graveled, will constitute one main thoroughfare through such city or village that connects with or forms a part of the county highway system of such county which has been or which shall be graveled up to the corporate limits of such city or village. Before being entitled to such county aid in graveling such thoroughfare,

the same must have been properly graded by such city or village in accordance with the grade established in the construction of the county road system.

Source: Laws 1957, c. 155, art. V, § 4, p. 553; Laws 1972, LB 1058, § 13; Laws 1986, LB 599, § 10.

39-1805 Snow fences; access to adjacent property authorized; damages; payment.

The county board shall cause the county roads to be kept sufficiently clear of snow and ice so as to be reasonably safe for travel. The county shall have the authority to enter upon private or public property adjacent to any county road and to place and maintain thereon snow fences wherever it is deemed necessary in order to prevent snow drifting on the traveled portion of such road. Such snow fences shall be erected in such a manner as to provide the most protection to the road and shall not be placed on such property prior to October 15, nor remain on such property after April 1, without the consent of the property owner. In case of any damage to such property, the county shall pay the amount of such damage to the owner of the property.

Source: Laws 1957, c. 155, art. V, § 5, p. 553.

39-1806 Snow fences; refusal of access to lands; willful or malicious damage; other violations; penalty.

Any person who shall refuse to allow an agent or employee of the county board access to any lands for the purpose of installing, maintaining or removing any snow fences, or any person who shall violate any other provision of section 39-1805, or any person who shall willfully or maliciously damage or destroy any snow fence installed and erected, as provided for by law, shall be guilty of a Class III misdemeanor.

Source: Laws 1957, c. 155, art. V, § 6, p. 554; Laws 1977, LB 40, § 216.

39-1807 Road lighting system; installation, maintenance, operation; powers of county board.

The county board of any county, as a part of its duties, shall have power and authority to contract for the installment, maintenance, and operation of road lighting systems, sufficient to light any county road, or any portion thereof in its county, when, in the judgment of the county board, the lighting of such road or any portion thereof is in the interest of public safety. The cost of installing, maintaining, and operating such road lighting systems shall be paid out of funds that are available for the construction and maintenance of county roads.

Source: Laws 1957, c. 155, art. V, § 7, p. 554.

39-1808 Livestock lanes; when provided by county board.

Whenever the condition of any sand roadbed shall be such that the driving of cattle or other livestock thereon will destroy or impair said sand roadbed, the county board may at its discretion, locate, build, and maintain lanes or other driveways adjacent to said road through which such cattle or other livestock shall be driven.

Source: Laws 1957, c. 155, art. V, § 8, p. 554.

39-1809 Livestock lanes; establishment; maintenance; powers of county board.

In the establishment and maintenance of such lanes and driveways the county board shall have the same powers and follow the same procedure as is provided by law for the establishment and maintenance of public roads and highways, except as to bridges, culverts and the grading of such lanes and driveways.

Source: Laws 1957, c. 155, art. V, § 9, p. 554.

39-1810 Livestock lanes; driving livestock on adjacent highway; penalty.

Any person who shall drive or assist in driving any cattle or livestock over a public road where such lane or driveway has been established as provided in section 39-1808 shall be guilty of a Class III misdemeanor.

Source: Laws 1957, c. 155, art. V, § 10, p. 554; Laws 1977, LB 40, § 217.

39-1811 Weeds; mowing; duty of landowner; neglect of duty; obligation of county board; cost; assessment and collection.

(1) It shall be the duty of the landowners in this state to mow all weeds that can be mowed with the ordinary farm mower to the middle of all public roads and drainage ditches running along their lands at least twice each year, namely, before July 15, for the first time and sometime in August for the second time.

(2) Whenever a landowner, referred to in subsections (1) and (3) of this section, neglects to mow the weeds as provided in this section, it shall be the duty of the county board on complaint of any resident of the county to cause the weeds to be mowed or otherwise destroyed on neglected portions of roads or ditches complained of.

(3) The county board shall cause to be ascertained and recorded an accurate account of the cost of mowing or destroying such weeds, as referred to in subsections (1) and (2) of this section, in such places, specifying, in such statement or account of costs, the description of the land abutting upon each side of the highway where such weeds were mowed or destroyed, and, if known, the name of the owner of such abutting land. The board shall file such statement with the county clerk, together with a description of the lands abutting on each side of the road where such expenses were incurred, and the county board, at the time of the annual tax levy made upon lands and property of the county, may, if it desires, assess such cost upon such abutting land, giving such landowner due notice of such proposed assessment and reasonable opportunity to be heard concerning the proposed assessment before the same is finally made.

Source: Laws 1957, c. 155, art. V, § 11, p. 555.

39-1812 Hedges and trees; trimming; duties of landowners.

Each landowner in this state upon whose land there is standing or growing any osage orange, willow or locust hedge fence, trees, or undergrowth, bordering the public roads, when such fence, trees, or undergrowth become a public nuisance to travel on the roads, or obstruct the view at or near railroad crossings, crossroads or abrupt turns in the road, shall keep the same trimmed not less than once a year by cutting back to within four feet of the ground,

excepting trees, which shall be trimmed from the ground up eight feet, and the trimmings so cut shall be burned or removed from the road right-of-way within ten days after each cutting.

Source: Laws 1957, c. 155, art. V, § 12, p. 555.

39-1813 Hedges and trees; failure of landowner to trim; procedure; notice; hearing; order.

Whenever any landowner or his agent shall neglect to trim such hedge fence, trees, or undergrowth as provided in section 39-1812, it shall be the duty of the person in charge of county road maintenance in the area in which such hedge fence, trees, or undergrowth is located, to report the same in writing simultaneously to the county attorney and to the county board, giving the location of the hedge fence, trees, or undergrowth and declaring the same to be a public nuisance. The county attorney shall, upon receipt of such written notice, immediately serve written notice upon the owner of the hedge fence, trees, or undergrowth, or upon his agent, to have such hedge fence, trees, or undergrowth, trimmed and the trimmings burned or removed within ten days. Upon failure of the landowner or his agent to comply with the notice of the county attorney within ten days, the county attorney shall give notice in writing to the landowner or his agent, fixing a date for a hearing before the county board on the complaint previously entered, that the landowner or his agent is maintaining a public nuisance by failing to trim said hedge fence, trees, or undergrowth in accordance with the provisions of section 39-1812. The notice shall fix a time not earlier than the next regular meeting of the county board, and in any event not less than five days after the date of the notice, when the owner or agent may appear before the county board and a hearing shall be had upon the matter. The county attorney shall appear at the hearing on behalf of the county for the abatement of the alleged public nuisance maintained by the owner or agent of the land upon which the hedge fence, trees, or undergrowth may be found. If at the hearing it shall appear that the hedge fence, trees, or undergrowth named in the notice are in a condition contrary to the provisions of section 39-1812, the county board shall forthwith and at once declare such hedge fence, trees, or undergrowth a public nuisance, and make an immediate order for the trimming of the same in accordance with the provisions of section 39-1812. If the owner or agent shall neglect or fail to comply with the order within thirty days after receipt of such written notice, the county board shall cause the same to be done. The cost shall be paid from the general fund and a statement of such cost shall be recorded by the county board with the county clerk, giving a proper description of the lands whereon such hedge fence, trees, or undergrowth was trimmed, and the county clerk shall include such costs in making the county tax lists as an assessment and charge against such lands, which charge shall be a lien upon said lands and be collected the same as all other taxes regularly levied. Nothing in sections 39-1812 and 39-1813 shall be deemed to abridge the right of appeal from the finding of the county board to the district court.

Source: Laws 1957, c. 155, art. V, § 13, p. 556.

39-1814 Road over private property; when authorized; fences; auto gates.

Where it is apparent to the county board that a county or township road causes or would cause unnecessary burdens upon the county or township or

upon the landowners adjoining such road, the county board may provide that such road may be fenced by such landowners; *Provided*, the safety and welfare of the traveling public are not substantially affected thereby; *provided further*, that the county board may install and maintain auto gates through such fences where the road crosses the fences; *and provided further*, that auto gates shall be not less than eighteen feet in length when located upon an established graded road.

Source: Laws 1957, c. 155, art. V, § 14, p. 557; Laws 1963, c. 238, § 1, p. 729.

39-1815 Road over private property; leaving gates open; penalty.

It shall be unlawful for any person traveling upon a road provided for in section 39-1814 to leave the gates open when he shall have passed through the same. Any person who violates the provisions of this section shall be guilty of a Class III misdemeanor.

Source: Laws 1957, c. 155, art. V, § 15, p. 557; Laws 1977, LB 40, § 218.

39-1816 Parking motor vehicles on right-of-way; county board; power to prohibit or restrict; violation; penalty.

In order to promote safety, power is conferred upon the county board of any county to prohibit or restrict the parking of motor vehicles on the right-of-way of county highways outside the corporate limits of any city or village and to erect and maintain appropriate signs thereon giving notice of no parking or restricted parking.

Any person, firm, association, partnership, limited liability company, or corporation which parks a motor vehicle in the right-of-way of a county highway where no parking or restricted parking signs have been erected or maintained, in violation of such signs, shall be guilty of a Class V misdemeanor. Whenever any peace officer finds a vehicle parked in violation of this section, he or she may move such vehicle at the expense of the registered owner or request the driver or person in charge of such vehicle to move such vehicle.

If any motor vehicle is found upon the right-of-way of any county highway in violation of this section and the identity of the driver cannot be determined, the owner or person in whose name such vehicle is registered shall be prima facie responsible for such violation.

Source: Laws 1963, c. 216, § 1, p. 688; Laws 1977, LB 40, § 219; Laws 1993, LB 121, § 213.

39-1817 Roads; water impoundment structure; when permitted; liability.

The county board of any county may, in accordance with sections 39-1817 to 39-1820, enter into an agreement with any agency or political subdivision of the state approving the construction of a water impoundment structure which, when completed, may result in the occasional and temporary storage or flowage of floodwaters upon, across, or adjacent to any road classified as a local road or remote residential road. Any such agreement may include such terms regarding the maintenance of such road or other matters incident to the construction and operation of such water impoundment structure as the parties to the agreement determine to be mutually acceptable. Conformance with sections 39-1817 to 39-1820 shall relieve the county board and all other parties

to any such agreement of any liability for personal injury or property damage suffered by any person while utilizing any such road for travel during a period of inundation.

Source: Laws 1979, LB 265, § 1; Laws 1988, LB 903, § 1; Laws 2008, LB1068, § 2.
Effective date July 18, 2008.

39-1818 Water impoundment structure; approval; criteria considered.

A water impoundment structure which will result in temporary storage and flowage of water upon, across, or adjacent to a road upstream from such structure may be approved only if such road would not be inundated because of the storage in such structure of waters from a ten-year, twenty-four-hour or lesser frequency storm. A water impoundment structure which will also serve as a roadbed may be approved and constructed only if the structure would contain the runoff from a twenty-five-year, twenty-four-hour frequency storm without water overtopping such structure or being discharged through its emergency spillway, except that if the road which is subject to such inundation is classified as a local road or remote residential road with current average daily traffic of fifty vehicles or less, the containment of a ten-year, twenty-four-hour frequency storm shall be sufficient. In making the storm frequency determinations required by this section, any recognized method may be used.

Source: Laws 1979, LB 265, § 2; Laws 1988, LB 903, § 2; Laws 2008, LB1068, § 3.
Effective date July 18, 2008.

39-1819 Water impoundment structure; county board; erect warning devices; form; maintenance.

Whenever any water impoundment structure is approved pursuant to sections 39-1817 to 39-1820, it shall be the responsibility of the county board to erect at both ends of the portion of the road subject to such inundation permanent warning devices providing notice of the potential hazard. Such warning devices shall conform to the United States Department of Transportation's Manual of Uniform Traffic Control Devices, shall have printed thereon the words FLOOD AREA, and shall indicate the distance from such sign to the opposite extreme of the flood hazard area. The county board shall exercise reasonable care in maintaining such warning devices.

Source: Laws 1979, LB 265, § 3.

39-1820 Existing water impoundment structure; liability; relieved from; when.

Any liability of the type described in section 39-1817 which might arise because of the operation of a water impoundment structure constructed prior to April 3, 1979, shall be relieved by conformance by the county board with section 39-1819 even if conformance with the provisions of section 39-1818 has not been achieved.

Source: Laws 1979, LB 265, § 4.

ARTICLE 19

COUNTY ROADS. ROAD FINANCES

Cross References

Flood control funds from United States Government, use for county roads, see section 79-1049.

Forest reserve funds from United States Government, use for county roads, see section 79-1044.

Surplus funds, transfers by county board to road funds, see section 23-333.

Section

- 39-1901. Road damages; payment from general fund; barricades by Department of Roads; payment by department; claimant's petition.
- 39-1902. Road districts; special tax levy; limit; collection; warrants; payment.
- 39-1903. Road districts; annual levies to meet deficiencies; limit.
- 39-1904. Road tax; levy; same rate in rural and municipal areas; division between municipalities and counties; authorized expenditures.
- 39-1905. Road tax; special levy by petition; limit; contributions; district road fund; authorized expenditures.
- 39-1906. Road construction or improvement; special levy; limit; bonds.
- 39-1907. County roads in township counties; construction or improvement; use of township road fund.
- 39-1908. Federal-aid secondary highway; in city or village; improvement by county; approval by city or village; conditions; contribution.
- 39-1909. Repealed. Laws 1963, c. 348, § 6.
- 39-1910. Repealed. Laws 1963, c. 348, § 6.
- 39-1911. Repealed. Laws 1963, c. 348, § 6.
- 39-1912. Repealed. Laws 1963, c. 348, § 6.
- 39-1913. Repealed. Laws 1963, c. 348, § 6.
- 39-1914. Repealed. Laws 1963, c. 348, § 6.

39-1901 Road damages; payment from general fund; barricades by Department of Roads; payment by department; claimant's petition.

All damages caused by the laying out, altering, opening, or discontinuing of any county road shall be paid by warrant on the general fund of the county in which such road is located; *Provided*, that the Department of Roads shall pay the damages, if any, which a person sustains and is legally entitled to recover because of the barricading of a county or township road pursuant to the provisions of section 39-1728. Upon the failure of the party damaged and the county to agree upon the amount of damages the damaged party, in addition to any other available remedy, may file a petition as provided for in section 76-705.

Source: Laws 1957, c. 155, art. VI, § 1, p. 558.

39-1902 Road districts; special tax levy; limit; collection; warrants; payment.

In order to provide for the payment of all outstanding road district warrants and to liquidate indebtedness against road districts, the county board of any county where such indebtedness exists is hereby authorized and empowered to levy a special tax not exceeding three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such road districts or so much thereof as may be necessary to pay all the outstanding indebtedness of the character described in this section, except that in no case shall the taxes levied in any one year by the county board in any road district, including the county taxes for all purposes, exceed the aggregate of ten and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such road district unless such additional levy is authorized

by a vote of the electors of the county. The levy shall be made by the county board at its regular annual meeting while assembled for the purpose of levying other taxes as provided by law. The tax shall be collected by the county treasurer in the same manner as other county taxes are collected, and all warrants shall be paid by the county treasurer in order in which they appear on his or her register.

Source: Laws 1957, c. 155, art. VI, § 2, p. 558; Laws 1979, LB 187, § 164; Laws 1992, LB 719A, § 144.

39-1903 Road districts; annual levies to meet deficiencies; limit.

In case the levy mentioned in section 39-1902 is not sufficient to pay the entire amount of the indebtedness of the various road districts, the county board in such counties where a deficiency exists shall annually thereafter make other levies for this purpose not exceeding three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such district in any one year until all the indebtedness against the road districts in such county has been paid.

Source: Laws 1957, c. 155, art. VI, § 3, p. 558; Laws 1979, LB 187, § 165; Laws 1992, LB 719A, § 145.

39-1904 Road tax; levy; same rate in rural and municipal areas; division between municipalities and counties; authorized expenditures.

The county board may levy the same rate of county road tax upon the property within cities and villages as is levied upon the property in the county not within cities and villages. One-half of such tax collected within cities or villages, when collected, shall be paid to the cities or villages within the county where levied to be used for the construction, improvement, or maintenance of municipal streets and alleys; and the remaining portion of such tax, when collected, shall be placed in the county road fund to be expended by the county board for construction, improvement, or maintenance of the roads and bridges in the county.

Source: Laws 1957, c. 155, art. VI, § 4, p. 559; Laws 1959, c. 183, § 1, p. 665.

39-1905 Road tax; special levy by petition; limit; contributions; district road fund; authorized expenditures.

Fifty-one percent of the resident freeholders of any road district, precinct, or township in this state, as shown by the records of the register of deeds of the county in which such road district, precinct, or township is situated, may petition the county board of the county in which such district, precinct, or township is located to levy an assessment of not to exceed ten and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such road district, precinct, or township. Upon receipt of such petition, the county board shall make the assessment, as requested, upon the taxable value of all the taxable property in such road district, precinct, or township to be levied and collected the same as other taxes. Such taxes and any voluntary contributions (1) shall be and become a part of the district road fund of the district, precinct, or township in which the taxes are levied, (2) shall be used exclusively in constructing or improving the public roads in such district, precinct, or township, and (3) shall not be transferred to any other fund. In

counties under township organization, the township board shall designate the road or roads in such road district where such levy shall be expended. In other counties the county board shall designate the road or roads in such road district where such levy shall be expended.

Source: Laws 1957, c. 155, art. VI, § 5, p. 559; Laws 1979, LB 187, § 166; Laws 1992, LB 719A, § 146.

39-1906 Road construction or improvement; special levy; limit; bonds.

Any township or precinct may make a special levy, not exceeding three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such township or precinct, to improve, to construct, or to aid in the improvement or construction of a road. For the same purpose, any township or precinct may issue bonds by proceeding in the manner prescribed in sections 39-836 to 39-842.

Source: Laws 1957, c. 155, art. VI, § 6, p. 560; Laws 1959, c. 167, § 8, p. 612; Laws 1971, LB 992, § 1; Laws 1979, LB 187, § 167; Laws 1992, LB 719A, § 147.

39-1907 County roads in township counties; construction or improvement; use of township road fund.

In counties under township organization, the electors of any township through which a county road passes, at any annual or special meeting, may direct the payment to the county, out of the township road fund, of such sum as may be determined upon and as the condition of such fund permits, to assist in the construction or improvement of the portion of said county road lying within such township.

Source: Laws 1957, c. 155, art. VI, § 7, p. 560.

39-1908 Federal-aid secondary highway; in city or village; improvement by county; approval by city or village; conditions; contribution.

Wherever a federal-aid secondary highway traverses or passes through any city or village, the county board may with the approval of the mayor and council or the chairman and board of trustees of such city or village, grade, pave, curb, gutter or hard-surface such highway lying in the corporate limits of such city or village; *Provided*, that such city or village may pay or contribute to the county highway fund of the county for paving or hard-surfacing such highway in an amount designated by the county board but not to exceed fifty percent of the cost of such project lying within the corporate limits of such city or village.

Source: Laws 1959, c. 184, § 1, p. 666; Laws 1963, c. 239, § 1, p. 730.

39-1909 Repealed. Laws 1963, c. 348, § 6.

39-1910 Repealed. Laws 1963, c. 348, § 6.

39-1911 Repealed. Laws 1963, c. 348, § 6.

39-1912 Repealed. Laws 1963, c. 348, § 6.

39-1913 Repealed. Laws 1963, c. 348, § 6.

39-1914 Repealed. Laws 1963, c. 348, § 6.

ARTICLE 20

COUNTY ROAD CLASSIFICATION

Section

- 39-2001. Designation of primary and secondary county roads by county board; procedure; determination by Department of Roads; when; certification; record.
- 39-2002. County primary road system; designation by county board; when; redesignation of primary roads; procedure; current map kept on file.
- 39-2003. County roads; maintenance at county expense; exception.

39-2001 Designation of primary and secondary county roads by county board; procedure; determination by Department of Roads; when; certification; record.

(1) The county board of each county shall select and designate, from the laid out and platted public roads within the county, certain roads to be known as primary and secondary county roads. Primary county roads shall include (a) direct highways leading to and from rural schools where ten or more grades are being taught, (b) highways connecting cities, villages, and market centers, (c) rural mail route and star mail route roads, (d) main traveled roads, and (e) such other roads as are designated as such by the county board. All county roads not designated as primary county roads shall be secondary county roads.

(2) As soon as the primary county roads are designated as provided by subsection (1) of this section, the county board shall cause such primary county roads to be plainly marked on a map to be deposited with the county clerk and be open to public inspection. Upon filing the map the county clerk shall at once fix a date of hearing thereon, which shall not be more than twenty days nor less than ten days from the date of filing. Notice of the filing of said map and of the date of such hearing shall be published prior to the hearing in one issue of each newspaper published in the English language in the county.

(3) At any time before the hearing provided for by subsection (2) of this section is concluded, any ten freeholders of the county may file a petition with the county clerk asking for any change in the designated primary county roads, setting forth the reason for the proposed change. Such petition shall be accompanied by a plat showing such proposed change.

(4) The roads designated on the map by the county board shall be conclusively established as the primary roads; *Provided*, if no agreement is reached between the county board and the petitioners at the hearing, the county clerk shall forward the map, together with all petitions and plats, to the Department of Roads.

(5) The department shall, upon receipt of the said maps, petitions and plats, proceed to examine the same, and shall determine the lines to be followed by the said county roads, having regard to volume of traffic, continuity, and cost of construction. The department shall, not later than twenty days from the receipt thereof, return the papers to the county clerk, together with the decision of the department in writing, duly certified, and accompanied by a plat showing the lines of the county roads as finally determined. The county clerk shall file the papers and record the decision, and the same shall be conclusive as to the lines of the county roads established therein.

Source: Laws 1957, c. 155, art. VII, § 1, p. 560.

39-2002 County primary road system; designation by county board; when; redesignation of primary roads; procedure; current map kept on file.

The county board of each county shall select and designate, within six months from January 1, 1958, the roads which will be county primary roads and which will constitute the county primary road system. Such roads shall be selected from those roads which already have been designated as primary county roads pursuant to the provisions of section 39-2001, or from those roads which were maintained by the Department of Roads under the provisions of section 39-1309. The primary county roads shall include only the more important county roads as determined by the actual or potential traffic volumes and other traffic survey data.

The county board of each county shall have authority to redesignate the county primary roads from time to time by naming additional roads as primary roads and by rescinding the designation of existing county primary roads; *Provided*, the county board shall follow the same procedure for redesignation as is required by law for initially designating the county primary roads; *and provided further*, that the principle of designating only the more important county roads as primary roads as determined by the actual or potential traffic volumes and other traffic survey data shall be adhered to.

A copy of a current map of the county roads showing the location of roads and bridges and reflecting the county primary road system as designated in this section shall be kept on file and available to public inspection at the office of the county clerk and with the Department of Roads.

Source: Laws 1957, c. 155, art. VII, § 2, p. 561; Laws 1963, c. 240, § 1, p. 730.

39-2003 County roads; maintenance at county expense; exception.

All county roads designated in accordance with sections 39-2001 and 39-2002 shall be maintained at the expense of the county; *Provided*, that in counties under township organization not operating under the county road unit system, the county board may, by resolution entered on its records, delegate to the township board the duty of maintaining in the township any road which has been designated after September 7, 1947, as a county primary road.

Source: Laws 1957, c. 155, art. VII, § 3, p. 562.

ARTICLE 21

FUNCTIONAL CLASSIFICATION

Section	
39-2101.	State highways; functional classification; declaration.
39-2102.	Functional classification; categories.
39-2103.	Rural highways; functional classifications.
39-2104.	Municipal streets; functional classifications.
39-2105.	Functional classifications; jurisdictional responsibility.
39-2106.	Board of Public Roads Classifications and Standards; established; members; number; appointment; qualifications; compensation; expenses.
39-2107.	Board of Public Roads Classifications and Standards; office space; furniture; equipment; supplies; personnel.
39-2108.	Board of Public Roads Classifications and Standards; proceedings; subject to Administrative Procedure Act.
39-2109.	Board of Public Roads Classifications and Standards; functional classification; criteria; adoption; hearing; publication; filing.

Section	
39-2110.	Functional classification; specific criteria; assignment to highways, roads, streets.
39-2111.	Functional classification; assignment; appeal.
39-2112.	Functional classification; assignment; Department of Roads; request to reclassify; county board; public hearing; decision; appeal.
39-2113.	Board of Public Roads Classifications and Standards; minimum standards; signs required; when; rule for relaxing; request for review; decision.
39-2114.	Counties and municipalities; contract between themselves; filing required.
39-2115.	Six-year plan; basis; filing; failure to file; penalty; funds placed in escrow.
39-2116.	Board of Public Roads Classifications and Standards; review of plans and programs; recommendations.
39-2117.	Six-year plan; extension.
39-2118.	Department of Roads; plan for specific highway improvements; file annually with Board of Public Roads Classifications and Standards; review.
39-2119.	Counties and municipalities; plan or program for specific improvements; file annually with Board of Public Roads Classifications and Standards; hearing; notice; adoption; review; failure to file; penalty; funds placed in escrow.
39-2119.01.	County or municipality; use of annual metropolitan transportation improvement program as alternate submission authorized.
39-2120.	Standardized system of annual reporting; Auditor of Public Accounts and Board of Public Roads Classifications and Standards; develop.
39-2121.	Department of Roads; counties; municipalities; reports; penalty; when imposed; appeal.
39-2122.	Board of Public Roads Classifications and Standards; duties.
39-2123.	County board; develop numbering system for its principal roads; arterial and collector roads; time.
39-2124.	Legislative intent.
39-2125.	Sections, how construed.

39-2101 State highways; functional classification; declaration.

Recognizing that safe and efficient transportation over public roads is a matter of major importance to all of the people in the state, the Legislature hereby determines and declares that an integrated system of public roads is essential to the general welfare of the State of Nebraska.

Adequate public roads provide for the free flow of traffic, protect the health and safety of the citizens of the state, result in lower cost of motor vehicle operation, increase property values, and generally promote the economic and social progress of the state.

Providing such a system of facilities and the efficient management, operation, and control thereof are recognized as urgent problems and proper objectives of legislation pertaining to all public roads.

As a result of the comprehensive three-year study of all public roads in Nebraska conducted by a committee of the Legislative Council as authorized by the Legislature in 1965 and 1967, a study through which determination has been made of the engineering, financial, and management needs of all public roads, a program has been developed to provide an integrated system of public roads for the state, its counties, and its municipalities.

Recognizing that cooperation among these governmental entities is essential in bringing to fruition the development of a truly integrated system of public roads, it is the intent of the Legislature to provide by law the structure upon

which the state, its counties, and its municipalities can work as equal partners in the development, operation, and management of such a system.

Fundamental to the development of an integrated system of public roads is a determination of the function each road segment serves. Through adoption by law of a functional classification system, it is the intent of the Legislature that each segment of public road shall be identified according to the function it serves. Identification of roads according to function then will permit the establishment of uniform standards of design, construction, operation, and maintenance for each classification of road. Such standards will promote the general safety of the traveling public, enhance the free flow of traffic, and provide improved utilization of highway financing.

Responsibility for the various functional classifications of public roads shall be assigned by law to the state, the counties, and the municipalities, as appropriate, such assignments reflecting the general responsibilities of each entity.

Through establishment of a Board of Public Roads Classifications and Standards composed of representation from the state, counties, municipalities, and general public, it is the intent of the Legislature to give each governmental entity and the public an equal voice in developing reasonable standards for each classification of road which shall be adequate to meet the needs of an increasingly mobile society.

Both long-range planning and annual programming are essential to the orderly development of an integrated system of public roads. It is the intent of the Legislature to provide by law a structure which will enable each governmental entity to program its individual needs on a priority basis, yet to establish an intergovernmental relationship which will permit their working in cooperation with each other to attain the desired objective of an integrated system. The structure will have the flexibility necessary to recognize that annual programs cannot always be met as planned because of unforeseen problems which may arise.

To assure realization of the maximum benefits possible from the substantial investment Nebraska citizens make toward their public roads, it is the intent of the Legislature to provide by law a system of planning, programming, budgeting, reporting, and accounting for each governmental entity which will bring improved management methods. Such management will provide citizens the opportunity to know how each governmental entity intends to spend its highway money, and to determine its performance when measured against its plans.

Nebraska's public roads system is one of the largest in the nation; yet its population is relatively small and ranges from high concentrations of people in urban centers to vast rural areas in which the population is sparsely located. The citizens in these diverse areas have the same need, however, for a transportation system which will meet their respective needs. It is not economically feasible to develop all public roads throughout the state to the same high standards, and thus it becomes incumbent upon the Legislature to devise a program under which the roads most important to these diverse areas are developed to modern standards. Adoption of a functional classification system and implementation of modern management methods will combine to bring such a program into being and result in improved utilization of highway financing.

Recognizing that highway financing heretofore has been inadequate to meet the needs of a modern transportation system, and that the distribution of revenue has resulted in disparities of treatment, it is the intent of the Legislature to provide reasonable financing and more equitable distribution of revenue. The objectives of this total program are to bring the state highway system up to adequate standards in a twenty-year period, and to bring the road systems of its counties, and the street systems of its municipalities, up to adequate standards over a twenty-year period.

Source: Laws 1969, c. 312, § 1, p. 1116.

This article contemplates continuous highway planning and improvements and every highway and bridge is subject to re-evaluation and change. State ex rel. Goossen v. Board of Supervisors, 198 Neb. 9, 251 N.W.2d 655 (1977).

39-2102 Functional classification; categories.

For purposes of functional classification thereof, the public highways, roads, and streets of this state are hereby divided into the two broad categories of rural highways and municipal streets. Rural highways shall consist of all public highways and roads outside the limits of any incorporated municipality and municipal streets shall consist of all public streets within the limits of any incorporated municipality.

Source: Laws 1969, c. 312, § 2, p. 1119.

39-2103 Rural highways; functional classifications.

Rural highways are hereby divided into nine functional classifications as follows:

- (1) Interstate, which shall consist of the federally designated National System of Interstate and Defense Highways;
- (2) Expressway, which shall consist of a group of highways following major traffic desires in Nebraska which rank next in importance to the National System of Interstate and Defense Highways. The expressway system is one which ultimately should be developed to multilane divided highway standards;
- (3) Major arterial, which shall consist of the balance of routes which serve major statewide interests for highway transportation. This system is characterized by high-speed, relatively long-distance travel patterns;
- (4) Scenic-recreation, which shall consist of highways or roads located within or which provide access to or through state parks, recreation or wilderness areas, other areas of geographical, historical, geological, recreational, biological, or archaeological significance, or areas of scenic beauty;
- (5) Other arterial, which shall consist of a group of highways of less importance as through-travel routes which would serve places of smaller population and smaller recreation areas not served by the higher systems;
- (6) Collector, which shall consist of a group of highways which pick up traffic from many local or land-service roads and carry it to community centers or to the arterial systems. They are the main school bus routes, mail routes, and farm-to-market routes;
- (7) Local, which shall consist of all remaining rural roads, except minimum maintenance roads and remote residential roads;
- (8) Minimum maintenance, which shall consist of (a) roads used occasionally by a limited number of people as alternative access roads for areas served primarily by local, collector, or arterial roads or (b) roads which are the

principal access roads to agricultural lands for farm machinery and which are not primarily used by passenger or commercial vehicles; and

(9) Remote residential, which shall consist of roads or segments of roads in remote areas of counties with (a) a population density of no more than five people per square mile or (b) an area of at least one thousand square miles, and which roads or segments of roads serve as primary access to no more than seven residences. For purposes of this subdivision, residence means a structure which serves as a primary residence for more than six months of a calendar year. Population shall be determined using data from the most recent federal decennial census.

The rural highways classified under subdivisions (1) through (3) of this section should, combined, serve every incorporated municipality having a minimum population of one hundred inhabitants or sufficient commerce, a part of which will be served by stubs or spurs, and along with rural highways classified under subdivision (4) of this section, should serve the major recreational areas of the state.

For purposes of this section, sufficient commerce means a minimum of two hundred thousand dollars of gross receipts under the Nebraska Revenue Act of 1967.

Source: Laws 1969, c. 312, § 3, p. 1119; Laws 1972, LB 866, § 2; Laws 1976, LB 724, § 1; Laws 1980, LB 873, § 1; Laws 1983, LB 10, § 3; Laws 2008, LB1068, § 4.
Effective date July 18, 2008.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

39-2104 Municipal streets; functional classifications.

Municipal streets are hereby divided into six functional classifications as follows:

(1) Interstate, which shall consist of the federally designated national system of interstate and defense highways;

(2) Expressway, which shall consist of two categories: Extensions of rural expressways and some additional routes which serve very high volumes of local traffic within urban areas;

(3) Major arterial, which shall generally consist of extensions of the rural major arterials which provide continuous service through municipalities for long-distance rural travel. They are the arterial streets used to transport products into and out of municipalities;

(4) Other arterial, which shall consist of two categories: Municipal extensions of rural other arterials, and arterial movements peculiar to a municipality's own complex, that is streets which interconnect major areas of activity within a municipality, such as shopping centers, the central business district, manufacturing centers, and industrial parks;

(5) Collector, which shall consist of a group of streets which collect traffic from residential streets and move it to smaller commercial centers or to higher arterial systems; and

(6) Local, which shall consist of the balance of streets in each municipality, principally residential access service streets and local business streets. They are

characterized by very short trip lengths, almost exclusively limited to vehicles desiring to go to or from an adjacent property.

Source: Laws 1969, c. 312, § 4, p. 1120.

39-2105 Functional classifications; jurisdictional responsibility.

Jurisdictional responsibility for the various functional classifications of public highways and streets shall be as follows:

(1) The state shall have the responsibility for the design, construction, reconstruction, maintenance, and operation of all roads classified under the category of rural highways as interstate, expressway, and major arterial, and the municipal extensions thereof, except that the state shall not be responsible for that portion of a municipal extension which exceeds the design of the rural highway leading into the municipality. When the design of a rural highway differs at the different points where it leads into the municipality, the state's responsibility for the municipal extension thereof shall be limited to the lesser of the two designs. The state shall be responsible for the entire interstate system under either the rural or municipal category and for connecting links between the interstate and the nearest existing state highway system in rural areas, except that if such a connecting link has not been improved and a sufficient study by the Department of Roads results in the determination that a link to an alternate state highway would provide better service for the area involved, the department shall have the option of providing the alternate route, subject to satisfactory local participation in the additional cost of the alternate route;

(2) The various counties shall have the responsibility for the design, construction, reconstruction, maintenance, and operation of all roads classified as other arterial, collector, local, minimum maintenance, and remote residential under the rural highway category;

(3) The various incorporated municipalities shall have the responsibility for the design, construction, reconstruction, maintenance, and operation of all streets classified as expressway which are of a purely local nature, that portion of municipal extensions of rural expressways and major arterials which exceeds the design of the rural portions of such systems, and responsibility for those streets classified as other arterial, collector, and local within their corporate limits; and

(4) Jurisdictional responsibility for all scenic-recreation roads and highways shall remain with the governmental subdivision which had jurisdictional responsibility for such road or highway prior to its change in classification to scenic-recreation made pursuant to this section and sections 39-2103, 39-2109, and 39-2113.

Source: Laws 1969, c. 312, § 5, p. 1121; Laws 1971, LB 738, § 1; Laws 1980, LB 873, § 2; Laws 1983, LB 10, § 4; Laws 2008, LB1068, § 5.

Effective date July 18, 2008.

39-2106 Board of Public Roads Classifications and Standards; established; members; number; appointment; qualifications; compensation; expenses.

To assist in developing the functional classification system, there is hereby established the Board of Public Roads Classifications and Standards which shall consist of eleven members to be appointed by the Governor with the

approval of the Legislature. Of the members of such board, two shall be representatives of the Department of Roads, three shall be representatives of the counties, one of whom shall be a licensed county highway superintendent in good standing and two of whom shall be county board members, three shall be representatives of the municipalities who shall be either public works directors or licensed city street superintendents in good standing, and three shall be lay citizens who shall represent the three congressional districts of the state. The county members on the board shall represent the various classes of counties, as defined in section 23-1114.01, in the following manner: One shall be a representative from either a Class 1 or Class 2 county; one shall be a representative from either a Class 3 or Class 4 county; and one shall be a representative from either a Class 5, Class 6, or Class 7 county. The municipal members of the board shall represent municipalities of the following sizes by population: One shall be a representative from a municipality of less than two thousand five hundred population; one shall be a representative from a municipality of two thousand five hundred to fifty thousand population; and one shall be a representative from a municipality of over fifty thousand population. In making such appointments, the Governor shall consult with the Director-State Engineer and with the appropriate county and municipal officials and may consult with organizations representing such officials or representing counties or municipalities as may be appropriate. At the expiration of existing term, one member from the county representatives, the municipal representatives and the lay citizens shall be appointed for a term of two years; two members from the county representatives, the municipal representatives and the lay citizens shall be appointed for terms of four years. One representative from the Department of Roads shall be appointed for a two-year term and the other representative shall be appointed for a four-year term. Thereafter, all such appointments shall be for terms of four years each. Members of such board shall receive no compensation for their services as such, except that the lay members shall receive the same compensation as members of the State Highway Commission, and all members shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as provided in sections 81-1174 to 81-1177 for state employees. All expenses of such board shall be paid by the Department of Roads.

Source: Laws 1969, c. 312, § 6, p. 1122; Laws 1971, LB 100, § 1; Laws 1981, LB 204, § 61.

39-2107 Board of Public Roads Classifications and Standards; office space; furniture; equipment; supplies; personnel.

The Department of Roads shall furnish the Board of Public Roads Classifications and Standards with necessary office space, furniture, equipment, and supplies as well as necessary professional, technical, and clerical assistants.

Source: Laws 1969, c. 312, § 7, p. 1123.

39-2108 Board of Public Roads Classifications and Standards; proceedings; subject to Administrative Procedure Act.

All proceedings of the Board of Public Roads Classifications and Standards shall be subject to the provisions of the Administrative Procedure Act.

Source: Laws 1969, c. 312, § 8, p. 1123.

Cross References

Administrative Procedure Act, see section 84-920.

39-2109 Board of Public Roads Classifications and Standards; functional classification; criteria; adoption; hearing; publication; filing.

(1) The Board of Public Roads Classifications and Standards shall develop the specific criteria for each functional classification set forth in sections 39-2103 and 39-2104, which criteria shall be consistent with the general criteria set forth in those sections. No such criteria shall be adopted until after public hearings have been held thereon at such times and places as to assure interested parties throughout the state an opportunity to be heard thereon. Following their adoption, such criteria shall be printed and published and copies thereof shall be deposited with the Secretary of State, the Clerk of the Legislature, the county clerk of each county, and the clerk of each incorporated municipality.

(2) Within eighteen months after July 18, 2008, the Board of Public Roads Classifications and Standards shall adopt and promulgate the specific criteria for remote residential roads.

Source: Laws 1969, c. 312, § 9, p. 1123; Laws 1980, LB 873, § 3; Laws 1983, LB 10, § 5; Laws 2008, LB1068, § 6.
Effective date July 18, 2008.

39-2110 Functional classification; specific criteria; assignment to highways, roads, streets.

Following adoption and publication of the specific criteria required by section 39-2109, the Department of Roads, after consultation with the appropriate local authorities in each instance, shall assign a functional classification to each segment of highway, road, and street in this state. Before assigning any such classification, the department shall make reasonable effort to resolve any differences of opinion between the department and any county or municipality. Whenever a new road or street is to be opened or an existing road or street is to be extended, the department shall, upon a request from the operating jurisdiction, assign a functional classification to such segment in accordance with the specific criteria established under section 39-2109.

Source: Laws 1969, c. 312, § 10, p. 1123; Laws 2008, LB1068, § 7.
Effective date July 18, 2008.

39-2111 Functional classification; assignment; appeal.

The county or municipality may appeal to the Board of Public Roads Classifications and Standards from any action taken by the Department of Roads in assigning any functional classification under the provisions of section 39-2110. Upon the taking of such an appeal, the board shall review all information pertaining to the assignment, hold a hearing thereon if deemed advisable, and render a decision on the assigned classification. The decision of the board may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1969, c. 312, § 11, p. 1123; Laws 1971, LB 100, § 2; Laws 1988, LB 352, § 32.

Cross References

Administrative Procedure Act, see section 84-920.

39-2112 Functional classification; assignment; Department of Roads; request to reclassify; county board; public hearing; decision; appeal.

Any county or municipality may, based on changing traffic patterns or volume or a change in jurisdiction, request the Department of Roads to reclassify any segment of highway, road, or street. Any county that wants to use the minimum maintenance, remote residential, or scenic-recreation functional classification or wants to return a road to its previous functional classification may request the department to reclassify an applicable segment of highway or road. If a county board wants a road or a segment of road to be classified as remote residential, it shall hold a public hearing on the matter prior to requesting the department to reclassify such road or segment of road. The department shall review a request made under this section and either grant or deny the reclassification in whole or in part. Any county or municipality dissatisfied with the action taken by the department under this section may appeal to the Board of Public Roads Classifications and Standards in the manner provided in section 39-2111.

Source: Laws 1969, c. 312, § 12, p. 1124; Laws 1971, LB 100, § 3; Laws 2008, LB1068, § 8.
Effective date July 18, 2008.

39-2113 Board of Public Roads Classifications and Standards; minimum standards; signs required; when; rule for relaxing; request for review; decision.

(1) In addition to the duties imposed upon it by section 39-2109, the Board of Public Roads Classifications and Standards shall develop minimum standards of design, construction, and maintenance for each functional classification set forth in sections 39-2103 and 39-2104. Except for scenic-recreation road standards, such standards shall be such as to assure that each segment of highway, road, or street will satisfactorily meet the requirements of the area it serves and the traffic patterns and volumes which it may reasonably be expected to bear.

(2) The standards for a scenic-recreation road and highway classification shall insure a minimal amount of environmental disruption practicable in the design, construction, and maintenance of such highways, roads, and streets by the use of less restrictive, more flexible design standards than other highway classifications. Design elements of such a road or highway shall incorporate parkway-like features which will allow the user-motorist to maintain a leisurely pace and enjoy the scenic and recreational aspects of the route and include rest areas and scenic overlooks with suitable facilities.

(3) The standards developed for a minimum maintenance road and highway classification shall provide for a level of minimum maintenance sufficient to serve farm machinery and the occasional or intermittent use by passenger and commercial vehicles. The standards shall provide that any defective bridges, culverts, or other such structures on, in, over, under, or part of the minimum maintenance road may be removed by the county in order to protect the public safety and need not be replaced by equivalent structures except when deemed by the county board to be essential for public safety or for the present or future transportation needs of the county. The standards for such minimum maintenance

nance roads shall include the installation and maintenance by the county at entry points to minimum maintenance roads and at regular intervals thereon of appropriate signs to adequately warn the public that the designated section of road has a lower level of maintenance effort than other public roads and thoroughfares. Such signs shall conform to the requirements in the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118.

(4) The standards developed for a remote residential road classification shall provide for a level of maintenance sufficient to provide access to remote residences, farms, and ranches by passenger and commercial vehicles. The standards shall allow for one-lane traffic where sight distance is adequate to warn motorists of oncoming traffic. The standards for remote residential roads shall include the installation and maintenance by the county at entry points to remote residential roads of appropriate signs to adequately warn members of the public that they are traveling on a one-lane road. Such signs shall conform to the requirements in the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118.

(5) The board shall by rule provide for the relaxation of standards for any functional classification in those instances in which their application is not feasible because of peculiar, special, or unique local situations.

(6) Any county or municipality which believes that the application of standards for any functional classification to any segment of highway, road, or street would work a special hardship, or any other interested party which believes that the application of standards for scenic-recreation roads and highways to any segment of highway, road, or street would defeat the purpose of the scenic-recreation functional classification contained in section 39-2103, may request the board to relax the standards for such segment. The Department of Roads, when it believes that the application of standards for any functional classification to any segment of highway that is not hard surfaced would work a special hardship, may request the board to relax such standards. The board shall review any request made pursuant to this section and either grant or deny it in whole or in part. The provisions of this section shall not be construed to apply to removal of a road or highway from the state highway system pursuant to section 39-1315.01.

Source: Laws 1969, c. 312, § 13, p. 1124; Laws 1973, LB 324, § 1; Laws 1980, LB 873, § 4; Laws 1983, LB 10, § 6; Laws 1993, LB 370, § 42; Laws 2008, LB1068, § 9.
Effective date July 18, 2008.

39-2114 Counties and municipalities; contract between themselves; filing required.

In order to achieve the efficiencies and economics resulting from unified operations, the Legislature encourages the counties and municipalities to make use of the Interlocal Cooperation Act or the Joint Public Agency Act by contracting between and among themselves for cooperative programs of administering all phases of their road and street programs. Any such contract shall be filed with the Board of Public Roads Classifications and Standards.

Source: Laws 1969, c. 312, § 14, p. 1124; Laws 1999, LB 87, § 72.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

39-2115 Six-year plan; basis; filing; failure to file; penalty; funds placed in escrow.

The Department of Roads, and each county and municipality shall develop and file with the Board of Public Roads Classifications and Standards a long-range, six-year plan of highway, road, and street improvements based on priority of needs and calculated to contribute to the orderly development of an integrated statewide system of highways, roads, and streets. Each such plan shall be filed with the board promptly upon preparation but in no event later than March 1, 1971. If any county or municipality, or the Department of Roads, shall fail to file its plan on or before such date, the board shall so notify the local governing board, the Governor, and the State Treasurer, who shall suspend distribution of any highway-user revenue allocated to such county or municipality, or the Department of Roads, until the plan has been filed. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality.

Source: Laws 1969, c. 312, § 15, p. 1124; Laws 1971, LB 100, § 4; Laws 1973, LB 137, § 1; Laws 1976, LB 724, § 2.

39-2116 Board of Public Roads Classifications and Standards; review of plans and programs; recommendations.

The Board of Public Roads Classifications and Standards shall review all six-year plans required by sections 39-2115 to 39-2117 or annual metropolitan transportation improvement programs under section 39-2119.01 submitted to it and make such recommendations for changes therein as it believes necessary or desirable in order to achieve the orderly development of an integrated system of highways, roads, and streets, but in so doing the board shall take into account the fact that individual priorities of needs may not lend themselves to immediate integration. The department and each county and municipality shall give careful and serious consideration to any such recommendations received from the board and shall not reject them except for substantial or compelling reason.

Source: Laws 1969, c. 312, § 16, p. 1125; Laws 1971, LB 100, § 5; Laws 2007, LB277, § 2.

39-2117 Six-year plan; extension.

The six-year plans required by the provisions of section 39-2115 shall be extended annually, on or before the anniversary date by the addition of a new year, so that there shall at all times be a six-year plan on file with the Board of Public Roads Classifications and Standards. Each such extension shall be subject to the provisions of section 39-2116.

Source: Laws 1969, c. 312, § 17, p. 1125; Laws 1971, LB 100, § 6; Laws 1976, LB 724, § 3.

39-2118 Department of Roads; plan for specific highway improvements; file annually with Board of Public Roads Classifications and Standards; review.

The Department of Roads shall annually prepare and file with the Board of Public Roads Classifications and Standards a plan for specific highway improvements for the current year. The annual plan shall be filed on or before July 1 of each year. In so doing, the department shall take into account all federal funds which will be available to the department for such year. The board shall review each such annual plan to determine whether it is consistent with the department's current six-year plan. The department shall be required to justify any inconsistency with the six-year plan to the satisfaction of the board.

Source: Laws 1969, c. 312, § 18, p. 1125; Laws 1971, LB 100, § 7; Laws 1976, LB 724, § 4.

39-2119 Counties and municipalities; plan or program for specific improvements; file annually with Board of Public Roads Classifications and Standards; hearing; notice; adoption; review; failure to file; penalty; funds placed in escrow.

Each county and municipality shall annually prepare and file, under sections 39-2115 to 39-2117 or 39-2119.01, with the Board of Public Roads Classifications and Standards, a plan or program for specific road or street improvements for the current year. The annual plan or program shall be filed on or before March 1 of each year. No such plan or program shall be adopted until after a local public hearing thereon and its approval by the local governing body. The board shall prescribe the nature and time of notice of such hearing, which shall be such as shall be likely to come to the attention of interested citizens in the jurisdiction involved. The board shall review each such annual plan or program within sixty days after it has been filed to determine whether it is consistent with the county's or municipality's current six-year plan. The county or municipality shall be required to justify any inconsistency with the six-year plan to the satisfaction of the board. If any county or municipality shall fail to comply with the provisions of this section, the board shall so notify the local governing board, the Governor, and the State Treasurer, who shall suspend distribution of any highway-user revenue allocated to such county or municipality until there has been compliance. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality.

Any county or municipality on a fiscal construction year basis may apply to the Board of Public Roads Classifications and Standards for a new anniversary date. The board may grant a new anniversary date, but such date shall not be later than July 1.

Source: Laws 1969, c. 312, § 19, p. 1126; Laws 1971, LB 100, § 8; Laws 1973, LB 137, § 2; Laws 1976, LB 724, § 5; Laws 2007, LB277, § 3.

39-2119.01 County or municipality; use of annual metropolitan transportation improvement program as alternate submission authorized.

Any county or municipality that is designated as a metropolitan planning organization pursuant to 23 U.S.C. 134(d), as such section existed on January 1, 2007, may, in lieu of submission of a six-year plan under sections 39-2115 to

39-2117 or an annual plan under section 39-2119, submit an annual metropolitan transportation improvement program pursuant to section 23 U.S.C. 134(j), as such section existed on January 1, 2007, that is treated as such plans required under sections 39-2115 to 39-2117 and 39-2119.

Source: Laws 2007, LB277, § 4.

39-2120 Standardized system of annual reporting; Auditor of Public Accounts and Board of Public Roads Classifications and Standards; develop.

The Auditor of Public Accounts and the Board of Public Roads Classifications and Standards shall develop and schedule for implementation a standardized system of annual reporting to the board by the department and by counties and municipalities, which system shall include:

(1) A procedure for documenting and certifying that standards of design, construction, and maintenance of roads and streets have been met;

(2) A procedure for documenting and certifying that all tax revenue for road or street purposes has been expended in accordance with approved plans and standards, to include county and municipal tax revenue, as well as highway-user revenue allocations made by the state;

(3) A uniform system of accounting which clearly indicates, through a system of reports, a comparison of receipts and expenditures to approved budgets and programs;

(4) A system of budgeting which reflects uses and sources of funds in terms of programs and accomplishments;

(5) An approved system of reporting an inventory of machinery, equipment, and supplies; and

(6) An approved system of cost accounting of the operation of equipment.

Source: Laws 1969, c. 312, § 20, p. 1126; Laws 1971, LB 100, § 9.

39-2121 Department of Roads; counties; municipalities; reports; penalty; when imposed; appeal.

(1) The department and each county and municipality shall make the reports provided for by section 39-2120.

(2) If any county or municipality or the Department of Roads fails to file such report on or before its due date, the Board of Public Roads Classifications and Standards shall so notify the local governing board, the Governor, and the State Treasurer who shall suspend distribution of any highway-user revenue allocated to such county or municipality or the Department of Roads until the report has been filed. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality.

(3) If any county or municipality either (a) files a materially false report or (b) constructs any highway, road, or street below the minimum standards developed under section 39-2113, without having received prior approval thereof, such county's or municipality's share of highway-user revenue allocated during the following calendar year shall be reduced by ten percent and the amount of any such reduction shall be distributed among the other counties or municipali-

ties, as appropriate, in the manner provided by law for allocation of highway-user revenue. The penalty for filing a materially false report and the penalty for constructing a highway, road, or street below established minimum standards without prior approval shall be assessed by the board only after a review of the facts involved in such case and the holding of a public hearing on the matter. The decision thereafter rendered by the board may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1969, c. 312, § 21, p. 1127; Laws 1971, LB 100, § 10; Laws 1973, LB 137, § 3; Laws 1976, LB 724, § 6; Laws 1988, LB 352, § 33.

Cross References

Administrative Procedure Act, see section 84-920.

39-2122 Board of Public Roads Classifications and Standards; duties.

The Board of Public Roads Classifications and Standards may make occasional random checks of construction projects to determine that the standards of design and construction developed under section 39-2113 are being met.

Source: Laws 1969, c. 312, § 22, p. 1128; Laws 1971, LB 100, § 11.

39-2123 County board; develop numbering system for its principal roads; arterial and collector roads; time.

The county board of each county shall develop a numbering system for its principal roads classified as other arterial and collector roads within two years after the Board of Public Roads Classifications and Standards has prescribed rules and regulations to achieve the maximum practicable uniformity of such numbering systems throughout the state and coordination between adjacent counties. Provisions shall be made for the placing of suitable signs along roads covered by such system, in such numbers and at such locations as the rules and regulations shall provide, and to give adequate notice of such numbering system.

Source: Laws 1969, c. 312, § 23, p. 1128; Laws 1971, LB 100, § 12.

39-2124 Legislative intent.

It is the intent of the Legislature to recognize the responsibilities of the Department of Roads, of the counties, and of the municipalities in their planning programs as authorized by state law and by home rule charter and to encourage the acceptance and implementation of comprehensive, continuing, cooperative, and coordinated planning by the state, the counties, and the municipalities. Sections 13-914 and 39-2101 to 39-2125 are not intended to prohibit or inhibit the actions of the counties and of the municipalities in their planning programs and their subdivision regulations, nor are sections 13-914 and 39-2101 to 39-2125 intended to restrict the actions of the municipalities in their creation of street improvement districts and in their assessment of property for special benefits as authorized by state law or by home rule charter.

Source: Laws 1969, c. 312, § 24, p. 1128; Laws 1971, LB 100, § 13; Laws 1983, LB 10, § 8; Laws 2007, LB277, § 5.

39-2125 Sections, how construed.

Sections 13-914 and 39-2101 to 39-2125 shall be construed as an independent act, complete in itself, and in the event of conflict between any provisions of sections 13-914 and 39-2101 to 39-2125 and any other statutes, the provisions of sections 13-914 and 39-2101 to 39-2125 shall control.

Source: Laws 1969, c. 312, § 25, p. 1128; Laws 1983, LB 10, § 9; Laws 2007, LB277, § 6.

ARTICLE 22

NEBRASKA HIGHWAY BONDS

Section	
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39-2201 Terms, defined.

As used in the Nebraska Highway Bond Act, unless the context otherwise requires:

(1) Bond fund shall mean the Highway Restoration and Improvement Bond Fund created in section 39-2215.01;

(2) Bonds shall mean the bonds authorized to be issued under the Nebraska Highway Bond Act and shall include notes or other similar evidences of indebtedness;

(3) Commission shall mean the State Highway Commission;

(4) Construction shall mean and include acquisition, construction, resurfacing, restoring, rehabilitation, and reconstruction necessary to plan, build,

improve, replace, or extend a highway, and to construct shall mean and include to acquire, to construct, to resurface, to restore, to rehabilitate, and to reconstruct as necessary to plan, build, improve, replace, or extend a highway;

(5) Cost of construction shall mean and include obligations to contractors and builders for construction and for the restoration of property damaged or destroyed in connection with such construction, the cost of acquiring land, property rights, rights-of-way, franchises, easements, and other interests deemed necessary or convenient for construction, the cost of acquiring any property, real or personal, tangible or intangible, or any interest therein, deemed necessary or convenient for construction, the interest requirements upon any bonds prior to, during, and for a period of eighteen months after completion of construction, fees and expenses of paying agents and other agents appointed by the commission for such bonds during any such period, the costs and expenses of preliminary investigations to determine the feasibility or practicability of such construction, the fees and expenses of engineers for making preliminary studies, surveys, reports, estimates of costs and of revenue, and other estimates and for preparing plans and specifications and supervising construction as well as for the performance of all other duties of engineers in relation to such construction or the issuance of bonds therefor, expenses of administration during construction, legal expenses and fees, financing charges, municipal bond insurance or surety bond premiums, credit facility fees, costs of audits, costs of preparing and issuing such bonds, and all other items of expense incident to such construction, the financing thereof, and the acquisition of land and property therefor;

(6) Fund shall mean the Highway Trust Fund which is created by section 39-2215; and

(7) Highway shall mean and include any public road now or at any time hereafter classified by the Legislature as the responsibility of the state to construct and any related facility, the cost of which is financed in whole or in part by the issuance of bonds under the Nebraska Highway Bond Act.

The Legislature hereby reserves the right to vary and change by law the definitions of construction, cost of construction, and highway contained in this section.

Source: Laws 1969, c. 309, § 1, p. 1106; Laws 1988, LB 632, § 1; Laws 2000, LB 1135, § 5.

39-2202 Repealed. Laws 2000, LB 1135, § 34.

39-2203 Bonds; issuance; amount; commission; powers.

The commission acting for and on behalf of the state may issue from time to time bonds in such principal amounts as shall be necessary to provide sufficient funds to defray any or all of the cost of construction of highways. The principal amount of the bonds so authorized to be issued shall not exceed, in the aggregate, the total amount authorized by the Legislature from time to time for such purpose. The proceeds from the sale of any bonds issued under the Nebraska Highway Bond Act shall be deposited in the state treasury to the credit of the Highway Cash Fund and shall be used only to finance or to refinance through the issuance of refunding bonds the construction of highways in this state as authorized by law. The commission is hereby granted all powers

necessary or convenient to carry out the purposes and exercise the powers granted by such act.

Source: Laws 1969, c. 309, § 3, p. 1108; Laws 1988, LB 632, § 2.

39-2204 Attorney General; legal advisor to commission; Auditor of Public Accounts; books; audit annually.

(1) The Attorney General shall serve as legal advisor to the commission and, to assist him in the performance of his duties as such, may authorize the commission to employ special bond counsel.

(2) The Auditor of Public Accounts shall audit the books of the commission annually and at such other times as may be necessary.

Source: Laws 1969, c. 309, § 4, p. 1108.

39-2205 Bonds; issuance; amount.

Bonds may be issued under the Nebraska Highway Bond Act only to the extent that the annual aggregate principal and interest requirements, in the calendar year in which such bonds are issued and in each calendar year thereafter until the scheduled maturity of such bonds, on such bonds and on all other bonds theretofore issued and to be outstanding and unpaid upon the issuance of such bonds shall not exceed the amount which is equal to fifty percent of the money deposited in the fund or the bond fund, as the case may be, from which such bonds shall be paid during the calendar year preceding the issuance of the bonds proposed to be issued. This section shall not apply to the first issuance of each series of bonds authorized by the Legislature.

If short-term bonds are issued in anticipation of the issuance of long-term refunding bonds and such short-term bonds are secured by insurance or a letter of credit or similar guarantee issued by a financial institution rated by a national rating agency in one of the two highest categories of bond ratings, then, for the purposes of the Nebraska Highway Bond Act, when determining the amount of short-term bonds that may be issued and the amount of taxes, fees, or other money to be deposited in any fund for the payment of bonds issued under the act, the annual aggregate principal and interest payments on the short-term bonds shall be deemed to be such payments thereon, except that the final principal payment shall not be that specified in the short-term bonds but shall be the principal and all interest payments required to reimburse the issuer of the insurance policy or letter of credit or similar guarantee pursuant to the reimbursement agreement between the commission and such issuer.

Source: Laws 1969, c. 309, § 5, p. 1108; Laws 1988, LB 632, § 3.

39-2206 Bonds; negotiable instruments.

Whether or not the bonds are of such form and character as to be negotiable instruments under article 8, Uniform Commercial Code, the bonds shall be and hereby are made negotiable instruments within the meaning and for all purposes of article 8, Uniform Commercial Code, with the exception of any provisions thereof pertaining to registration.

Source: Laws 1969, c. 309, § 6, p. 1108.

39-2207 Bonds; date; maturity; interest; redemption; sale.

The bonds shall be authorized by resolution or resolutions of the commission, bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration and conversion privileges, be executed in such manner, be payable in such medium of payment and at such place or places within or without the state, and be subject to such terms of redemption and such redemption price or prices as such resolution or resolutions may provide. The bonds may be sold by the commission, at public or private sale, at such price or prices as the commission shall determine.

Source: Laws 1969, c. 309, § 7, p. 1109; Laws 2001, LB 420, § 29.

39-2208 Interim receipts; exchangeable for definitive bonds; mutilated, destroyed, stolen, or lost; replacement; security.

Prior to the preparation of definitive bonds, the commission may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The commission may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed, stolen or lost. In so replacing any bonds, the commission shall take adequate security to protect against any loss which might be incurred as a result thereof.

Source: Laws 1969, c. 309, § 8, p. 1109.

39-2209 Resolution authorizing issuance of bonds; contents.

Any resolution or resolutions of the commission authorizing any bonds or any issue thereof may contain provisions, consistent with the Nebraska Highway Bond Act and not in derogation or limitation of such act, which shall be a part of the contract with the holders thereof, as to:

- (1) Pledging all or any part of the money in the fund or bond fund, as the case may be, to secure the payment of the bonds, subject to such agreements with the bondholders as may then prevail;
- (2) The use and disposition of money in the fund or bond fund;
- (3) The setting aside of reserves, sinking funds, or arbitrage rebate funds and the funding, regulation, and disposition thereof;
- (4) Limitations on the purpose to which the proceeds from the sale of bonds may be applied;
- (5) Limitations on the issuance of additional bonds and on the retirement of outstanding or other bonds pursuant to the Nebraska Highway Bond Act;
- (6) The procedure by which the terms of any agreement with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;
- (7) Vesting in a bank or trust company as paying agent such rights, powers, and duties as the commission may determine, vesting in a trustee appointed by the bondholders pursuant to the Nebraska Highway Bond Act such rights, powers, and duties as the commission may determine, and limiting or abrogating the right of the bondholders to appoint a trustee under such act or limiting the rights, powers, and duties of such trustee;
- (8) Providing for a municipal bond insurance policy, surety bond, letter of credit, or other credit support facility or liquidity facility; and

(9) Any other matters, of like or different character, which in any way affect the security or protection of the bonds.

Source: Laws 1969, c. 309, § 9, p. 1109; Laws 1988, LB 632, § 4.

39-2210 Commission; retirement of bonds; powers.

The commission, subject to such agreements with bondholders as may then prevail, shall have the power out of any money available therefor to purchase the bonds for retirement.

Source: Laws 1969, c. 309, § 10, p. 1110.

39-2211 Commission; bonds; issuance; agreements; contents; powers.

In addition to the powers conferred upon the commission to secure the bonds in the Nebraska Highway Bond Act, the commission shall have power in connection with the issuance of bonds to enter into such agreements, consistent with the act and not in derogation or limitation of the act, as it may deem necessary, convenient, or desirable concerning the use or disposition of the money in the fund or bond fund including the pledging or creation of any security interest in such money and the doing of or refraining from doing any act which the commission would have the right to do to secure the bonds in the absence of such agreements. The commission shall have the power to enter into amendments of any such agreements, consistent with the Nebraska Highway Bond Act and not in derogation or limitation of the act, within the powers granted to the commission by the act and to perform such agreements. The provisions of any such agreements may be made a part of the contract with the holders of the bonds.

Source: Laws 1969, c. 309, § 11, p. 1110; Laws 1988, LB 632, § 5.

39-2212 Pledge or security agreement; lien on funds.

Any pledge or security instrument made by the commission shall be valid and binding from the time when the pledge or security instrument is made. The money in the fund or bond fund so pledged and entrusted shall immediately be subject to the lien of such pledge or security instrument upon the deposit thereof in the fund without any physical delivery thereof or further act. The lien of any such pledge or security instrument shall be valid and binding as against all parties having subsequently arising claims of any kind in tort, contract, or otherwise, irrespective of whether such parties have notice thereof. Neither the resolution nor any security instrument or other instrument by which a pledge or other security is created need be recorded or filed and the commission shall not be required to comply with any of the provisions of the Uniform Commercial Code.

Source: Laws 1969, c. 309, § 12, p. 1111; Laws 1988, LB 632, § 6.

39-2213 Bonds; special obligations of state; payment.

The bonds shall be special obligations of the state payable solely and only from the fund or bond fund, as the case may be, and neither the members of the commission nor any person executing the bonds shall be liable thereon. Such bonds shall not be a general obligation debt of this state and they shall contain on the face thereof a statement to such effect.

Source: Laws 1969, c. 309, § 13, p. 1111; Laws 1988, LB 632, § 7.

39-2214 State; pledge with holders of bonds.

The state pledges and agrees with the holders of any bonds issued under the Nebraska Highway Bond Act that it will not limit or alter or in any way impair the rights and remedies of such holders until such bonds, together with the interest thereon, the interest on any unpaid installments of interest, and all costs and expenses for which the commission is liable in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged.

Source: Laws 1969, c. 309, § 14, p. 1111; Laws 1988, LB 632, § 8.

39-2215 Highway Trust Fund; created; allocation; investment; State Treasurer; transfer; disbursements.

(1) There is hereby created in the state treasury a special fund to be known as the Highway Trust Fund.

(2) All funds credited to the Highway Trust Fund pursuant to sections 66-489.02, 66-499, 66-4,140, 66-4,147, 66-6,108, and 66-6,109.02, and related penalties and interest, shall be allocated as provided in such sections.

(3) All other motor vehicle fuel taxes, diesel fuel taxes, compressed fuel taxes, and alternative fuel taxes related to highway use retained by the state, all motor vehicle registration fees retained by the state other than those fees credited to the State Recreation Road Fund pursuant to subdivision (3) of section 60-3,156, and other highway-user taxes imposed by state law and allocated to the Highway Trust Fund, except for the proceeds of the sales and use taxes derived from motor vehicles, trailers, and semitrailers credited to the fund pursuant to section 77-27,132, are hereby irrevocably pledged for the terms of the bonds issued prior to January 1, 1988, to the payment of the principal, interest, and redemption premium, if any, of such bonds as they mature and become due at maturity or prior redemption and for any reserves therefor and shall, as received by the State Treasurer, be deposited in the fund for such purpose.

(4) Of the money in the fund specified in subsection (3) of this section which is not required for the use specified in such subsection, (a) an amount equal to three dollars times the number of motorcycles registered during the previous month shall be placed in the Motorcycle Safety Education Fund, (b) an amount to be determined annually by the Legislature through the appropriations process may be transferred to the Motor Fuel Tax Enforcement and Collection Cash Fund for use as provided in section 66-738 on a monthly or other less frequent basis as determined by the appropriation language, (c) an amount to be determined annually by the Legislature through the appropriations process shall be transferred to the License Plate Cash Fund as certified by the Director of Motor Vehicles, and (d) the remaining money may be used for the purchase for retirement of the bonds issued prior to January 1, 1988, in the open market.

(5) The State Treasurer shall monthly transfer, from the proceeds of the sales and use taxes credited to the Highway Trust Fund and any money remaining in the fund after the requirements of subsections (2) through (4) of this section are satisfied, thirty thousand dollars to the Grade Crossing Protection Fund.

(6) Except as provided in subsection (7) of this section, the balance of the Highway Trust Fund shall be allocated fifty-three and one-third percent, less the amount provided for in section 39-847.01, to the Department of Roads, twenty-three and one-third percent, less the amount provided for in section

39-847.01, to the various counties for road purposes, and twenty-three and one-third percent to the various municipalities for street purposes. If bonds are issued pursuant to subsection (2) of section 39-2223, the portion allocated to the Department of Roads shall be credited monthly to the Highway Restoration and Improvement Bond Fund, and if no bonds are issued pursuant to such subsection, the portion allocated to the department shall be credited monthly to the Highway Cash Fund. The portions allocated to the counties and municipalities shall be credited monthly to the Highway Allocation Fund and distributed monthly as provided by law. Vehicles accorded prorated registration pursuant to section 60-3,198 shall not be included in any formula involving motor vehicle registrations used to determine the allocation and distribution of state funds for highway purposes to political subdivisions.

(7) If it is determined by December 20 of any year that a county will receive from its allocation of state-collected highway revenue and from any funds relinquished to it by municipalities within its boundaries an amount in such year which is less than such county received in state-collected highway revenue in calendar year 1969, based upon the 1976 tax rates for highway-user fuels and registration fees, the Department of Roads shall notify the State Treasurer that an amount equal to the sum necessary to provide such county with funds equal to such county's 1969 highway allocation for such year shall be transferred to such county from the Highway Trust Fund. Such makeup funds shall be matched by the county as provided in sections 39-2501 to 39-2510. The balance remaining in the fund after such transfer shall then be reallocated as provided in subsection (6) of this section.

(8) The State Treasurer shall disburse the money in the Highway Trust Fund as directed by resolution of the commission. All disbursements from the fund shall be made upon warrants drawn by the Director 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 and the earnings, if any, credited to the fund.

Source: Laws 1969, c. 309, § 15, p. 1111; Laws 1971, LB 53, § 3; Laws 1979, LB 571, § 2; Laws 1981, LB 22, § 8; Laws 1983, LB 118, § 2; Laws 1984, LB 1089, § 1; Laws 1986, LB 599, § 11; Laws 1988, LB 632, § 9; Laws 1989, LB 258, § 3; Laws 1990, LB 602, § 1; Laws 1991, LB 627, § 4; Laws 1992, LB 319, § 1; Laws 1994, LB 1066, § 25; Laws 1994, LB 1160, § 49; Laws 1995, LB 182, § 22; Laws 2002, LB 989, § 7; Laws 2002, Second Spec. Sess., LB 1, § 2; Laws 2003, LB 563, § 17; Laws 2004, LB 983, § 1; Laws 2004, LB 1144, § 3; Laws 2005, LB 274, § 228; Laws 2008, LB846, § 1.

Operative date July 18, 2008.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

39-2215.01 Highway Restoration and Improvement Bond Fund; created; use; investment.

(1) There is hereby created in the state treasury a fund to be known as the Highway Restoration and Improvement Bond Fund.

(2) If bonds are issued pursuant to subsection (2) of section 39-2223, all motor vehicle fuel taxes, diesel fuel taxes, compressed fuel taxes, and alternative fuel taxes related to highway use, motor vehicle registration fees, and other highway-user taxes which are retained by the state and allocated to the bond fund from the Highway Trust Fund shall be hereby irrevocably pledged for the terms of the bonds issued after July 1, 1988, to the payment of the principal, interest, and redemption premium, if any, of such bonds as they mature and become due at maturity or prior redemption and for any reserves therefor and shall, as received by the State Treasurer, be deposited directly in the bond fund for such purpose. Of the money in the bond fund not required for such purpose, such remaining money may be used for the purchase for retirement of the bonds in the open market or for any other lawful purpose related to the issuance of bonds, and the balance, if any, shall be transferred monthly to the Highway Cash Fund for such use as may be provided by law.

(3) The State Treasurer shall disburse the money in the bond fund as directed by resolution of the commission. All disbursements from the bond fund shall be made upon warrants drawn by the Director of Administrative Services. Any money in the bond fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1988, LB 632, § 10; Laws 1990, LB 602, § 2; Laws 1994, LB 1066, § 26; Laws 1994, LB 1160, § 50; Laws 1995, LB 182, § 23.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

39-2216 Legislature; holders of bonds; pledges not to repeal, diminish, or apply funds for other uses.

The Legislature hereby irrevocably pledges and agrees with the holders of the bonds issued under the Nebraska Highway Bond Act that so long as such bonds remain outstanding and unpaid it shall not repeal, diminish, or apply to any other purposes the motor vehicle fuel taxes, diesel fuel taxes, compressed fuel taxes, and alternative fuel taxes related to highway use, motor vehicle registration fees, and such other highway-user taxes which may be imposed by state law and allocated to the fund or bond fund, as the case may be, if to do so would result in fifty percent of the amount deposited in the fund or bond fund in each year being less than the amount equal to the maximum annual principal and interest requirements of such bonds.

Source: Laws 1969, c. 309, § 16, p. 1112; Laws 1988, LB 632, § 11; Laws 1994, LB 1160, § 51; Laws 1995, LB 182, § 24.

39-2217 Bondholders; rights protected; suit at law or in equity.

Any holder of bonds issued under the Nebraska Highway Bond Act or any of the coupons appertaining thereto, except to the extent the rights given by such act may be restricted by resolution of the commission, may, either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of this state or as granted under the act or under the resolution authorizing the issuance of the bonds and may enforce and compel the performance of all duties required by such laws, by such act, or by

such resolution to be performed by the commission or by any employee thereof.

Source: Laws 1969, c. 309, § 17, p. 1112; Laws 1988, LB 632, § 12.

39-2218 Bonds; legal obligations; investment.

The bonds are hereby made securities in which all public officers, boards, agencies, and bodies of the state, its counties, political subdivisions, public corporations, and municipalities and the officers, boards, agencies or bodies of any of them, all insurance companies and associations and other persons carrying on an insurance business, all banks, trust companies, savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees, and other fiduciaries, and all other persons who are now or who may hereafter be authorized to invest in notes, bonds, or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. Notwithstanding any other provision of law, the bonds are also hereby made securities which may be deposited with and shall be received by all public officers, boards, agencies, and bodies of this state, its counties, political subdivisions, public corporations and municipalities, and the officers, boards, agencies or bodies of any of them for any purpose for which the deposit of notes, bonds, or other obligations of the state is now or may be hereafter authorized.

Source: Laws 1969, c. 309, § 18, p. 1113.

39-2219 Bonds; interest; exempt from taxation.

It is hereby found, determined, and declared that there exists a need for the construction of highways in this state requiring the issuance of bonds by the commission acting for and on behalf of the state, all as more fully provided in the Nebraska Highway Bond Act, that the creation of the commission and the carrying out of its purpose are in all respects for the benefit of the people of this state and for the improvement of their health, welfare, and prosperity and constitute a public purpose, and that such bonds, the interest thereon, and the income therefrom shall at all times be exempt from taxation by this state or any political subdivision of this state.

Source: Laws 1969, c. 309, § 19, p. 1113; Laws 1988, LB 632, § 13.

39-2220 Repealed. Laws 2000, LB 1135, § 34.

39-2221 Act, how construed.

The Nebraska Highway Bond Act is supplemental to existing statutes and shall not be construed as repealing or amending existing statutes but shall be construed harmoniously and implemented compatibly with them.

Source: Laws 1969, c. 309, § 21, p. 1113; Laws 1988, LB 632, § 14.

39-2222 Act, how cited.

Sections 39-2201 to 39-2226 shall be known and may be cited as the Nebraska Highway Bond Act.

Source: Laws 1969, c. 309, § 22, p. 1113; Laws 1988, LB 632, § 15.

39-2223 Bonds; issuance; amount.

(1) Under the authority granted by Article XIII, section 1, of the Constitution of Nebraska, the Legislature hereby authorizes the issuance of bonds in the principal amount of twenty million dollars in 1969 and in the principal amount of twenty million dollars on or before June 30, 1977, with the proceeds thereof to be used for the construction of highways in this state, the Legislature expressly finding that the need for such construction requires such action. Such bonds shall in all respects comply with the provisions of Article XIII, section 1, of the Constitution of Nebraska.

(2) Under the authority granted by Article XIII, section 1, of the Constitution of Nebraska, the Legislature hereby authorizes after July 1, 1988, the issuance of bonds in a principal amount to be determined by the commission, not to exceed fifty million dollars. The outstanding principal amount of such bonds may exceed such limit if and to the extent that the commission determines that the issuance of advance refunding bonds under section 39-2226 in a principal amount greater than the bonds to be refunded would reduce the aggregate bond principal and interest requirements payable from the bond fund. The proceeds of such issues shall be used exclusively (a) for the construction, resurfacing, reconstruction, rehabilitation, and restoration of highways in this state, the Legislature expressly finding that the need for such construction and reconstruction work and the vital importance of the highway system to the welfare and safety of all Nebraskans requires such action, or (b) to eliminate or alleviate cash-flow problems resulting from the receipt of federal funds. Such bonds shall in all respects comply with the provisions of Article XIII, section 1, of the Constitution of Nebraska.

Source: Laws 1969, c. 314, § 1, p. 1132; Laws 1975, LB 401, § 1; Laws 1988, LB 632, § 16.

39-2224 Bonds; sale; proceeds; appropriated to Highway Cash Fund.

(1) The proceeds of the sale of bonds authorized by subsection (1) of section 39-2223 are hereby appropriated to the Highway Cash Fund of the Department of Roads, for the biennium ending June 30, 1977, for expenditure for the construction of highways.

(2) The proceeds of the sale of bonds authorized by subsection (2) of section 39-2223 are hereby appropriated to the Highway Cash Fund of the Department of Roads for expenditure for highway construction, resurfacing, reconstruction, rehabilitation, and restoration and for the elimination or alleviation of cash-flow problems resulting from the receipt of federal funds.

Source: Laws 1969, c. 314, § 2, p. 1132; Laws 1975, LB 401, § 2; Laws 1988, LB 632, § 17.

39-2225 Highway Cash Fund; warrants.

The Director of Administrative Services shall draw his warrants upon the Highway Cash Fund for, but never in excess of, the amount herein appropriated upon presentation of proper vouchers. The State Treasurer shall pay such warrants out of the Highway Cash Fund.

Source: Laws 1969, c. 314, § 3, p. 1132.

39-2226 Commission; issue refunding bonds; when; procedure; proceeds; how invested; safekeeping; when considered as outstanding and unpaid.

For the purpose of refunding present and future bonded indebtedness issued pursuant to the Nebraska Highway Bond Act, the commission may issue, without further legislative authorization, refunding bonds with which to call and redeem all or any part of such outstanding bonds at or before the maturity or the redemption date thereof, may include various series and issues of the outstanding bonds in a single issue of refunding bonds, and may issue refunding bonds to pay any redemption premium and interest to accrue and become payable on the outstanding bonds being refunded. The refunding bonds may be issued and delivered at any time prior to the date of maturity or the redemption date of the bonds to be refunded that the commission determines to be in the best interests of the state. The refunding bonds shall, except as specifically provided in this section, be issued in accordance with such act. The proceeds derived from the sale of refunding bonds issued pursuant to this section may be invested in obligations of or guaranteed by the United States Government pending the time the proceeds are required for the purposes for which refunding bonds are issued, and to further secure the refunding bonds, the commission may enter into a contract with any bank or trust company, within or without the state, with respect to the safekeeping and application of the proceeds of the refunding bonds and the safekeeping and application of the earnings on the investment. Such contract shall become a part of the contract with the holders of the refunding bonds. Bonds refunded by such refunding bonds, which have been called for redemption or with respect to which the bond trustee or paying agent has irrevocable instructions to call such bonds for redemption on a date certain in accordance with the terms thereof, and which have sufficient funds or obligations of, or guaranteed by, the United States Government set aside in safekeeping to be applied for the complete payment of such bonds, interest thereon, and redemption premium, if any on the redemption date, shall not be considered as outstanding and unpaid bonds with respect to the limitations set forth in section 39-2205.

Source: Laws 1975, LB 401, § 3; Laws 1988, LB 632, § 18.

ARTICLE 23

COUNTY HIGHWAY AND CITY STREET SUPERINTENDENTS ACT

Section

- 39-2301. Act, how cited; legislative findings.
- 39-2301.01. Terms, defined.
- 39-2302. County highway or city street superintendents; license required; effect.
- 39-2303. Repealed. Laws 2003, LB 500, § 23.
- 39-2304. Board of Examiners for County Highway and City Street Superintendents; created; members; qualifications; appointment; term; vacancy; expenses.
- 39-2305. Board of examiners; office space; equipment; meetings.
- 39-2306. Class B license; application; fee; exceptions.
- 39-2307. Board of examiners; examinations; conduct; test qualifications of applicants for Class B licenses.
- 39-2308. Class B license; term; renewal.
- 39-2308.01. Class A license; application; qualifications; fees; term; renewal.
- 39-2308.02. Class A license; renewal; professional development required.
- 39-2308.03. Licensees; additional licensure; requirements.
- 39-2309. License; suspension; revocation; grounds; hearing; notice.
- 39-2310. Funds received under act; use.

Section
39-2311. Rules and regulations.

39-2301 Act, how cited; legislative findings.

(1) Sections 39-2301 to 39-2311 shall be known and may be cited as the County Highway and City Street Superintendents Act.

(2) The Legislature finds that in order to safeguard life, health, and property, and in order to further professional management of county road and municipal street programs, persons practicing or offering to practice street or highway superintending in this state are encouraged to become licensed as provided in the act.

Source: Laws 1969, c. 144, § 1, p. 665; Laws 2003, LB 500, § 1.

39-2301.01 Terms, defined.

For purposes of the County Highway and City Street Superintendents Act, unless the context otherwise requires:

(1) Board of examiners means the Board of Examiners for County Highway and City Street Superintendents;

(2) City street superintendent means a person who engages in the practice of street superintending for an incorporated municipality;

(3) County highway superintendent means a person who engages in the practice of highway superintending for a county; and

(4) Street or highway superintending means:

(a) Developing and annually updating long-range plans based on needs and coordinated with adjacent local governmental units;

(b) Developing annual programs for design, construction, and maintenance;

(c) Developing annual budgets based on programmed projects and activities;

(d) Implementing the capital improvements and maintenance activities provided in the approved plans, programs, and budgets; and

(e) Managing personnel, contractors, and equipment in support of such planning, programming, budgeting, and implementation operations.

Source: Laws 2003, LB 500, § 2.

39-2302 County highway or city street superintendents; license required; effect.

No person shall be employed by any county as a county highway superintendent or by any municipality as a city street superintendent to qualify for the incentive payments provided in sections 39-2501 to 39-2520 unless he or she has been licensed under the County Highway and City Street Superintendents Act.

Source: Laws 1969, c. 144, § 2, p. 665; Laws 2003, LB 500, § 3.

39-2303 Repealed. Laws 2003, LB 500, § 23.

39-2304 Board of Examiners for County Highway and City Street Superintendents; created; members; qualifications; appointment; term; vacancy; expenses.

The Board of Examiners for County Highway and City Street Superintendents is created. The board shall consist of seven members to be appointed by the Governor, four of whom shall be county representatives, and three of whom shall be municipal representatives.

Immediately preceding appointment to the board, each county and municipal representative shall hold a current license as a county highway or city street superintendent pursuant to the County Highway and City Street Superintendents Act. Of the county representatives, no more than one member shall be appointed from each class of county as defined in section 23-1114.01, and of the municipal representatives, no more than one shall be appointed from each congressional district, one of whom shall be a representative of a city of the metropolitan or primary class, one of whom shall be a representative of a city of the first class, and one of whom shall be a representative of a city of the second class or a village.

In making such appointments, the Governor may give consideration to a list of licensed county highway engineers, county highway superintendents, and county surveyors submitted by the Nebraska Association of County Officials and to a list of licensed city street superintendents or street commissioners, city engineers, and public works directors submitted by the League of Nebraska Municipalities. Two county representatives shall initially be appointed for terms of two years each, and two county representatives shall initially be appointed for terms of four years each. One municipal representative shall initially be appointed for a term of two years, and two municipal representatives shall initially be appointed for terms of four years each. Thereafter, all such appointments shall be for terms of four years each.

In the event a county or municipal representative loses his or her license as a county highway or city street superintendent, such person shall no longer be qualified to serve on the board and such seat shall be vacant. In the event of a vacancy occurring on the board for any reason, such vacancy shall be filled by appointment by the Governor for the remainder of the unexpired term. Such appointed person shall meet the same requirements and qualifications as the member whose vacancy he or she is filling.

Members of the board shall receive no compensation for their services as members of the board but shall be reimbursed for their actual and necessary expenses incurred while engaged in the performance of their official duties as provided in sections 81-1174 to 81-1177.

Source: Laws 1969, c. 144, § 4, p. 666; Laws 1981, LB 204, § 63; Laws 1992, LB 175, § 1; Laws 2003, LB 500, § 4.

39-2305 Board of examiners; office space; equipment; meetings.

The board of examiners shall be furnished necessary office space, furniture, equipment, stationery, and clerical assistance by the Department of Roads. The board shall organize itself by selecting from among its members a chairperson and such other officers as it may find desirable. The board shall meet at such times at the Department of Roads headquarters in Lincoln as may be necessary for the administration of the County Highway and City Street Superintendents Act.

Source: Laws 1969, c. 144, § 5, p. 666; Laws 2003, LB 500, § 5.

39-2306 Class B license; application; fee; exceptions.

(1) Any person desiring to be issued a Class B license under section 39-2308 shall make application therefor to the board of examiners upon forms prescribed and furnished by the board. The application shall include the applicant's social security number. Such application shall be accompanied by an application fee of twenty-five dollars.

(2) Any professional engineer shall be entitled to a Class B license under section 39-2308 without examination.

Source: Laws 1969, c. 144, § 6, p. 667; Laws 1997, LB 622, § 61; Laws 1997, LB 752, § 94; Laws 2003, LB 500, § 6.

39-2307 Board of examiners; examinations; conduct; test qualifications of applicants for Class B licenses.

The board of examiners shall, twice each year, conduct examinations of applicants for Class B licenses under section 39-2308. Such examinations shall be designed to test the qualifications of applicants for the position of county highway superintendent or city street superintendent and shall cover the ability to:

(1) Develop and annually update long-range plans based on needs and coordinated with adjacent local governmental units;

(2) Develop annual programs for design, construction, and maintenance;

(3) Develop annual budgets based on programmed projects and activities;

(4) Implement the capital improvements and maintenance activities provided in the approved plans, programs, and budgets; and

(5) Understand principles pertaining to highway, road, and street operations and to management of personnel, contractors, and equipment.

Source: Laws 1969, c. 144, § 7, p. 667; Laws 2003, LB 500, § 7.

39-2308 Class B license; term; renewal.

Any person satisfactorily completing the examination required by section 39-2307 or exempt from such examination under the provisions of subsection (2) of section 39-2306 shall be issued a Class B license as a county highway or city street superintendent. Such license shall be valid for a period of one year and shall be renewable upon the payment of an annual fee of ten dollars. Any person holding a license on January 1, 2004, shall be deemed to be holding a Class B license under this section.

Source: Laws 1969, c. 144, § 8, p. 668; Laws 2003, LB 500, § 8.

39-2308.01 Class A license; application; qualifications; fees; term; renewal.

Any person holding a Class B license issued pursuant to section 39-2308 may apply to the board of examiners for a Class A license upon forms prescribed and furnished by the board upon submitting evidence that (1) he or she has been employed and appointed by one or more county or counties or municipality or municipalities as a county highway or city street superintendent at least half-time for at least two years within the past six years or (2) he or she has at least four years' experience in work comparable to street or highway superintending. Such application shall be accompanied by a fee of seventy-five dollars. A Class A license shall be valid for a period of three years and shall be

renewable for three years as provided in section 39-2308.02 upon payment of a fee of fifty dollars.

Source: Laws 2003, LB 500, § 9.

39-2308.02 Class A license; renewal; professional development required.

(1) As a condition for renewal of a license issued pursuant to section 39-2308.01, the holder of a Class A license shall be required to have successfully completed twenty hours of professional development within the preceding three years. Any license holder who completes in excess of twenty hours of professional development within the preceding three years may have the excess, not to exceed ten hours, applied to the requirement for the next triennium.

(2) The board of examiners shall not renew the Class A license of a license holder who has failed to complete the professional development requirements pursuant to subsection (1) of this section unless he or she can show good cause why he or she was unable to comply with such requirements. If the board determines that good cause was shown, the board shall permit such license holder to make up all outstanding required hours of professional development. If the board determines that good cause was not shown or if the license holder requests renewal as a Class B licensee, the board shall issue a Class B license. Renewal of such Class B license shall be governed by section 39-2308.

(3) A holder of a Class B license who previously held a Class A license may be reissued a Class A license by:

(a) Electing to either:

(i) Complete one and one-half of the triennial requirements for professional development as set forth in the rules and regulations of the board; or

(ii) Reapply under section 39-2308.01; and

(b) Paying the seventy-five-dollar Class A application fee.

Source: Laws 2003, LB 500, § 10.

39-2308.03 Licensees; additional licensure; requirements.

The holder of a county highway superintendent's license shall be entitled to hold a city street superintendent's license of the same or a lower level upon payment of the application fee for that additional license. The holder of a city street superintendent's license shall be entitled to hold a county highway superintendent's license of the same or a lower level upon payment of the application fee for that additional license.

Source: Laws 2003, LB 500, § 11.

39-2309 License; suspension; revocation; grounds; hearing; notice.

The board of examiners may suspend or revoke any license issued under the County Highway and City Street Superintendents Act for fraud or deceit in obtaining it, neglect of duty, or incompetence in the performance of duty. Such action shall only be taken after notice and hearing under the provisions of the Administrative Procedure Act.

Source: Laws 1969, c. 144, § 9, p. 668; Laws 2003, LB 500, § 12.

Cross References

Administrative Procedure Act, see section 84-920.

39-2310 Funds received under act; use.

All funds received under the County Highway and City Street Superintendents Act shall be remitted to the State Treasurer for credit to the Highway Cash Fund. Expenses of the members of the board of examiners as provided in section 39-2304 shall be paid by the Department of Roads from the Highway Cash Fund.

Source: Laws 1969, c. 144, § 10, p. 668; Laws 1971, LB 53, § 4; Laws 1972, LB 1496, § 1; Laws 2003, LB 500, § 13.

39-2311 Rules and regulations.

The board of examiners may adopt and promulgate rules and regulations for the administration of the County Highway and City Street Superintendents Act.

Source: Laws 1969, c. 144, § 11, p. 668; Laws 2003, LB 500, § 14.

ARTICLE 24**HIGHWAY ALLOCATION FUND**

Section

39-2401. Highway Allocation Fund; created; investment.

39-2402. Repealed. Laws 1986, LB 599, § 25.

39-2403. Repealed. Laws 1986, LB 599, § 25.

39-2401 Highway Allocation Fund; created; investment.

There is hereby established the Highway Allocation Fund. There shall be paid into such fund the amounts disbursed from time to time from the Highway Trust Fund as provided by law together with such sums as may be appropriated thereto from the General Fund and proceeds of sales and use taxes credited to the Highway Allocation Fund under section 77-27,132. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1971, LB 53, § 5; Laws 1986, LB 599, § 12; Laws 1995, LB 7, § 37; Laws 2006, LB 904, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

39-2402 Repealed. Laws 1986, LB 599, § 25.**39-2403 Repealed. Laws 1986, LB 599, § 25.****ARTICLE 25****DISTRIBUTION TO POLITICAL SUBDIVISIONS**

(a) ROADS

Section

39-2501. Incentive payments for road purposes; priority.

39-2502. County highway superintendent, defined; duties; incentive payment.

39-2503. Incentive payment; amount.

39-2504. Incentive payment; reduction; when; consulting engineer; when; contracting with another political subdivision; payment.

39-2505. Incentive payments; Department of Roads; certify amount; State Treasurer; payment.

§ 39-2501

HIGHWAYS AND BRIDGES

Section

- 39-2506. Repealed. Laws 1985, LB 25, § 3.
- 39-2507. Allocation of funds for road purposes; factors used.
- 39-2508. Allocation of funds for road purposes; Department of Roads; State Treasurer; duties.
- 39-2509. Matching funds; requirement; exceptions; effect.
- 39-2510. Funds received; use; restriction; exception.

(b) STREETS

- 39-2511. Incentive payments for street purposes; priority.
- 39-2512. City street superintendent, defined; duties; incentive payment.
- 39-2513. Incentive payment; amount.
- 39-2514. Incentive payment; reduction; when; consulting engineer; when; contracting with another political subdivision.
- 39-2515. Incentive payments; Department of Roads, certify amount; State Treasurer; payment.
- 39-2516. Repealed. Laws 1982, LB 592, § 2.
- 39-2517. Allocation of funds for street purposes; factors used.
- 39-2518. Allocation of funds for street purposes; Department of Roads; State Treasurer; duties.
- 39-2519. Matching funds; requirement; exceptions; effect.
- 39-2520. Funds received; use restriction; exception.

(a) ROADS

39-2501 Incentive payments for road purposes; priority.

Before making distribution of funds allocated to the counties or municipal counties for road purposes, incentive payments shall first be made as provided in sections 39-2502 to 39-2505.

Source: Laws 1969, c. 315, § 1, p. 1133; Laws 2001, LB 142, § 39.

39-2502 County highway superintendent, defined; duties; incentive payment.

An incentive payment shall be made to each county having in its employ a county highway superintendent licensed under the County Highway and City Street Superintendents Act, during the calendar year preceding the year in which payment is made. For purposes of sections 39-2501 to 39-2510, county highway superintendent means a person who actually performs the following duties:

- (1) Developing and annually updating a long-range plan based on needs and coordinated with adjacent local governmental units;
- (2) Developing an annual program for design, construction, and maintenance;
- (3) Developing an annual budget based on programmed projects and activities;
- (4) Submitting such plans, programs, and budgets to the local governing body for approval;
- (5) Implementing the capital improvements and maintenance activities provided in the approved plans, programs, and budgets; and
- (6) Preparing and submitting annually to the Board of Public Roads Classifications and Standards the county's one-year plans, six-year plans, or annual metropolitan transportation improvement programs for highway, road, and street improvements under sections 39-2115 to 39-2117, 39-2119, and

39-2119.01 and a report showing the actual receipts, expenditures, and accomplishments compared with those budgeted and programmed in the county's annual plans as set forth in section 39-2120.

Source: Laws 1969, c. 315, § 2, p. 1133; Laws 1976, LB 724, § 7; Laws 2003, LB 500, § 15; Laws 2007, LB277, § 7.

Cross References

County Highway and City Street Superintendents Act, see section 39-2301.

39-2503 Incentive payment; amount.

The incentive payment to the various counties and municipal counties shall be based on the level of license of the county highway superintendent employed by the county and on the rural population of each county or municipal county, as determined by the most recent federal census, according to the following table:

Rural Population	Class B License Payment	Class A License Payment
Not more than 3,000	\$4,500.00	\$ 9,000.00
3,001 to 5,000	\$4,875.00	\$ 9,750.00
5,001 to 10,000	\$5,250.00	\$10,500.00
10,001 to 20,000	\$5,625.00	\$11,250.00
20,001 to 30,000	\$6,000.00	\$12,000.00
30,001 and more	\$6,375.00	\$12,750.00

Source: Laws 1969, c. 315, § 3, p. 1134; Laws 1981, LB 51, § 1; Laws 2001, LB 142, § 40; Laws 2003, LB 500, § 16.

39-2504 Incentive payment; reduction; when; consulting engineer; when; contracting with another political subdivision; payment.

(1) A reduced incentive payment shall be made to any county or municipal county having in its employ either (a) a licensed county highway superintendent for only a portion of the calendar year preceding the year in which the payment is made or (b) two or more successive licensed county highway superintendents for the calendar year preceding the year in which the payment is made. Such reduced payment shall be in the proportion of the payment amounts listed in section 39-2503 as the number of full months each such licensed superintendent was employed is of twelve.

(2) Any county or municipal county that contracts for the services of a consulting engineer licensed under the County Highway and City Street Superintendents Act or any other person licensed under the act to perform the duties outlined in section 39-2502 rather than employing a licensed county highway superintendent shall be entitled to an incentive payment equal to two-thirds the payment amount provided in section 39-2503 or two-thirds of the reduced incentive payment provided in subsection (1) of this section, as determined by the Department of Roads pursuant to section 39-2505.

(3) Any county or municipal county that contracts with another county or municipal county or with any city or village for the services of a licensed county highway superintendent as provided in section 39-2114 shall be entitled to the incentive payment provided in section 39-2503 or the reduced incentive payment provided in subsection (1) of this section.

Source: Laws 1969, c. 315, § 4, p. 1134; Laws 1981, LB 51, § 2; Laws 2001, LB 142, § 41; Laws 2003, LB 500, § 17.

Cross References

County Highway and City Street Superintendents Act, see section 39-2301.

39-2505 Incentive payments; Department of Roads; certify amount; State Treasurer; payment.

The Department of Roads shall, in January of each year commencing in 1970, determine and certify to the State Treasurer the amount of each incentive payment to be made under the provisions of sections 39-2501 to 39-2505. The State Treasurer shall, on or before February 15, make the incentive payments in accordance with such certification.

Source: Laws 1969, c. 315, § 5, p. 1134.

39-2506 Repealed. Laws 1985, LB 25, § 3.**39-2507 Allocation of funds for road purposes; factors used.**

The following factors and weights shall be used in determining the amount to be allocated to each of the counties or municipal counties for road purposes each year:

- (1) Rural population of each county or municipal county, as determined by the most recent federal census, twenty percent;
- (2) Total population of each county or municipal county, as determined by the most recent federal census, ten percent;
- (3) Lineal feet of bridges twenty feet or more in length and all overpasses in each county or municipal county, as determined by the most recent inventory available within the Department of Roads, ten percent, and for purposes of this subdivision a bridge or overpass located partly in one county or municipal county and partly in another shall be considered as being located one-half in each county or municipal county;
- (4) Total motor vehicle registrations, other than prorated commercial vehicles, in the rural areas of each county or municipal county, as determined from the most recent information available from the Department of Motor Vehicles, twenty percent;
- (5) Total motor vehicle registrations, other than prorated commercial vehicles, in each county or municipal county as determined from the most recent information available from the Department of Motor Vehicles, ten percent;
- (6) Total miles of county or municipal county and township roads within each county or municipal county, as determined by the most recent inventory available within the Department of Roads, twenty percent; and
- (7) Value of farm products sold from each county or municipal county, as determined from the most recent federal Census of Agriculture, ten percent.

Source: Laws 1969, c. 315, § 7, p. 1135; Laws 2001, LB 142, § 42.

39-2508 Allocation of funds for road purposes; Department of Roads; State Treasurer; duties.

The Department of Roads shall compute the amount allocated to each county or municipal county under each of the factors listed in section 39-2507 and shall then compute the total allocation to each such county or municipal county

and transmit such information to the local governing board and the State Treasurer, who shall disburse funds accordingly.

Source: Laws 1969, c. 315, § 8, p. 1136; Laws 1985, LB 25, § 1; Laws 2001, LB 142, § 43.

39-2509 Matching funds; requirement; exceptions; effect.

(1) Each county or municipal county shall be entitled to one-half of the amount allocated to it each year under sections 39-2507 and 39-2508 with no requirement for providing funds locally, but shall be required to match the second one-half on the basis of one dollar for each two dollars it receives with any available funds.

(2) Each county or municipal county which, during the preceding fiscal year, failed to provide locally the minimum required by subsection (1) of this section shall forfeit one dollar for each dollar which it fails to so provide locally. Any amounts forfeited under the provisions of this subsection first shall be made available to the incorporated municipalities, as determined by the county board or the council of the municipal county, within the county or municipal county which forfeits the funds, such funds to be matched by the incorporated municipalities in the same manner as would have been required of the county or municipal county had it not forfeited the funds, and if not so used, then shall be allocated among and distributed to the counties and municipal counties that have complied with the requirements of subsection (1) of this section. Such distribution shall be made as provided in sections 39-2507 and 39-2508, except that any county or municipal county having levied its constitutional maximum and not levied sufficient funds to fully match its share of the second half of the highway-user funds allocated to that county or municipal county may apply to the Board of Public Roads Classifications and Standards for exemption from that part of the local matching requirement that it cannot match. The board may grant such exemption if, in its judgment, the county or municipal county has not unnecessarily increased its expenditures for other than road purposes after receiving its allocation for roads in previous years.

(3) For the purposes of this section, providing locally shall include, but not be limited to, providing money for road purposes through the following, except that there shall not be duplication in the following in the determination of the total:

(a) Property taxes levied by action of county and township boards or the council of the municipal county for construction, improvement, maintenance, and repair of roads, bridges, culverts, and drainage structures, for curbs, for snow removal, for grading of dirt and gravel roads, for traffic signs and signals, and for construction of storm sewers directly related to roads and property taxes levied for the payment of the principal and interest on general obligation bonds for any of the foregoing;

(b) Contributions received for road purposes;

(c) Local costs in the acquisition of road right-of-way, including incidental expenses directly related to such acquisition; and

(d) Inheritance taxes allocated for road purposes.

Source: Laws 1969, c. 315, § 9, p. 1136; Laws 1971, LB 694, § 1; Laws 1971, LB 844, § 2; Laws 1985, LB 25, § 2; Laws 2001, LB 142, § 44.

39-2510 Funds received; use; restriction; exception.

(1) All money derived from fees, excises, or license fees relating to registration, operation, or use of vehicles on the public highways, or to fuels used for the propulsion of such vehicles, shall be expended for payment of highway obligations, cost of construction, reconstruction, maintenance, and repair of public highways and bridges and county, city, township, and village roads, streets, and bridges, and all facilities, appurtenances, and structures deemed necessary in connection with such highways, bridges, roads, and streets, or may be pledged to secure bonded indebtedness issued for such purposes, except for (a) the cost of administering laws under which such money is derived, (b) statutory refunds and adjustments provided therein, and (c) money derived from the motor vehicle operators' license fees or money received from parking meter proceeds, fines, and penalties.

(2) The requirements of subsection (1) of this section also apply to sales and use taxes imposed on motor vehicles, trailers, and semitrailers pursuant to sections 13-319 and 77-27,142, except that such provisions shall not apply in a county or municipal county that has issued bonds (a) the proceeds of which were used for purposes listed in subsection (1) of this section and for which revenue other than sales and use taxes on motor vehicles, trailers, and semitrailers is pledged for payment or (b) approved by a vote that required the use of sales and use taxes imposed on motor vehicles, trailers, and semitrailers for a specific purpose other than those listed in subsection (1) of this section, until all such bonds issued prior to January 1, 2006, have been paid or retired. The county or municipal county shall include a certification with the report under section 39-2120 showing the amount of revenue other than sales and use tax revenue derived from motor vehicles, trailers, or semitrailers that is to be expended for the purposes listed in subsection (1) of this section and the amount of sales and use taxes expected to be collected from sales of motor vehicles, trailers, and semitrailers for that year.

Source: Laws 1969, c. 315, § 10, p. 1138; Laws 1997, LB 271, § 15; Laws 2006, LB 904, § 2.

(b) STREETS**39-2511 Incentive payments for street purposes; priority.**

Before making distribution of funds allocated to the municipalities or municipal counties for street purposes, incentive payments shall first be made as provided in sections 39-2512 to 39-2515.

Source: Laws 1969, c. 316, § 1, p. 1139; Laws 2001, LB 142, § 45.

39-2512 City street superintendent, defined; duties; incentive payment.

An incentive payment shall be made to each municipality or municipal county having in its employ a city street superintendent licensed under the County Highway and City Street Superintendents Act, during the calendar year preceding the year in which payment is made. For purposes of sections 39-2511 to 39-2520, city street superintendent means a person who actually performs the following duties:

(1) Developing and annually updating a long-range plan based on needs and coordinated with adjacent local governmental units;

- (2) Developing an annual program for design, construction, and maintenance;
- (3) Developing an annual budget based on programmed projects and activities;
- (4) Submitting such plans, programs, and budgets to the local governing body for approval;
- (5) Implementing the capital improvements and maintenance activities provided in the approved plans, programs, and budgets; and
- (6) Preparing and submitting annually to the Board of Public Roads Classifications and Standards the one-year plans, six-year plans, or annual metropolitan transportation improvement programs of the municipality or municipal county for highway, road, and street improvements under sections 39-2115 to 39-2117, 39-2119, and 39-2119.01 and a report showing the actual receipts, expenditures, and accomplishments compared with those budgeted and programmed in the annual plans of the municipality or municipal county as set forth in section 39-2120.

Source: Laws 1969, c. 316, § 2, p. 1139; Laws 1976, LB 724, § 8; Laws 2001, LB 142, § 46; Laws 2003, LB 500, § 18; Laws 2007, LB277, § 8.

Cross References

County Highway and City Street Superintendents Act, see section 39-2301.

39-2513 Incentive payment; amount.

The incentive payment to the various municipalities or municipal counties shall be based on the level of license of the city street superintendent employed by the municipality or municipal counties and on the population of each municipality or urbanized area of each municipal county, as determined by the most recent federal census figures certified by the Tax Commissioner as provided in section 77-3,119, according to the following table:

Population	Class B License Payment	Class A License Payment
Not more than 500	\$ 300.00	\$ 600.00
501 to 1,000	\$ 500.00	\$1,000.00
1,001 to 2,500	\$1,500.00	\$3,000.00
2,501 to 5,000	\$2,000.00	\$4,000.00
5,001 to 10,000	\$3,000.00	\$6,000.00
10,001 to 20,000	\$3,500.00	\$7,000.00
20,001 to 40,000	\$3,750.00	\$7,500.00
40,001 to 200,000	\$4,000.00	\$8,000.00
200,001 and more	\$4,250.00	\$8,500.00

Source: Laws 1969, c. 316, § 3, p. 1139; Laws 1993, LB 726, § 9; Laws 1994, LB 1127, § 5; Laws 2001, LB 142, § 47; Laws 2003, LB 500, § 19.

39-2514 Incentive payment; reduction; when; consulting engineer; when; contracting with another political subdivision.

- (1) A reduced incentive payment shall be made to any municipality or municipal county having in its employ either (a) a licensed city street superin-

tendent for only a portion of the calendar year preceding the year in which the payment is made or (b) two or more successive licensed city street superintendents for the calendar year preceding the year in which the payment is made. Such reduced payment shall be in the proportion of the payment amounts listed in section 39-2513 as the number of full months each such licensed superintendent was employed is of twelve.

(2) Any municipality or municipal county that contracts for the services of a consulting engineer licensed under the County Highway and City Street Superintendents Act or any other person licensed under the act to perform the duties outlined in section 39-2512 rather than employing a licensed city street superintendent shall be entitled to an incentive payment as provided in section 39-2513 or to the reduced incentive payment provided in subsection (1) of this section, as determined by the Department of Roads pursuant to section 39-2515.

(3) Any municipality or municipal county that contracts with another municipality, county, or municipal county for the services of a licensed city street superintendent as provided in section 39-2114 shall be entitled to the incentive payment provided in section 39-2513 or the reduced incentive payment provided in subsection (1) of this section.

Source: Laws 1969, c. 316, § 4, p. 1140; Laws 2001, LB 142, § 48; Laws 2003, LB 500, § 20.

Cross References

County Highway and City Street Superintendents Act, see section 39-2301.

39-2515 Incentive payments; Department of Roads, certify amount; State Treasurer; payment.

The Department of Roads shall, in January of each year commencing in 1970, determine and certify to the State Treasurer the amount of each incentive payment to be made under the provisions of sections 39-2511 to 39-2520. The State Treasurer shall, on or before February 15, make the incentive payments in accordance with such certification.

Source: Laws 1969, c. 316, § 5, p. 1140.

39-2516 Repealed. Laws 1982, LB 592, § 2.

39-2517 Allocation of funds for street purposes; factors used.

The following factors and weights shall be used in determining the amount to be allocated to each of the municipalities or municipal counties for street purposes each year:

(1) Total population of each incorporated municipality or the urbanized area of a municipal county, as determined by the most recent federal census figures certified by the Tax Commissioner as provided in section 77-3,119, fifty percent;

(2) Total motor vehicle registrations, other than prorated commercial vehicles, in each incorporated municipality or the urbanized area of a municipal county, as determined from the most recent information available from the Department of Motor Vehicles, thirty percent; and

(3) Total number of miles of traffic lanes of streets in each incorporated municipality or the urbanized area of a municipal county, as determined by the

most recent inventory available within the Department of Roads, twenty per cent.

Source: Laws 1969, c. 316, § 7, p. 1141; Laws 1993, LB 726, § 10; Laws 1994, LB 1127, § 6; Laws 2001, LB 142, § 49.

39-2518 Allocation of funds for street purposes; Department of Roads; State Treasurer; duties.

The Department of Roads shall compute the amount allocated to each municipality or municipal county under the factors listed in section 39-2517 and shall then compute the total allocation to each such municipality or municipal county and transmit such information to the local governing body and the State Treasurer, who shall disburse funds accordingly.

Source: Laws 1969, c. 316, § 8, p. 1141; Laws 1986, LB 729, § 1; Laws 2001, LB 142, § 50.

39-2519 Matching funds; requirement; exceptions; effect.

(1) Each city of the metropolitan or primary class or successor municipal county shall be entitled to the first one-third of its annual allocation with no requirement of matching, but shall be required to match the second one-third, on the basis of one dollar for each dollar it receives, with funds provided locally for street purposes, and shall be required to match the final one-third, on the basis of one dollar for each two dollars it receives, with funds so provided. Each city of the first or second class or village or successor municipal county shall be entitled to one-half of its annual allocation with no requirement of matching, but shall be required to match the second one-half on the basis of one dollar for each two dollars it receives, with any available funds. Any municipality or municipal county which during the preceding fiscal year failed to provide the matching funds required by this subsection shall, except as provided in subsection (2) or (3) of this section, forfeit so much of its allocation as it fails to match. Any amount so forfeited shall be reallocated and distributed to the municipalities or municipal counties which have met the full matching provisions of this subsection. Such reallocation shall be made in the manner provided in sections 39-2517 and 39-2518.

(2) Any municipality or municipal county may accumulate and invest any portion or all of the money it receives for a period not to exceed four years so as to provide funds for one or more specific street improvement projects. Any municipality or municipal county so accumulating funds shall certify to the State Treasurer that the required matching funds are being accumulated and invested each year of the accumulation.

(3) Any municipality may, for any year, certify to the State Treasurer that it relinquishes, to the county in which it is situated in whole or in part or to a county whose border is contiguous with and adjacent to any county which is adjacent to the county in which the municipality is situated in whole or in part, all or a part of the state funds allocated to it for that year. The amount so relinquished shall be available for distribution to such county subject to the same matching as would have been required of the municipality had it not relinquished such funds and without regard to the provisions of sections 39-2501 to 39-2510. Any amount so distributed to the county shall be used exclusively for road purposes within the trade area of the relinquishing municipality as may be agreed upon by the county and municipal governing bodies.

(4) Any municipality may certify to the State Treasurer that it relinquishes, to the county in which it is situated in whole or in part, all or a part of the state funds allocated to it for not to exceed three years. The amount so relinquished shall be available for distribution to such county subject to the same matching as would have been required of the municipality had it not relinquished such funds and without regard to the provisions of sections 39-2501 to 39-2510. Any relinquishment under this subsection shall be made pursuant to an agreement between the relinquishing municipality and the county, to which other political subdivisions may also be parties, which provides for the accumulation and investment by the county of the amount relinquished for not to exceed three years so as to provide funds for one or more specific road improvement projects.

(5) For purposes of this section, provided locally shall include, but not be limited to, money provided for street purposes through the following, except that there shall not be duplication in the following in the determination of the total:

(a) Local motor vehicle or wheel fees or taxes;

(b) Property taxes levied by action of the local governing body for construction, improvement, maintenance, and repair of streets and bridges, curbs, snow removal, street cleaning, grading of dirt and gravel streets and roads, traffic signs and signals, construction of storm sewers directly related to streets, offstreet public parking owned by the municipality or municipal county, and the payment of the principal and interest on general obligation bonds for any of the foregoing;

(c) Special assessments levied for street paving or improvement districts and offstreet public parking owned by the municipality or municipal county;

(d) Local costs in the acquisition of street right-of-way including incidental expenses directly related to such acquisition; and

(e) Any other funds provided solely for street purposes.

Source: Laws 1969, c. 316, § 9, p. 1141; Laws 1971, LB 74, § 1; Laws 1972, LB 907, § 1; Laws 1976, LB 724, § 9; Laws 1993, LB 384, § 1; Laws 1997, LB 271, § 16; Laws 2001, LB 142, § 51; Laws 2002, LB 616, § 2.

39-2520 Funds received; use restriction; exception.

(1) All money derived from fees, excises, or license fees relating to registration, operation, or use of vehicles on the public highways, or to fuels used for the propulsion of such vehicles, shall be expended for payment of highway obligations, cost of construction, reconstruction, maintenance, and repair of public highways and bridges and county, city, township, and village roads, streets, and bridges, and all facilities, appurtenances, and structures deemed necessary in connection with such highways, bridges, roads, and streets, or may be pledged to secure bonded indebtedness issued for such purposes, except for (a) the cost of administering laws under which such money is derived, (b) statutory refunds and adjustments provided therein, and (c) money derived from the motor vehicle operators' license fees or money received from parking meter proceeds, fines, and penalties.

(2) The requirements of subsection (1) of this section also apply to sales and use taxes imposed on motor vehicles, trailers, and semitrailers pursuant to

sections 13-319 and 77-27,142, except that such provisions shall not apply in a municipality that has issued bonds (a) the proceeds of which were used for purposes listed in subsection (1) of this section and for which revenue other than sales and use taxes on motor vehicles, trailers, and semitrailers is pledged for payment or (b) approved by a vote that required the use of sales and use taxes imposed on motor vehicles, trailers, and semitrailers for a specific purpose other than those listed in subsection (1) of this section, until all such bonds issued prior to January 1, 2006, have been paid or retired. The municipality shall include a certification with the report under section 39-2120 showing the amount of revenue other than sales and use tax revenue derived from motor vehicles, trailers, or semitrailers that is to be expended for the purposes listed in subsection (1) of this section and the amount of sales and use taxes expected to be collected from sales of motor vehicles, trailers, and semitrailers for that year.

Source: Laws 1969, c. 316, § 10, p. 1143; Laws 1971, LB 74, § 2; Laws 1997, LB 271, § 17; Laws 2006, LB 904, § 3.

ARTICLE 26 JUNKYARDS

Section	
39-2601.	Purpose of sections.
39-2601.01.	Expenditure of funds; limitation.
39-2602.	Terms, defined.
39-2603.	Location.
39-2604.	Permit; issuance; fees; disposition.
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39-2606.	Existing junkyards; screening; expense paid by Department of Roads.
39-2607.	Rules and regulations; promulgation.
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39-2601 Purpose of sections.

For the purpose of promoting the public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is declared to be in the public interest to regulate and restrict the location and maintenance of junkyards in areas adjacent to the Highway Beautification Control System within this state. The Legislature finds and declares that junkyards which do not conform to the requirements of sections 39-2601 to 39-2612 are public nuisances.

Source: Laws 1971, LB 398, § 1; Laws 1995, LB 264, § 24.

39-2601.01 Expenditure of funds; limitation.

The department shall not expend any funds under sections 39-2601 to 39-2612 unless federal-aid matching funds are available for the purpose described in 23 U.S.C. 136.

Source: Laws 1995, LB 264, § 34.

39-2602 Terms, defined.

For purposes of sections 39-2601 to 39-2612, unless the context otherwise requires:

- (1) Junk means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material;
- (2) Automobile graveyard means any establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts;
- (3) Junkyard means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk or for the maintenance or operation of an automobile graveyard, and includes garbage dumps and sanitary fills;
- (4) Highway Beautification Control System has the same meaning as in section 39-201.01;
- (5) Scenic byway has the same meaning as in section 39-201.01;
- (6) Main-traveled way means the traveled portion of an interstate or primary highway on which through traffic is carried and, in the case of a divided highway, the traveled portion of each of the separated roadways;
- (7) Person means any natural person, partnership, limited liability company, association, corporation, or governmental subdivision; and
- (8) Department means the Department of Roads.

Source: Laws 1971, LB 398, § 2; Laws 1993, LB 121, § 214; Laws 1995, LB 264, § 25.

For purposes of subsection (2) of this section, a scrapped vehicle is an automobile which has no value whatsoever as a vehicle, but the only worth of which is in the value of its metal for remelting or remanufacturing. For purposes of subsection (2) of this section, a ruined vehicle is one which, through destruction or disintegration, has become formless, useless, or valueless. For purposes of subsection (2) of this section, a

wrecked vehicle is one which is seriously damaged in its outward appearance. For purposes of subsection (2) of this section, a dismantled vehicle is one which is stripped of furnishings or equipment. For purposes of subsection (2) of this section, a junked vehicle is one no longer intended or in condition for legal use upon a public highway. *State v. Melcher*, 240 Neb. 592, 483 N.W.2d 540 (1992).

39-2603 Location.

(1) Except as provided in subsection (2) of this section, no person shall locate or maintain a junkyard, any portion of which is within one thousand feet of the nearest edge of the right-of-way of any roadway of the Highway Beautification Control System, without obtaining a permit from the department.

(2) Junkyards located in counties which have formally adopted a comprehensive development plan and a zoning resolution regulating the location of junkyards within one thousand feet of the nearest edge of the right-of-way of any roadway of the Highway Beautification Control System, except those routes which consist of the federally designated National System of Interstate and Defense Highways, shall be exempt from the permit requirements of sections 39-2601 to 39-2612.

Source: Laws 1971, LB 398, § 3; Laws 1995, LB 264, § 26; Laws 2003, LB 186, § 1.

39-2604 Permit; issuance; fees; disposition.

The department may issue permits for the location and operation of junkyards within the limits prescribed in section 39-2603. If the applicant is an

individual, the application for a permit shall include the applicant's social security number. The department shall charge an annual permit fee to be paid to the department in the manner provided by the department and shall thereafter be paid into the Highway Cash Fund and shall, by order, adjust the annual fees to cover the costs of administering the provisions of sections 39-2601 to 39-2612.

Source: Laws 1971, LB 398, § 4; Laws 1995, LB 264, § 27; Laws 1997, LB 752, § 95.

39-2605 Permit; issuance; conditions.

No permit shall be granted for the location and maintenance of a junkyard within one thousand feet of the nearest edge of the right-of-way of any roadway of the Highway Beautification Control System except the following:

(1) Those which are screened by natural objects, plantings, fences or other appropriate means so as not to be visible from the main-traveled way of the system, or otherwise removed from sight;

(2) Those located within areas which are zoned for industrial use under authority of the law of a municipality or county, except those located along any route designated as a scenic byway;

(3) Those located within unzoned industrial areas, which areas shall be determined from actual land uses and defined by rules to be promulgated by the department, except those located along any route designated as a scenic byway; and

(4) Those which are not visible from the main-traveled way of the system.

Source: Laws 1971, LB 398, § 5; Laws 1995, LB 264, § 28.

39-2606 Existing junkyards; screening; expense paid by Department of Roads.

Except as provided in section 39-2608, any junkyard lawfully in existence on August 27, 1971, which is within one thousand feet of the nearest edge of the right-of-way and visible from the main-traveled way of the Highway Beautification Control System and which does not qualify for a permit under section 39-2605 shall be screened by the department so as not to be visible from the main-traveled way of such highway, the cost of which shall be paid in full by the department.

Source: Laws 1971, LB 398, § 6; Laws 1995, LB 264, § 29.

39-2607 Rules and regulations; promulgation.

The department may promulgate rules governing the materials, location, planting, construction, and maintenance for the screening or fencing required by the provisions of sections 39-2601 to 39-2612.

Source: Laws 1971, LB 398, § 7; Laws 1995, LB 264, § 30.

39-2608 Removal; when; department; powers.

Any junkyard in existence on August 27, 1971, which does not qualify for a permit under section 39-2605 and which cannot, as a practical matter, be screened may be removed. The department may acquire by gift, purchase, exchange or condemnation from the owner, such interests in lands as may be

necessary to acquire the location, or to effect the removal or disposal of such junkyards.

Source: Laws 1971, LB 398, § 8; Laws 1995, LB 264, § 31.

39-2609 Nuisance; injunction.

The department may apply to the district court in the county in which such junkyards may be located for an injunction to abate such nuisance or for such other relief as may be necessary or proper.

Source: Laws 1971, LB 398, § 9.

39-2610 Sections, how construed.

Nothing in sections 39-2601 to 39-2612 shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation, or resolution which is more restrictive than sections 39-2601 to 39-2612.

Source: Laws 1971, LB 398, § 10; Laws 1995, LB 264, § 32.

39-2611 Agreements with federal authority; authorization.

The department shall be authorized to enter into agreements with the appropriate federal authority as provided by 23 U.S.C., relating to the control of junkyards in areas adjacent to the Highway Beautification Control System, and to take action in the name of the state to comply with the terms of such agreement.

Source: Laws 1971, LB 398, § 11; Laws 1995, LB 264, § 33.

39-2612 Violations; penalty.

Any person who shall be found in violation of section 39-2603 shall be guilty of a Class II misdemeanor. Each day's violation shall constitute a separate offense.

Source: Laws 1971, LB 398, § 12; Laws 1977, LB 40, § 220.

CHAPTER 40 HOMESTEADS

Section

- 40-101. Homestead, defined; exempted.
- 40-102. Homestead; selection, property available for.
- 40-103. Homestead; exemption; when inoperative.
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40-101 Homestead, defined; exempted.

A homestead not exceeding sixty thousand dollars in value shall consist of the dwelling house in which the claimant resides, its appurtenances, and the land on which the same is situated, not exceeding one hundred and sixty acres of land, to be selected by the owner, and not in any incorporated city or village, or, at the option of the claimant, a quantity of contiguous land not exceeding two lots within any incorporated city or village, and shall be exempt from judgment liens and from execution or forced sale, except as provided in sections 40-101 to 40-116.

Source: Laws 1879, § 1, p. 57; R.S.1913, § 3076; C.S.1922, § 2816; C.S.1929, § 40-101; R.S.1943, § 40-101; Laws 1957, c. 153, § 3, p. 498; Laws 1973, LB 15, § 1; Laws 1980, LB 940, § 3; Laws 1986, LB 999, § 2; Laws 1997, LB 372, § 4; Laws 2007, LB237, § 1.

1. Occupancy required
2. Dwelling house and premises
3. Interest necessary to support claim
4. Value above exemption
5. Area and extent
6. Rights of surviving spouse
7. Liability for debts
8. Fraudulent alienation
9. Priority of liens
10. Sale on execution
11. Equitable relief
12. Waiver and abandonment
13. Miscellaneous

1. Occupancy required

In order to qualify real estate as a homestead, a homestead claimant and his family must reside in habitation on the premises. A person cannot have two homesteads, nor can he have two places either of which at his election he may claim as a

homestead. *Travelers Indemnity Co. v. Heim*, 218 Neb. 326, 352 N.W.2d 921 (1984).

All that law requires is that homestead claimant and family reside in habitation on premises. *Schroeder v. Ely*, 161 Neb. 262, 73 N.W.2d 172 (1955).

Homestead selected from property of wife must be with her consent, but consent may be presumed from occupancy of property as a family home. In re Estate of Nielsen, 135 Neb. 110, 280 N.W. 246 (1938).

Nonresident alien, who never lived on land claimed as a homestead, is not entitled to benefit of homestead laws. Engen v. Union State Bank of Harvard, 121 Neb. 257, 236 N.W. 741 (1931).

Where wife and children of married man resided in New York and never lived on premises claimed as homestead, a homestead was not acquired. Cunningham v. Marshall, 94 Neb. 302, 143 N.W. 197 (1913).

Actual or constructive occupancy, or bona fide intention and preparation to occupy, followed by actual occupancy within reasonable time is necessary to exempt property as homestead. Davis v. Kelly, 62 Neb. 642, 87 N.W. 347 (1901); Clement, Bane & Co. v. Kopietz, 2 Neb. Unof. 18, 95 N.W. 1126 (1901).

Where land is purchased by head of family with bona fide intention of residing thereon, but occupancy is temporarily prevented by unexpired term of tenant residing thereon, homestead rights attach at time of purchase. Hanlon v. Pollard, 17 Neb. 368, 22 N.W. 767 (1885).

2. Dwelling house and premises

Where two tracts of land corner on each other, they are contiguous and may be allowed as homestead. Thomas v. Sternhagen, 178 Neb. 578, 134 N.W.2d 237 (1965).

Homestead means house and land where the family dwells. Horn v. Gates, 155 Neb. 667, 53 N.W.2d 84 (1952).

A building consisting of a single structure and under one roof, though divided into two parts by a solid wall, is a dwelling house within the meaning of this section. Hawley v. Arnold, 137 Neb. 238, 288 N.W. 823 (1939).

Apartment house on lot contiguous to lot on which mortgagor dwells in another apartment house cannot be claimed as part of homestead. First Trust Co. of Lincoln v. Bauer, 128 Neb. 725, 260 N.W. 194 (1935).

A person cannot at the same time have two homesteads, nor can he have two places either of which at his election he may claim as a homestead. Berggren v. Bliss, 122 Neb. 801, 241 N.W. 544 (1932); Hair v. Davenport, 74 Neb. 117, 103 N.W. 1042 (1905).

Building occupied as residence, although used for hotel, constitutes homestead. Foltz v. Maxwell, 100 Neb. 713, 161 N.W. 254 (1916).

Dwelling house in which the claimant resides is an essential part of the homestead. City Savings Bank v. Thompson, 91 Neb. 628, 136 N.W. 992 (1912).

A homestead may be composed of contiguous parts of different subdivisions. Tindall v. Peterson, 71 Neb. 160, 98 N.W. 688 (1904), 99 N.W. 659 (1904).

Exemption of adjoining land depends upon homestead right to premises on which debtor resides. Howard v. Raymers, 64 Neb. 213, 89 N.W. 1004 (1902).

The term lot denotes parcel of land as surveyed and platted within limits of city or village. Norfolk State Bank v. Schwenk, 51 Neb. 146, 70 N.W. 970 (1897).

The word dwelling house does not contemplate any particular kind of house, and the requirement of this section is satisfied if the claimant and his family reside in the habitation, whatever be its character. Corey v. Schuster, 44 Neb. 269, 62 N.W. 470 (1895).

3. Interest necessary to support claim

Any interest in real estate, either legal or equitable, that gives a present right of occupancy or possession, followed by exclusive occupancy, is sufficient to support a homestead right therein. Blankenau v. Landess, 261 Neb. 906, 626 N.W.2d 588 (2001).

Estate in remainder, whether vested or contingent, will not support claim of homestead exemption until termination of

prior estate. Fisher v. Kellogg, 128 Neb. 248, 258 N.W. 404 (1935).

A homestead may be claimed in lands held in joint tenancy or tenancy in common. Doman v. Fenton, 96 Neb. 94, 147 N.W. 209 (1914).

If property is owned by husband and wife equally as tenants in common, and is of the value of the homestead exemption, neither can claim other property as exempt. Valparaiso State Bank v. Schwartz, 92 Neb. 575, 138 N.W. 757 (1912), 42 L.R.A.N.S. 1213 (1912).

Life estate in land, if occupied as home, is homestead. Downing v. Hartshorn, 69 Neb. 364, 95 N.W. 801 (1903).

Joint tenancy, occupied exclusively by owner of interest and family, as a home, will support homestead exemption. Giles v. Miller, 36 Neb. 346, 54 N.W. 551 (1893).

Tenant in common is not entitled to homestead as against right and interest of other claimant. Lynch v. Lynch, 18 Neb. 586, 26 N.W. 390 (1886).

Not essential to homestead that occupant shall possess legal title. State ex rel. Hilton v. Townsend, 17 Neb. 530, 23 N.W. 509 (1885).

4. Value above exemption

Where husband transferred homestead to wife and subsequently placed thereon improvements increasing the value of the property beyond the amount of homestead exemption, court of equity could subject property in excess of exemption to debts of husband. Van Steenberg v. Nelson, 147 Neb. 88, 22 N.W.2d 414 (1946).

Under former law, statutory homestead, as between mortgagors and mortgagees, was not limited to a value of two thousand dollars, but covers the value of the entire one hundred sixty acres. Evans v. First Nat. Bank of Fairbury, 138 Neb. 727, 297 N.W. 154 (1940).

Where husband and wife each owned undivided one-half interest in property occupied as homestead, and mortgage encumbrance and homestead exemption exceeded value of husband's undivided interest, judgment against husband did not become a lien, in absence of wife's consent to selection of homestead from her separate property. Connor v. McDonald, 120 Neb. 503, 233 N.W. 894 (1931).

Under former law, if homestead was of less value than two thousand dollars, it could not be disposed of at administrator's sale. Brandon v. Jensen, 74 Neb. 569, 104 N.W. 1054 (1905); Bixby v. Jewell, 72 Neb. 755, 101 N.W. 1026 (1904); Tindall v. Peterson, 71 Neb. 160, 98 N.W. 688 (1904), 99 N.W. 659 (1904).

Under former law, where homestead was worth more than two thousand dollars and could not be divided, court could order sale and invest two thousand dollars of proceeds for benefit of widow. Wardell v. Wardell, 71 Neb. 774, 99 N.W. 674 (1904).

Under former law, judgment was not lien on lands occupied as homestead when debtor's interest did not exceed two thousand dollars. Farmers L. & T. Co. v. Schwenk, 54 Neb. 657, 74 N.W. 1063 (1898).

Under former law, judgment was lien only on excess above two thousand dollars. Horbach v. Smiley, 54 Neb. 217, 74 N.W. 623 (1898).

Value of homestead of decedent, above exemption, is liable for claims allowed against estate. W. J. Perry Live Stock Commission Co. v. Biggs, 4 Neb. Unof. 440, 94 N.W. 712 (1903).

5. Area and extent

A one hundred and sixty acre tract cannot be occupied by two families so that each will have a homestead right thereto. Lueningborg v. Lueningborg, 128 Neb. 624, 259 N.W. 649 (1935).

Homestead is limited to one hundred sixty acres in size. Clare v. Fricke, 102 Neb. 486, 167 N.W. 727 (1918).

Extent of homestead is determined by claimant's interest in land, not by fee simple value of premises. Morrill v. Skinner, 57 Neb. 164, 77 N.W. 375 (1898); Corey v. Plummer, 48 Neb. 481,

67 N.W. 445 (1896); *Hoy v. Anderson*, 39 Neb. 386, 58 N.W. 125 (1894).

6. Rights of surviving spouse

Homestead right of surviving spouse was exempt from judgment lien based on debt contracted after death of the spouse for necessities of life. *Ehlers v. Campbell*, 159 Neb. 328, 66 N.W.2d 585 (1954).

Under former law, rights of survivor on death of owner were not limited to two thousand dollars in value where there were no debts. *Meisner v. Hill*, 92 Neb. 435, 138 N.W. 583 (1912); *In re Jurgens' Estate*, 87 Neb. 571, 127 N.W. 885 (1910).

7. Liability for debts

Judgment at law for double the amount of money embezzled is not excepted from homestead exemption. *Canada v. State*, 148 Neb. 115, 26 N.W.2d 509 (1947).

Judgment against surety on bond is a debt within meaning of law. *Leman v. Chipman*, 82 Neb. 392, 117 N.W. 885 (1908).

Under former law, a homestead of less than two thousand dollars in value could not be disposed of at administrator's sale, either for the discharge of encumbrances thereon, or for the payment of debts against the estate of the decedent. *Holmes v. Mason*, 80 Neb. 448, 114 N.W. 606 (1908).

Land acquired under federal homestead laws are not liable for debts of patentee contracted before issuance of patent. *Jackett v. Bower*, 62 Neb. 232, 86 N.W. 1075 (1901); *Brandhoefer v. Bain*, 45 Neb. 781, 64 N.W. 213 (1895).

Exemption does not extend to debts of subsequent owner. *Duell v. Potter*, 51 Neb. 241, 70 N.W. 932 (1897).

8. Fraudulent alienation

Conveyance of real estate to daughter and held by daughter as homestead should be set aside in its entirety when conveyed by mother to daughter in fraud of creditors. *Reifenrath v. Dover*, 132 Neb. 801, 273 N.W. 205 (1937).

Under former law, homestead worth less than two thousand dollars, was not the subject of fraudulent alienation. *Cowles v. Cowles*, 89 Neb. 327, 131 N.W. 738 (1911).

Homestead is not susceptible of fraudulent alienation. *Brown v. Campbell*, 68 Neb. 103, 93 N.W. 1007 (1903); *Plummer, Perry & Co. v. Rohman*, 61 Neb. 61, 84 N.W. 600 (1900); *Roberts v. Robinson*, 49 Neb. 717, 68 N.W. 1035 (1896); *Mundt v. Hagedorn*, 49 Neb. 409, 68 N.W. 610 (1896).

Right to claim homestead is not affected by fraudulent intent with which it is conveyed. *Munson v. Carter*, 40 Neb. 417, 58 N.W. 931 (1894).

9. Priority of liens

Where mortgage on homestead is paid with proceeds of a new loan, new mortgage has prior lien to judgment filed when old mortgage was in force. *Goble v. Brenneman*, 75 Neb. 309, 106 N.W. 440 (1905); *France v. Hohnbaum*, 73 Neb. 70, 102 N.W. 75 (1905), 104 N.W. 865 (1905).

Judgment lien is superior to subsequent mortgage lien on anything above debtor's homestead interest. *Beach v. Reed*, 55 Neb. 605, 76 N.W. 22 (1898).

10. Sale on execution

The purpose of the homestead exemption under this section is to protect a debtor and his or her family in a home from forced sale on execution or attachment. *Blankenau v. Landess*, 261 Neb. 906, 626 N.W.2d 588 (2001).

Sale on ordinary execution of debtor's homestead, actually occupied as such, will not divest him of title. *Van Doren v. Wiedeman*, 68 Neb. 243, 94 N.W. 124 (1903); *Baumann v. Franse*, 37 Neb. 807, 56 N.W. 395 (1893).

11. Equitable relief

Filing objections to confirmation of execution sale of homestead is no bar to subsequent action to remove cloud of sheriff's deed. *Kaley v. Eselin*, 108 Neb. 544, 188 N.W. 254 (1922).

Equitable relief may be granted to remove apparent lien from homestead. *Smith v. Neufeld*, 57 Neb. 660, 78 N.W. 278 (1899).

Owner may maintain action to remove cloud from title. *Best v. Grist*, 1 Neb. Unof. 812, 95 N.W. 836 (1901).

12. Waiver and abandonment

Homestead is defined, but held to have been abandoned. *Phifer v. Miller*, 153 Neb. 748, 45 N.W.2d 907 (1951).

Right to claim homestead interest was not waived because claimant did not claim interest prior to sale by sheriff in mortgage foreclosure proceedings. *J. H. Melville Lumber Co. v. Maroney*, 145 Neb. 374, 16 N.W.2d 527 (1944).

Where owner of homestead is elected to state office, and removes to capital city with intention of returning, he has reasonable time after expiration of term to return and occupy homestead without being charged with abandonment thereof. *Allen v. Holt County*, 81 Neb. 198, 115 N.W. 775 (1908).

A debtor who has acquired a homestead does not lose his right to exemption, where he continues to occupy the property as a home, though by death and the removal of family, he has no one living with him. *Palmer v. Sawyer*, 74 Neb. 108, 103 N.W. 1088 (1905).

Attempt by wife, after husband has absconded, to negotiate a sale of the homestead does not work an abandonment thereof. *National Bank of Commerce v. Chamberlain*, 72 Neb. 469, 100 N.W. 943 (1904).

A departure from the homestead for purposes of business, pleasure or health does not constitute an abandonment thereof. *Blumer v. Albright*, 64 Neb. 249, 89 N.W. 809 (1902).

Right of homestead is personal privilege and will be deemed waived unless asserted before sale, where there has been opportunity to assert right. *Curtis v. D. M. Osborne & Co.*, 63 Neb. 837, 89 N.W. 420 (1902); *Brownell & Co. v. Stoddard*, 42 Neb. 177, 60 N.W. 380 (1894); *Gilbert v. Provident L. & T. Co.*, 1 Neb. Unof. 282, 95 N.W. 488 (1901).

Where premises had been occupied as homestead, burden is on creditor to show removal and intention to abandon. *Union Stock Yards Nat. Bank v. Smout*, 62 Neb. 227, 87 N.W. 14 (1901).

Homestead, transferred to wife, does not become liable for debts of husband after losing its homestead character. *Bank of Bladen v. David*, 53 Neb. 608, 74 N.W. 42 (1898).

Two things must occur to show an abandonment of a homestead, namely, an intent to abandon and actual abandonment. *Quigley v. McEvony*, 41 Neb. 73, 59 N.W. 767 (1894); *Mallard v. First Nat. Bank of North Platte*, 40 Neb. 784, 59 N.W. 511 (1894); *Omaha Brewing Assn. v. Zeller*, 4 Neb. Unof. 198, 93 N.W. 762 (1903).

If occupancy as home by debtor and family continues, transfer of title from husband to wife is not abandonment of homestead right. *McHugh v. Smiley*, 17 Neb. 626, 24 N.W. 277 (1885).

13. Miscellaneous

Where contract for sale of real estate including homestead is not acknowledged by husband and wife, and is not severable as to homestead and nonhomestead, specific performance will not be required. *McIntosh v. Borchers*, 196 Neb. 109, 241 N.W.2d 534 (1976).

Notice to sheriff signed by both husband and wife that they claim a homestead in the property levied upon is sufficient to require sheriff to take statutory steps for an ascertainment of the homestead. *Bliss v. White*, 132 Neb. 651, 272 N.W. 769 (1937).

Homestead interest of surviving spouse of titleholder terminates at death. *Lewis v. McAdams*, 130 Neb. 62, 263 N.W. 480 (1935), vacating on rehearing, 129 Neb. 490, 262 N.W. 7 (1935).

A fine and costs imposed for a criminal offense create a lien on homestead of convict. *Mancuso v. State*, 123 Neb. 204, 242 N.W. 430 (1932).

Possession of homestead by widow may be tacked to that of husband to raise bar of statute of limitation. *Larson v. Anderson*, 74 Neb. 361, 104 N.W. 925 (1905).

Release of homestead right is consideration sufficient to support contract between husband and wife. *Racek v. First Nat. Bank of North Bend*, 62 Neb. 669, 87 N.W. 542 (1901).

As against heirs, mortgage executed before full compliance with law is void. *Marley v. Sturkert*, 62 Neb. 163, 86 N.W. 1056 (1901).

Right of exemption depends upon situation at time judgment is recovered and not when debt was created. *Paxton v. Sutton*, 53 Neb. 81, 73 N.W. 221 (1897).

General principles of equity govern claimants of homestead. *Walsh v. Walsh*, 4 Neb. Unof. 683, 95 N.W. 1025 (1903).

Provisions of this chapter restraining alienation of homestead are not repugnant to treaty with Norway and inoperative. *Todok v. Union State Bank*, 281 U.S. 449 (1930), reversing *Engen v. Union State Bank of Harvard*, 118 Neb. 105, 223 N.W. 664 (1929).

Definition of homestead under this section is not applicable to allotments made to Indians under federal laws. *United States v. Thurston County*, 54 F.Supp. 201 (D. Neb. 1944).

40-102 Homestead; selection, property available for.

If the claimant be married, the homestead may be selected from the separate property of the husband, or with the consent of the wife from her separate property. When the claimant is not married, but is the head of a family within the meaning of section 40-115, the homestead may be selected from any of his or her property.

Source: Laws 1879, § 2, p. 58; R.S.1913, § 3077; C.S.1922, § 2817; C.S.1929, § 40-102.

- 1. Selection
- 2. Property available

1. Selection

Homestead may be selected from property held as tenants in common. *Ehlers v. Campbell*, 159 Neb. 328, 66 N.W.2d 585 (1954).

Homestead may be selected from property held in joint ownership by husband and wife. *Edgerton v. Hamilton County*, 150 Neb. 821, 36 N.W.2d 258 (1949).

Formal declaration of selection of land as homestead is not necessary. *Meyer v. Platt*, 137 Neb. 714, 291 N.W. 86 (1940).

Homestead selected from property of wife must be with her consent, but consent may be presumed from occupancy of property as a family home. In *re Estate of Nielsen*, 135 Neb. 110, 280 N.W. 246 (1938).

Pleading was sufficient to set forth selection of homestead from wife's separate property. *Williams v. Williams*, 106 Neb. 584, 184 N.W. 114 (1921).

2. Property available

While a homestead cannot be claimed in two separate properties at the same time, a homestead claimant who is about to lose

his homestead as the result of foreclosure proceeding may abandon it and establish a new homestead in other property. *Hawley v. Arnold*, 137 Neb. 238, 288 N.W. 823 (1939).

Where wife owned undivided one-half interest in property occupied as homestead, and did not consent to selection of homestead from her interest therein, judgment against husband did not become a lien, where mortgage encumbrance and homestead exemption exceeded the value of husband's one-half interest. *Connor v. McDonald*, 120 Neb. 503, 233 N.W. 894 (1931).

Homestead right in wife's separate property is dependent upon her consent thereto. *Zeng v. Jacobs*, 101 Neb. 645, 164 N.W. 656 (1917); *Klamp v. Klamp*, 58 Neb. 748, 79 N.W. 735 (1899).

Widow living alone cannot acquire homestead that will descend to her heirs as against creditors. *Brusha v. Phipps*, 86 Neb. 822, 126 N.W. 856 (1910).

Where husband deserts his family, wife is entitled to his homestead exemption. *First Nat. Bank of Tekamah v. McClanahan*, 83 Neb. 706, 120 N.W. 185 (1909).

40-103 Homestead; exemption; when inoperative.

The homestead is subject to execution or forced sale in satisfaction of judgments obtained (1) on debts secured by mechanics', laborers', or vendors' liens upon the premises and (2) on debts secured by mortgages or trust deeds upon the premises executed and acknowledged by both husband and wife, or an unmarried claimant.

Source: Laws 1879, § 3, p. 58; R.S.1913, § 3078; C.S.1922, § 2818; C.S.1929, § 40-103; R.S.1943, § 40-103; Laws 1997, LB 372, § 5.

- 1. Lien
- 2. Exceptions
- 3. Constitutionality

1. Lien

Lack of statutory acknowledgment to an improvement mortgage on homestead does not preclude enforcement of mortgage.

Miles Homes, Inc. v. Muhs, 184 Neb. 617, 169 N.W.2d 691 (1969).

Homestead is subject to debts specified in this section. *Schroeder v. Ely*, 161 Neb. 262, 73 N.W.2d 172 (1955).

Fine and costs imposed for criminal offense create lien on homestead of convict and homestead is subject to sale under execution issued on such judgment for fine and cost. *Mancuso v. State*, 123 Neb. 204, 242 N.W. 430 (1932).

Married man informing lender that he intended to use borrowed money to pay for homestead is not sufficient to entitle lender to lien. *Engaard v. Schmidt*, 103 Neb. 369, 171 N.W. 905 (1919).

Purchase money mortgage is valid as against homestead claim. *Peterson v. Fisher*, 85 Neb. 745, 124 N.W. 145 (1910).

Judgment for alimony is lien on homestead, title whereof is in husband. *Best v. Zutavern*, 53 Neb. 604, 74 N.W. 64 (1898).

Homestead is subject to sale on mechanics' lien. *Phelps & Bigelow Windmill Co. v. Shay*, 32 Neb. 19, 48 N.W. 896 (1891).

2. Exceptions

A vendor's lien is one of the exceptions to homestead statute. *Corn Belt Products Co. v. Mullins*, 172 Neb. 561, 110 N.W.2d 845 (1961).

Exceptions are set forth which permit sale of homestead. *Ehlers v. Campbell*, 159 Neb. 328, 66 N.W.2d 585 (1954).

Exceptions referred to in section 40-117 are mechanics', laborers', and vendors' liens, and mortgages duly executed. *Judson v. Creighton*, 88 Neb. 37, 128 N.W. 651 (1910).

Provisions of civil code relating to exemptions have no application to property exempt as a homestead. *Fox v. McClay*, 48 Neb. 820, 67 N.W. 888 (1896).

As in the case of a mortgage, there is no homestead exemption for debts secured by a trust deed, foreclosed in the same manner as a mortgage, and executed and acknowledged by both husband and wife. *Travelers Ins. Co. v. Nelson*, 4 Neb. App. 551, 546 N.W.2d 333 (1996).

3. Constitutionality

This section neither contravenes 11 U.S.C. sec. 522(f)(1) nor violates Neb. Const., art. I, sec. 3, or art. III, sec. 18. *Federal Land Bank of Omaha v. Blankemeyer*, 228 Neb. 249, 422 N.W.2d 81 (1988).

40-104 Homestead; how conveyed or encumbered; assertion of claim of invalidity of conveyance.

The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife except as otherwise provided in this section. The interest of either or both spouses may be conveyed or encumbered by a conservator acting in accordance with the provisions of the Nebraska Probate Code and may also be conveyed or encumbered by an attorney in fact appointed by and acting on behalf of either spouse under any power of attorney which grants the power to sell and convey real property. Any claim of invalidity of a deed of conveyance of homestead property because of failure to comply with the provisions of this section must be asserted within the time provided in sections 76-288 to 76-298.

Source: Laws 1879, § 4, p. 58; R.S.1913, § 3079; C.S.1922, § 2819; C.S.1929, § 40-104; Laws 1935, c. 91, § 1, p. 312; C.S.Supp.,1941, § 40-104; R.S.1943, § 40-104; Laws 1947, c. 243, § 13, p. 767; Laws 2006, LB 409, § 1.

Cross References

For provisions as to mortgaging interest in homestead of incompetent spouse, see sections 42-501 to 42-503.

- 1. Signature to instrument
- 2. Acknowledgment
- 3. Conveyance or encumbrance
- 4. Oral contract to convey
- 5. Ratification and estoppel
- 6. Miscellaneous

1. Signature to instrument

Any interest defendant might have had under the homestead law became merged in her new title as surviving joint tenant, and this section was not applicable to the option to sell. *David v. Tucker*, 196 Neb. 575, 244 N.W.2d 197 (1976).

Deed to convey homestead is void if not executed by both husband and wife. *Krueger v. Callies*, 190 Neb. 376, 208 N.W.2d 685 (1973).

Where the wife of an insane husband did not join with the guardian, who had been duly authorized by the court, in the execution of a mortgage upon the homestead property, such mortgage was not enforceable as a lien against the homestead. *Evans v. First Nat. Bank*, 138 Neb. 727, 295 N.W. 381 (1940).

Execution of joint will by husband and wife does not operate as a conveyance of homestead. *Abboud v. Boock*, 137 Neb. 652, 290 N.W. 713 (1940).

Mortgage on homestead to which signature of wife is forged is void, although executed and acknowledged by husband. *Bacon v. Western Securities Co.*, 125 Neb. 812, 252 N.W. 317 (1934).

Contract for sale of homestead not signed by vendor's wife is unenforceable. *Storrs v. Bollinger*, 111 Neb. 307, 196 N.W. 512 (1923).

Homestead may be conveyed by surviving spouse. *Hill v. Naylor*, 99 Neb. 791, 157 N.W. 922 (1916).

Consort need not sign purchase money mortgage on homestead. *Jackson v. Phillips*, 57 Neb. 189, 77 N.W. 683 (1898);

Prout v. Burke, 51 Neb. 24, 70 N.W. 512 (1897); Irwin v. Gay, 3 Neb. Unof. 153, 91 N.W. 197 (1902).

Deed from husband to wife need not be signed by wife. Furrow v. Athey, 21 Neb. 671, 33 N.W. 208 (1887).

2. Acknowledgment

A contract to convey the homestead of a married person is absolutely void and unenforceable unless validly executed and acknowledged by both husband and wife. Christensen v. Arant, 218 Neb. 625, 358 N.W.2d 200 (1984).

Where a contract for the sale of real estate includes both homestead and nonhomestead property, but is not duly executed and acknowledged, specific performance may be obtained of the nonhomestead land only if the contract is clearly severable as to the homestead and nonhomestead property. Struempfer v. Peterson, 203 Neb. 173, 277 N.W.2d 691 (1979).

Where contract for sale of real estate including homestead is not acknowledged by husband and wife, and is not severable as to homestead and nonhomestead, specific performance will not be required. McIntosh v. Borchers, 196 Neb. 109, 241 N.W.2d 534 (1976).

An option to purchase land constituting a homestead, or covering nonseverable homestead and other land, is void when not executed and acknowledged by both husband and wife. Struempfer v. Peterson, 190 Neb. 133, 206 N.W.2d 629 (1973).

Lack of statutory acknowledgment to an improvement mortgage on homestead does not preclude enforcement of mortgage. Miles Homes, Inc. v. Muhs, 184 Neb. 617, 169 N.W.2d 691 (1969).

Requirement that wife join in execution and acknowledgment of conveyance applies to easement across homestead property. Martin v. Norris Public Power Dist., 175 Neb. 815, 124 N.W.2d 221 (1963).

A contract to sell land constituting the homestead is void where wife does not appear before notary and acknowledge the execution thereof. Trowbridge v. Bisson, 153 Neb. 389, 44 N.W.2d 810 (1950).

Instrument, purporting to encumber homestead and falsely certifying that wife acknowledged same, was void. Storz v. Clarke, 117 Neb. 488, 221 N.W. 101 (1928).

Mortgage on homestead, acknowledged before stockholder of bank beneficially interested, was void. Anderson v. Cusack, 115 Neb. 643, 214 N.W. 73 (1927).

Alteration of mortgage covering homestead property by raising the amount at request of husband alone rendered mortgage void, since mortgage as altered was not acknowledged by wife. David City Building & Loan Assn. v. Fast, 114 Neb. 621, 208 N.W. 964 (1926).

Officer and stockholder of mortgagee corporation was disqualified to take acknowledgment of mortgage on homestead. Trevett, Mattis & Baker Co. v. Reagor, 112 Neb. 470, 200 N.W. 449 (1924).

A contract for the sale of homestead property signed by both husband and wife, though not acknowledged, when made at the same time with a warranty deed to the property, which deed is executed and duly acknowledged by both, and which is delivered in escrow, is a valid contract. Farmers Investment Co. v. O'Brien, 109 Neb. 19, 189 N.W. 291 (1922).

Contract signed by husband and wife, but wife's acknowledgment certified without inquiry as to whether it was her voluntary act, coercion being indicated, is void. Ambler v. Jones, 102 Neb. 40, 165 N.W. 886 (1917).

Contract to convey signed by husband and wife, but not acknowledged, is void. Anderson v. Schertz, 94 Neb. 390, 143 N.W. 238 (1913).

Conveyance of homestead is void if not signed and acknowledged by both husband and wife. Kimmerly v. McMichael, 83 Neb. 789, 120 N.W. 487 (1909); Thompson v. Foken, 81 Neb. 261, 115 N.W. 770 (1908); Weatherington v. Smith, 77 Neb. 369, 112 N.W. 566 (1906); Interstate S. & L. Assn. v. Strine, 58 Neb. 133, 78 N.W. 377 (1899); Havemeyer v. Dahn, 48 Neb.

536, 67 N.W. 489 (1896); Horbach v. Tyrrell, 48 Neb. 514, 67 N.W. 485 (1896); Hedbloom v. Pierson, 2 Neb. Unof. 799, 90 N.W. 218 (1902).

Contract for sale of homestead, not acknowledged by vendors, applies to whole tract, regardless of value, and cannot be enforced. Lichty v. Beale, 75 Neb. 770, 106 N.W. 1018 (1906); Solt v. Anderson, 63 Neb. 734, 89 N.W. 306 (1902); Clarke v. Koenig, 36 Neb. 572, 54 N.W. 842 (1893).

Fact of acknowledgment should appear from certificate of officer. Solt v. Anderson, 71 Neb. 826, 99 N.W. 678 (1904).

A party who has a direct pecuniary interest in the transaction is disqualified to take an acknowledgment. Watkins v. Youll, 70 Neb. 81, 96 N.W. 1042 (1903); Wilson v. Griess, 64 Neb. 792, 90 N.W. 866 (1902).

Nonperformance of such contract not acknowledged will not afford a cause of action for damages. Meek v. Lange, 65 Neb. 783, 91 N.W. 695 (1902).

The acknowledgment of a wife to a deed conveying the homestead is essential to its validity. Blumer v. Albright, 64 Neb. 249, 89 N.W. 809 (1902).

The certificate of acknowledgment of an officer having authority to take acknowledgments cannot be impeached by showing that the officer irregularly performed his duty. Council Bluffs Savings Bank v. Smith, 59 Neb. 90, 80 N.W. 270 (1899); Phillips v. Bishop, 35 Neb. 487, 53 N.W. 375 (1892).

Instrument purporting to convey homestead may be invalid for want of mental capacity of one of parties to make acknowledgment. Dewey v. Allgire, 37 Neb. 6, 55 N.W. 276 (1893).

Conveyance of homestead from one spouse to other does not require that both execute and acknowledge instrument. Troyer v. Mundy, 60 F.2d 818 (8th Cir. 1932).

Presumption arising from notary's certificate, that acknowledgment of husband and wife to mortgage on homestead was taken as certified, was not overcome by evidence. Hamling v. Aetna Life Insurance Co., 34 F.2d 112 (8th Cir. 1929).

3. Conveyance or encumbrance

Purchase agreement for sale of real property was not void as unacknowledged encumbrance of homestead. Overman v. Brown, 220 Neb. 788, 372 N.W.2d 102 (1985).

Even though mortgage was not properly acknowledged, it was valid as to land other than the homestead. Mazanec v. Lincoln Bonding & Ins. Co., 169 Neb. 629, 100 N.W.2d 881 (1960).

Lease for right-of-way across homestead for road is void unless executed and acknowledged by both husband and wife. Eng v. Olsen, 99 Neb. 183, 155 N.W. 796 (1915).

Lease of homestead for five years is conveyance and void unless executed and acknowledged by both husband and wife. Kloke v. Wolff, 78 Neb. 504, 111 N.W. 134 (1907).

Power of attorney to convey homestead, signed by husband alone, is void. Norbury v. Harper, 70 Neb. 389, 97 N.W. 438 (1903).

Where a mortgage on the homestead is paid and husband takes assignment of security, a reassignment of the security for a new debt constitutes an encumbrance and is not enforceable. Downing v. Hartshorn, 69 Neb. 364, 95 N.W. 801 (1903).

Contract of purchase of premises occupied as homestead cannot be assigned, unless signed and acknowledged by husband and wife. Rawles v. Reichenbach, 65 Neb. 29, 90 N.W. 943 (1902).

An amendment to restrictive covenants on land is not an encumbrance on the homestead within the meaning of this section. Countryside Developers, Inc. v. Peterson, 9 Neb. App. 798, 620 N.W.2d 124 (2000).

4. Oral contract to convey

That premises were parents' homestead does not make void an oral contract to give them to son for care during parents' lifetime. Denesia v. Denesia, 116 Neb. 789, 219 N.W. 142 (1928), overruling Teske v. Dittberner, 70 Neb. 544, 98 N.W. 57 (1903).

Oral contract to leave all of property at death to another in consideration of services rendered during lifetime of promisor is not void as to homestead property. *Moline v. Carlson*, 92 Neb. 419, 138 N.W. 721 (1912).

5. Ratification and estoppel

Where deed is executed and acknowledged by both husband and wife covering homestead property, conveyance is valid even though contract for exchange for other property is not signed by wife. *Johnson v. Kelley*, 112 Neb. 60, 198 N.W. 567 (1924).

Where wife voluntarily joins in conveyance of homestead, she is thereafter estopped to assert any right or title therein. *Laughlin v. Gardiner*, 104 Neb. 237, 176 N.W. 727 (1920).

Estoppel cannot supply statutory requirements. *Davis v. Thomas*, 66 Neb. 26, 92 N.W. 187 (1902); *France v. Bell*, 52 Neb. 57, 71 N.W. 984 (1897).

6. Miscellaneous

This section applies to contracts for sale as well as to conveyances or encumbrances. The classification made in this section, that is, the line drawn between married and nonmarried property owners, is one rationally related to a legitimate governmental end. *Landon v. Pettijohn*, 231 Neb. 837, 438 N.W.2d 757 (1989).

Any interest defendant might have had under the homestead law became merged in her new title as surviving joint tenant, and this section was not applicable to the option to sell. *David v. Tucker*, 196 Neb. 575, 244 N.W.2d 197 (1976).

Issue of homestead was not raised in trial court and hence could not be raised on appeal. *Meyer v. Meyer*, 180 Neb. 379, 142 N.W.2d 922 (1966).

Where husband was a minor and rescinded contract, mortgage on homestead property was void. *Smith v. Wade*, 169 Neb. 710, 100 N.W.2d 770 (1960).

Married man cannot by his own act or neglect deprive wife of homestead right. *Sanne v. Sanne*, 167 Neb. 683, 94 N.W.2d 367 (1959).

Homestead may be waived by abandonment, even though conveyance thereof was not acknowledged by both husband and wife. *Phifer v. Miller*, 153 Neb. 748, 45 N.W.2d 907 (1951).

A homestead, once established, is presumed to continue as such. The burden of proving waiver, loss, or abandonment rests on the party asserting same. *Karls v. Nichols*, 148 Neb. 712, 28 N.W.2d 595 (1947).

Nonresident alien wife is not required to join in conveyance of property resided on by husband alone. *Engen v. Union State Bank of Harvard*, 121 Neb. 257, 236 N.W. 741 (1931).

40-105 Homestead; selection.

When an execution for the enforcement of a judgment obtained in a case not within the classes enumerated in section 40-103 is levied upon the lands or tenements of a head of a family, such head of a family may at any time prior to confirmation of sale apply to the district court in the county in which the homestead is situated for an order to determine whether or not such lands or tenements, or any part thereof, are exempt as a homestead and, if so, the value thereof.

Source: Laws 1879, § 5, p. 58; R.S.1913, § 3080; C.S.1922, § 2820; C.S.1929, § 40-105; R.S.1943, § 40-105; Laws 1947, c. 153, § 1, p. 420.

Application for determination of homestead exemption was properly made. *Sanne v. Sanne*, 167 Neb. 683, 94 N.W.2d 367 (1959); *Schroeder v. Ely*, 161 Neb. 262, 73 N.W.2d 172 (1955).

Homestead exemption is not a proper subject for consideration upon confirmation of judicial sale. *Enquist v. Enquist*, 146 Neb. 708, 21 N.W.2d 404 (1946).

Married woman, joining husband in note and mortgage for his preexisting debt, under agreement that sole purpose was to bind her dower and homestead rights, is not personally liable on note. *People's State Bank v. Smith*, 120 Neb. 29, 231 N.W. 141 (1930).

Under former law, mortgage on homestead property to the extent of two thousand dollars was valid as against claim of preference under federal bankruptcy act. *Herring v. Whitford*, 119 Neb. 733, 232 N.W. 581 (1930); 119 Neb. 725, 230 N.W. 665 (1930).

Wife's homestead right, in husband's land occupied by family, is real estate. *Mead v. Polly*, 119 Neb. 206, 228 N.W. 369 (1929).

Wife cannot withdraw from homestead selected from her separate property and sue husband in ejectment. *Williams v. Williams*, 106 Neb. 584, 184 N.W. 114 (1921).

Fact that husband and wife are not living together, or insanity of one, does not affect rule. In re Estate of Robertson, *Holyoke v. Bishop*, 86 Neb. 490, 125 N.W. 1093 (1910); *France v. Bell*, 52 Neb. 57, 71 N.W. 984 (1897); *Whitlock v. Gosson*, 35 Neb. 829, 53 N.W. 980 (1892).

Mortgage upon homestead executed by both husband and wife is valid, notwithstanding it was delivered by wife without compliance with instructions given by husband where mortgagee was not aware of conditions. *McLanahan v. Chamberlain*, 85 Neb. 850, 124 N.W. 684 (1910).

Homestead rights cannot be divested by acts of husband or wife alone. *Miller v. Paustian*, 79 Neb. 196, 112 N.W. 342 (1907); *Nat. Bank of Commerce of Kansas City, Mo. v. Chamberlain*, 72 Neb. 469, 100 N.W. 943 (1904); *Van Doren v. Wiedeman*, 68 Neb. 243, 94 N.W. 124 (1903); *Morrill v. Skinner*, 57 Neb. 164, 77 N.W. 375 (1898); *Silk v. McDonald*, 4 Neb. Unof. 34, 93 N.W. 212 (1903).

One who fraudulently puts in currency a mortgage on homestead without procuring wife to join cannot gain an advantage to himself. *Pitman v. Mann*, 71 Neb. 257, 98 N.W. 821 (1904).

Statutory provision for conveyance or encumbrance of homestead is exclusive. *Buettgenbach v. Gerbig*, 2 Neb. Unof. 889, 90 N.W. 654 (1902).

Provision requiring acknowledgment of conveyance by both husband and wife is not repugnant to treaty rights with Norway. *Todok v. Union State Bank*, 281 U.S. 449 (1930), reversing *Engen v. Union State Bank of Harvard*, 118 Neb. 105, 223 N.W. 664 (1929).

Occupancy for purposes of a home is an imperative condition of homestead. *United States v. Thurston County*, 54 F.Supp. 201 (D. Neb. 1944).

Where husband and wife reside upon homestead and wife dies, homestead character of the land continues, and, although husband may have no children or dependents, he may still claim the benefit of the homestead laws. *Bartels v. Seefus*, 132 Neb. 841, 273 N.W. 485 (1937).

Objection to confirmation of execution sale of homestead is no bar to action to remove cloud of sheriff's deed, or other appropriate remedy. *Kaley v. Eselin*, 108 Neb. 544, 188 N.W. 254 (1922).

Administrator's sale of homestead is not void, after confirmation, for failure to segregate homestead interest and to order it preserved. *Pohlentz v. Panko*, 106 Neb. 156, 182 N.W. 972 (1921).

There is no provision for setting off of the homestead except when it is sought to be taken on execution. *Sanford v. Anderson*, 69 Neb. 249, 95 N.W. 632 (1903).

The homestead character of real estate upon which an attachment has been levied is not a proper question to be heard and determined upon motion to discharge attachment. *Quigley v. McEvony*, 41 Neb. 73, 59 N.W. 767 (1894).

40-106 Homestead; selection; application; contents.

The application must show (1) the fact that an execution has been levied upon property which is claimed as a homestead, (2) the name of the judgment creditor, (3) the facts which give rise to a homestead exemption, and (4) the value of the homestead.

Source: Laws 1879, § 6, p. 59; R.S.1913, § 3081; C.S.1922, § 2821; C.S.1929, § 40-106; R.S.1943, § 40-106; Laws 1947, c. 153, § 2, p. 420.

Procedure for selection of homestead was in conformity with statute. *Sanne v. Sanne*, 167 Neb. 683, 94 N.W.2d 367 (1959).

40-107 Homestead; selection; application; filing; service.

The application must be filed with the clerk of the district court, and a copy thereof, with notice of the time and place of hearing, be served upon the judgment creditor or his attorney of record and the officer making the levy at least ten days before the hearing. The hearing may be had before or at the hearing on confirmation of sale.

Source: Laws 1879, § 7, p. 59; R.S.1913, § 3082; C.S.1922, § 2822; C.S.1929, § 40-107; R.S.1943, § 40-107; Laws 1947, c. 153, § 3, p. 421.

Procedure for selection of homestead was in conformity with statute. *Sanne v. Sanne*, 167 Neb. 683, 94 N.W.2d 367 (1959).

40-108 Homestead; selection; hearing.

At the hearing the court, upon proof of the service of such application and notice, shall determine whether or not such land is subject to the homestead exemption. If it is not, the court shall dismiss the application. If it is, the court shall further determine: (1) The extent and value of the homestead; and (2) if of greater value than the homestead exemption, whether or not the land claimed as a homestead can be divided without material injury. In the event the land which is determined by the court to be subject to the homestead exemption has already been sold on execution by the sheriff, the sale shall be set aside and the judgment creditor shall be assessed the costs of the sale and of the hearing, unless such land was sold for more than the homestead exemption.

Source: Laws 1879, § 8, p. 59; R.S.1913, § 3083; C.S.1922, § 2823; C.S.1929, § 40-108; R.S.1943, § 40-108; Laws 1947, c. 153, § 4, p. 421.

Procedure for selection of homestead was in conformity with statute. *Sanne v. Sanne*, 167 Neb. 683, 94 N.W.2d 367 (1959).

Hearing and determination of homestead was had under this section. *Schroeder v. Ely*, 161 Neb. 262, 73 N.W.2d 172 (1955).

40-109 Repealed. Laws 1947, c. 153, § 7.

40-110 Homestead; when set off; selection of other lands.

If from the evidence it appears that the land upon which the execution has been levied can be divided without material injury, the court shall, by an order,

set off to the claimant so much of the land, including the residence, not exceeding the quantity prescribed in section 40-101, as will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land, except that if the residence and the ground on which it is situated, with five acres surrounding the same, amount in value to more than the homestead exemption, other lands may be selected on which no building or residence stands as the homestead for the debtor and his or her family.

Source: Laws 1879, § 10, p. 59; R.S.1913, § 3085; C.S.1922, § 2825; Laws 1927, c. 111, § 1, p. 315; C.S.1929, § 40-110; R.S.1943, § 40-110; Laws 1947, c. 153, § 5, p. 421; Laws 1986, LB 999, § 3.

If property is not capable of division, exemption should be granted from proceeds of sale. Schroeder v. Ely, 161 Neb. 262, 73 N.W.2d 172 (1955).

40-111 Indivisible homestead; sale; conditions.

If from the evidence it appears that the land upon which the execution has been levied cannot be divided, the court shall, unless a sale has already been held, make an order directing the sale of the land under the execution; but at such sale no bid must be received unless it exceeds the amount of the homestead exemption. Where a sale has already been held, the proceeds of sale to an amount equaling the homestead exemption shall be set off to the judgment debtor as exempt, and the balance distributed as provided by order of the court.

Source: Laws 1879, § 11, p. 60; R.S.1913, § 3086; C.S.1922, § 2826; C.S.1929, § 40-111; R.S.1943, § 40-111; Laws 1947, c. 153, § 6, p. 422.

Bid cannot be received unless it exceeds amount of homestead exemption and other existing valid liens. Sanne v. Sanne, 167 Neb. 683, 94 N.W.2d 367 (1959).

40-112 Indivisible homestead; sale; proceeds; disposition.

If the sale is made, the proceeds thereof, to the amount of the homestead exemption, must be paid to the claimant, and the balance applied to the satisfaction of the execution.

Source: Laws 1879, § 12, p. 60; R.S.1913, § 3087; C.S.1922, § 2827; C.S.1929, § 40-112.

Sheriff's deed on execution sale of homestead passes title to purchaser, where homestead interest is extinguished by mortgage thereof. Hess v. Eselin, 110 Neb. 590, 194 N.W. 469 (1923).

40-113 Indivisible homestead; sale; surplus proceeds; protection.

The money paid to the claimant is entitled, for the period of six months thereafter, to the same protection against legal process and the voluntary disposition of the claimant which the law gives to the homestead.

Source: Laws 1879, § 13, p. 60; R.S.1913, § 3088; C.S.1922, § 2828; C.S.1929, § 40-113.

Sheriff's deed on execution sale of homestead passes title to purchaser, where homestead interest is extinguished by mortgage thereof. Hess v. Eselin, 110 Neb. 590, 194 N.W. 469 (1923).

40-114 Repealed. Laws 1947, c. 153, § 7.

40-115 Head of family, defined.

The phrase head of a family, as used in sections 40-101 to 40-116, includes within its meanings every person who has residing on the premises with him or her and under his or her care and maintenance:

- (1) His or her minor child or the minor child of his or her deceased wife or husband;
- (2) A minor brother or sister or the minor child of a deceased brother or sister;
- (3) A father, mother, grandfather, or grandmother;
- (4) The father, mother, grandfather, or grandmother of a deceased husband or wife;
- (5) An unmarried sister, brother, or any other of the relatives mentioned in this section who have attained the age of majority and are unable to take care of or support themselves; or
- (6) A surviving spouse who resides in property which would have qualified for a homestead exemption if the deceased spouse were still alive and married to the surviving spouse.

Source: Laws 1879, § 15, p. 60; R.S.1913, § 3090; C.S.1922, § 2830; C.S.1929, § 40-115; R.S.1943, § 40-115; Laws 1979, LB 80, § 103; Laws 1994, LB 760, § 1.

Definition of head of the family in this section is restricted to sections 40-101 to 40-117. *Grassman v. Jensen*, 183 Neb. 147, 158 N.W.2d 673 (1968).

Where husband and wife reside upon homestead selected from separate property of husband, and wife dies, and the husband continues to reside thereon until his death, the homestead character of the land continues in the surviving husband, although he may have no children or dependents residing with him. *United States Nat. Bank of Omaha v. Simonds*, 133 Neb. 42, 274 N.W. 187 (1937).

Widow, not head of family, with life estate as surviving spouse as well as fee title to land occupied as homestead, may execute valid instrument creating equitable mortgage without acknowledgment. *Miles v. Martin*, 103 Neb. 261, 171 N.W. 907 (1919).

Children of deceased sister-in-law are members of family within meaning of this section. *Doman v. Fenton*, 96 Neb. 94, 147 N.W. 209 (1914).

In order to be head of family, claimant must be married or have a dependent residing on premises. *Brusha v. Phipps*, 86 Neb. 822, 126 N.W. 856 (1910).

Once acquired, the homestead character continues so long as residence is on the premises. *Palmer v. Sawyer*, 74 Neb. 108, 103 N.W. 1088 (1905); *First Nat. Bank of Greenwood v. Reece*, 64 Neb. 292, 89 N.W. 804 (1902).

In order to claim exemption on account of dependency, there must be an actual and necessary dependency by reason of the inability of dependent to support self. *Hyde v. Hyde*, 60 Neb. 502, 83 N.W. 673 (1900).

40-116 Homestead; protection of surplus after execution sale.

If the homestead be conveyed by the claimant, or sold for the satisfaction of any lien mentioned in section 40-103, the proceeds of such sale, beyond the amount necessary to the satisfaction of such lien, and not exceeding the amount of the homestead exemption, shall be entitled, for the period of six months thereafter, to the same protection against legal process and the voluntary disposition of the claimant which the law gives to the homestead. The sale and disposition of one homestead shall not be held to prevent the selection or purchase of another, as provided in sections 40-101 to 40-116.

Source: Laws 1879, § 16, p. 61; R.S.1913, § 3091; C.S.1922, § 2831; C.S.1929, § 40-116.

Protection accorded to the proceeds of the sale of a homestead applies to property received in exchange for the homestead, not exceeding in value the amount of the exemption. *Meyer v. Platt*, 137 Neb. 714, 291 N.W. 86 (1940).

Under former law, proceeds arising from sale of homestead, not exceeding two thousand dollars, was protected for period of

six months, to same extent as homestead. *Corey v. Plummer*, 48 Neb. 481, 67 N.W. 445 (1896); *Prugh v. Portsmouth Savings Bank*, 48 Neb. 414, 67 N.W. 309 (1896); *Scheel v. Lackner*, 4 Neb. Unof. 221, 93 N.W. 741 (1903).

40-117 Repealed. Laws 1974, LB 354, § 316.

40-118 Transferred to section 61-105.

CHAPTER 41

HOTELS AND INNS

Article.

1. General Provisions. Repealed.
2. Liability Limitations. 41-201 to 41-214.

ARTICLE 1

GENERAL PROVISIONS

Section

41-101.	Repealed. Laws 1981, LB 487, § 62.
41-102.	Repealed. Laws 1981, LB 487, § 62.
41-103.	Repealed. Laws 1981, LB 487, § 62.
41-104.	Repealed. Laws 1981, LB 487, § 62.
41-104.01.	Repealed. Laws 1981, LB 487, § 62.
41-105.	Repealed. Laws 1981, LB 487, § 62.
41-106.	Repealed. Laws 1981, LB 487, § 62.
41-107.	Repealed. Laws 1981, LB 487, § 62.
41-108.	Repealed. Laws 1981, LB 487, § 62.
41-109.	Repealed. Laws 1981, LB 487, § 62.
41-110.	Repealed. Laws 1981, LB 487, § 62.
41-111.	Repealed. Laws 1981, LB 487, § 62.
41-112.	Repealed. Laws 1981, LB 487, § 62.
41-113.	Repealed. Laws 1981, LB 487, § 62.
41-114.	Repealed. Laws 1981, LB 487, § 62.
41-115.	Repealed. Laws 1981, LB 487, § 62.
41-116.	Repealed. Laws 1981, LB 487, § 62.
41-117.	Repealed. Laws 1981, LB 487, § 62.
41-118.	Repealed. Laws 1981, LB 487, § 62.
41-119.	Repealed. Laws 1981, LB 487, § 62.
41-120.	Repealed. Laws 1981, LB 487, § 62.
41-121.	Repealed. Laws 1981, LB 487, § 62.
41-122.	Repealed. Laws 1981, LB 487, § 62.
41-123.	Repealed. Laws 1981, LB 487, § 62.
41-123.01.	Repealed. Laws 1981, LB 487, § 62.
41-123.02.	Repealed. Laws 1981, LB 487, § 62.
41-123.03.	Repealed. Laws 1981, LB 487, § 62.
41-123.04.	Repealed. Laws 1981, LB 487, § 62.
41-124.	Repealed. Laws 1981, LB 487, § 62.
41-125.	Repealed. Laws 1981, LB 487, § 62.
41-126.	Repealed. Laws 1981, LB 487, § 62.
41-127.	Repealed. Laws 1981, LB 487, § 62.
41-127.01.	Repealed. Laws 1981, LB 487, § 62.
41-128.	Repealed. Laws 1981, LB 487, § 62.
41-129.	Repealed. Laws 1981, LB 487, § 62.
41-130.	Repealed. Laws 1981, LB 487, § 62.

41-101 Repealed. Laws 1981, LB 487, § 62.

41-102 Repealed. Laws 1981, LB 487, § 62.

41-103 Repealed. Laws 1981, LB 487, § 62.

41-104 Repealed. Laws 1981, LB 487, § 62.

- 41-104.01 Repealed. Laws 1981, LB 487, § 62.
- 41-105 Repealed. Laws 1981, LB 487, § 62.
- 41-106 Repealed. Laws 1981, LB 487, § 62.
- 41-107 Repealed. Laws 1981, LB 487, § 62.
- 41-108 Repealed. Laws 1981, LB 487, § 62.
- 41-109 Repealed. Laws 1981, LB 487, § 62.
- 41-110 Repealed. Laws 1981, LB 487, § 62.
- 41-111 Repealed. Laws 1981, LB 487, § 62.
- 41-112 Repealed. Laws 1981, LB 487, § 62.
- 41-113 Repealed. Laws 1981, LB 487, § 62.
- 41-114 Repealed. Laws 1981, LB 487, § 62.
- 41-115 Repealed. Laws 1981, LB 487, § 62.
- 41-116 Repealed. Laws 1981, LB 487, § 62.
- 41-117 Repealed. Laws 1981, LB 487, § 62.
- 41-118 Repealed. Laws 1981, LB 487, § 62.
- 41-119 Repealed. Laws 1981, LB 487, § 62.
- 41-120 Repealed. Laws 1981, LB 487, § 62.
- 41-121 Repealed. Laws 1981, LB 487, § 62.
- 41-122 Repealed. Laws 1981, LB 487, § 62.
- 41-123 Repealed. Laws 1981, LB 487, § 62.
- 41-123.01 Repealed. Laws 1981, LB 487, § 62.
- 41-123.02 Repealed. Laws 1981, LB 487, § 62.
- 41-123.03 Repealed. Laws 1981, LB 487, § 62.
- 41-123.04 Repealed. Laws 1981, LB 487, § 62.
- 41-124 Repealed. Laws 1981, LB 487, § 62.
- 41-125 Repealed. Laws 1981, LB 487, § 62.
- 41-126 Repealed. Laws 1981, LB 487, § 62.
- 41-127 Repealed. Laws 1981, LB 487, § 62.
- 41-127.01 Repealed. Laws 1981, LB 487, § 62.
- 41-128 Repealed. Laws 1981, LB 487, § 62.
- 41-129 Repealed. Laws 1981, LB 487, § 62.

41-130 Repealed. Laws 1981, LB 487, § 62.

**ARTICLE 2
LIABILITY LIMITATIONS**

Section

- 41-201. Definitions, where found.
- 41-202. Hotel, defined.
- 41-203. Motel, defined.
- 41-204. Rooming house, defined.
- 41-205. Boarding house, defined.
- 41-206. Apartment house, defined.
- 41-207. Guests, defined.
- 41-208. Proprietor's liability for money and valuables; conditions; amount.
- 41-209. Proprietor's liability for baggage and wearing apparel; amount.
- 41-210. Proprietor's liability; limitation.
- 41-211. Proprietor's liability; limitation; notice; declaration of value; display copy of law.
- 41-212. Proprietor's liability for property being transported; limitation; declaration; display copy of law.
- 41-213. Proprietor's liability; negligence of proprietor or agents; limitation; declaration; display copy of law.
- 41-214. Proprietor's liability; notice of loss required; when; display copy of law.

41-201 Definitions, where found.

For purposes of sections 41-201 to 41-214, unless the context otherwise requires, the definitions found in sections 41-202 to 41-207 shall be used.

Source: Laws 1982, LB 547, § 1.

41-202 Hotel, defined.

Hotel shall mean every building or other structure kept, used, maintained, advertised, or held out to the public to be a place where sleeping and other accommodations are offered for pay, principally to transient guests, in which ten or more persons are accommodated or five or more rooms are used principally for the accommodation of transient guests, with or without one or more dining rooms or cafes where meals or lunches are served to such guests, together with any buildings in connection therewith.

Source: Laws 1982, LB 547, § 2.

41-203 Motel, defined.

Motel shall mean a roadside hotel providing both lodging for travelers, whether in individual cabins or not, and garage or parking space for their motor vehicles.

Source: Laws 1982, LB 547, § 3.

41-204 Rooming house, defined.

Rooming house shall mean every building or other structure kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests in which five or more rooms are used for the accommodation of such guests, but

which does not maintain dining rooms or cafes in connection therewith, and which has not been designated as a hotel or boarding house.

Source: Laws 1982, LB 547, § 4.

41-205 Boarding house, defined.

Boarding house shall mean every building or other structure kept, used, maintained, advertised, or held out to the public to be a place where sleeping and other accommodations are furnished for pay to transient or permanent guests in which five or more rooms are used for the accommodation of such guests, which maintains a dining room, cafe, or common kitchen for the use of the guests in connection therewith, and in which social or domestic services may be provided at the request of the guest to assist such guest in daily living activities, and which has not been designated as a hotel, restaurant, or cafe.

Source: Laws 1982, LB 547, § 5.

41-206 Apartment house, defined.

Apartment house shall mean every building or other structure kept, used, maintained, advertised, or held out to the public to be a place where accommodations for living rooms, either furnished or unfurnished, single or in suites for light housekeeping, or both, are furnished for permanent guests, but where no dining room or cafe is maintained in the same building or under the same management, and where five or more tenants occupy such buildings, together with any buildings in connection therewith.

Source: Laws 1982, LB 547, § 6.

41-207 Guests, defined.

Guests shall mean and include all persons who have registered on a register provided for such purpose by hotels, motels, and rooming houses, whether assigned a room or rooms or not, occupants of apartments, patrons of restaurants, or persons who have signified their intention in writing to become a guest of such hotel, restaurant, apartment house, motel, or rooming house.

Source: Laws 1982, LB 547, § 7.

41-208 Proprietor's liability for money and valuables; conditions; amount.

No person, firm, or corporation, operating a hotel, restaurant, apartment house, motel, or rooming house, who (1) constantly has in his, her, or their place of business a metal safe or vault in good order and fit for the custody of money, bank notes, jewelry, articles of gold and silver manufacture, precious stones, personal ornaments, railroad mileage checks or tickets, negotiable or other valuable papers, bullion, or other property of small size belonging to the guests of such hotel, restaurant, apartment house, motel, or rooming house, (2) keeps suitable locks or bolts on the doors of the sleeping rooms used by guests and suitable fastenings on the transoms and windows of such rooms, and (3) constantly and conspicuously keeps posted, in the public areas of such place of business and in each sleeping room in the place of business, a copy of this section, printed in distinct type, shall be liable for the loss of or injury to such property suffered by any guest, unless such guest has offered to deliver the property to the keeper of a hotel, restaurant, apartment house, motel, or rooming house, for custody in such metal safe or vault, and the proprietor of

such business has omitted or refused to take and deposit the same in such safe or vault for custody and give such guest a receipt therefor. If such property is offered by the guest and deposited by the proprietor in such safe, there shall be no liability on the part of the proprietor for loss or injury to such property absent negligence or dishonesty on the part of the proprietor or his or her agents. The proprietor of such business place shall not be obliged to receive from any one guest, for deposit in such safe or vault, any property, described in this section, exceeding a total value of five hundred dollars and shall not be liable for the value of any such property in excess of five hundred dollars, unless receipted for in writing, in which event recovery of the actual damages sustained may be allowed in an amount not to exceed the actual value of such property. Such keeper of a hotel, restaurant, apartment house, motel, or rooming house may, by special arrangement with the guest, receive for deposit in such safe or vault any property upon such terms as they may agree to in writing and, in such a case, shall be liable for any loss of the above-enumerated articles of a guest, only after such articles have been accepted for deposit, if such loss is caused by theft or negligence on the part of the keeper of such business or any of his or her servants. Whenever any person shall allow his or her trunks, grips, household articles, boxes of merchandise, or samples to remain in any hotel, restaurant, apartment house, motel, or rooming house after leaving such place of business as a guest, such proprietor shall have the right to deposit any baggage or property so received in a storage warehouse, in which event he or she shall take from the proprietor of such warehouse a receipt for the same in the name of the owner thereof, and hold the receipt, for such owner. The proprietor of a hotel, restaurant, apartment house, motel, or rooming house, after he or she has deposited such baggage or property in a storage warehouse, shall not be responsible for the loss thereof if he or she has the storage warehouse receipt for delivery to the owner of such baggage or property upon demand.

Source: Laws 1982, LB 547, § 8.

41-209 Proprietor's liability for baggage and wearing apparel; amount.

Every person, firm, or corporation maintaining, operating, or conducting a hotel, restaurant, apartment house, motel, or rooming house, where a suitable room or rooms are provided for the reception and keeping of trunks, packages, wearing apparel, and similar articles, who, on the request of a bona fide guest of such place of business, receives for safekeeping any trunk, bag, or articles of wearing apparel, or similar articles shall (1) issue to such guest a receipt or check therefor, (2) be responsible for such property so taken, and (3) be liable for loss, damage, or injury to such property, except that the person, firm, or corporation, operating such hotel, restaurant, apartment house, motel, or rooming house, shall not be required to receive and be responsible for any (a) trunk and its contents to the value of more than two hundred dollars, (b) valise, grip, or sample case and its contents to the value of more than seventy-five dollars, (c) box, bundle, or package and its contents to the value of more than twenty-five dollars, or (d) miscellaneous other effects, including wearing apparel and personal belongings so checked to the value of more than seventy-five dollars, unless he or she shall have consented in writing with such guest to assume a greater responsibility.

Source: Laws 1982, LB 547, § 9.

41-210 Proprietor's liability; limitation.

The limitations of liability, provided for in sections 41-208 and 41-209, shall apply to all property brought upon the premises of the hotel, restaurant, apartment house, motel, or rooming house for forty-eight hours after the guest has ceased occupying the premises and paid his or her bill therefor, which shall terminate the relation of keeper and guest, except that the keeper or owner may continue to hold such property at the risk of the guest or owner of such property.

Source: Laws 1982, LB 547, § 10.

41-211 Proprietor's liability; limitation; notice; declaration of value; display copy of law.

For any loss of or damage to any property left by a guest after he or she has departed from any hotel, restaurant, apartment house, motel, or rooming house and ceased to be a guest thereof, the liability of the proprietor thereof, whether or not such loss or damage is occasioned by the negligence of such proprietor or his or her agents or servants, shall be that of a gratuitous bailee and the amount which may be recovered against such proprietor shall not exceed the sum of two hundred fifty dollars unless the guest shall have declared a greater value upon the property in writing and delivered such declaration, while a guest thereof, to the hotel, restaurant, apartment house, motel, or rooming house, in which event recovery of the actual damages sustained may be allowed in an amount not in excess of the value so declared. Forms for making such declaration shall be furnished by the hotel, restaurant, apartment house, motel, or rooming house. A copy thereof, signed by the proprietor or his or her agent, shall be delivered to the guest. A copy of this section printed in not smaller than ten-point type shall be conspicuously posted in the public areas and in each room of each hotel, restaurant, apartment house, motel, or rooming house desiring to obtain the benefit of this section.

Source: Laws 1982, LB 547, § 11.

41-212 Proprietor's liability for property being transported; limitation; declaration; display copy of law.

For any loss of or damage to any property of a guest while in transport to or from any hotel, restaurant, apartment house, motel, or rooming house, whether or not such loss or damage is occasioned by the negligence of such proprietor or his or her agents or servants, the amount which may be recovered against such proprietor shall not exceed five hundred dollars unless the guest shall have declared a greater value upon the property in writing and delivered such declaration, while a guest thereof, to the hotel, restaurant, apartment house, motel, or rooming house, in which event recovery of the actual damages sustained may be allowed in an amount not in excess of the value so declared. Forms for making such declaration shall be furnished by the hotel, restaurant, apartment house, motel, or rooming house. A copy thereof, signed by the proprietor or his or her agent, shall be delivered to the guest. A copy of this section printed in not smaller than ten-point type shall be conspicuously posted in the public areas and in each room of each hotel, restaurant, apartment house, motel, or rooming house desiring to obtain the benefit of this section.

Source: Laws 1982, LB 547, § 12.

41-213 Proprietor's liability; negligence of proprietor or agents; limitation; declaration; display copy of law.

For any loss of or damage to any property brought into any hotel, restaurant, apartment house, motel, or rooming house, arising out of the negligence of the proprietor or his or her agents or servants, the proprietor thereof shall not be liable for an amount in excess of one thousand dollars unless such guest shall have declared a greater value upon the property in writing and delivered such declaration, while a guest thereof, to the hotel, restaurant, apartment house, motel, or rooming house, in which event recovery of the actual damages sustained may be allowed but not in excess of the value so declared. Forms for making such declaration shall be furnished by the hotel, restaurant, apartment house, motel, or rooming house. A copy thereof signed by the proprietor or his or her agent shall be delivered to the guest. A copy of this section printed in not smaller than ten-point type shall be conspicuously posted in the public areas and in each room of each hotel, restaurant, apartment house, motel, or rooming house desiring to obtain the benefit of this section.

Source: Laws 1982, LB 547, § 13.

41-214 Proprietor's liability; notice of loss required; when; display copy of law.

There shall be no liability on the part of the proprietor of any hotel, apartment house, rooming house, restaurant, or motel, for loss of, or damage to, any property of guests of such place of business unless within seven days from the time of discovery of any loss or damage, such loss or damage is reported in writing to such proprietor. A copy of this section in not smaller than ten-point type shall be conspicuously posted in the public areas and in each room of each hotel, restaurant, apartment house, motel, or rooming house desiring to obtain the benefit of this section.

Source: Laws 1982, LB 547, § 14.

HUSBAND AND WIFE

CHAPTER 42 HUSBAND AND WIFE

Article.

1. Marriage. 42-101 to 42-128.
2. Wife's Contracts, Debts, and Separate Property. 42-201 to 42-207.
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ARTICLE 1

MARRIAGE

Cross References

Marriage, same-sex relationships not valid or recognized, see Article I, section 29, Constitution of Nebraska.

Section

- | | |
|---------|------------------------------------------------------------------|
| 42-101. | Marriage a civil contract. |
| 42-102. | Minimum age; affliction with venereal disease, disqualification. |
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- Section
- 42-104. Solemnization; license; application; requirements.
 - 42-105. Marriage of minor; conditions upon which a license may be issued.
 - 42-106. License issued by county clerk; contents; marriage record; forms.
 - 42-107. License; issuance prohibited, when.
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 - 42-111. Repealed. Laws 1951, c. 124, § 2.
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 - 42-119. Repealed. Laws 2004, LB 1207, § 49.
 - 42-120. Repealed. Laws 2004, LB 1207, § 49.
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 - 42-123. Repealed. Laws 1983, LB 497, § 2.
 - 42-124. Repealed. Laws 1971, LB 728, § 5.
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 - 42-126. Repealed. Laws 1983, LB 497, § 2.
 - 42-127. Repealed. Laws 1983, LB 497, § 2.
 - 42-128. Repealed. Laws 1983, LB 497, § 2.

42-101 Marriage a civil contract.

In law, marriage is considered a civil contract, to which the consent of the parties capable of contracting is essential.

Source: R.S.1866, c. 34, § 1, p. 254; R.S.1913, § 1540; C.S.1922, § 1489; C.S.1929, § 42-101.

Cross References

Agreements based on consideration of marriage, must be written, see section 36-202.
 Child whose parents marry is legitimate, see section 43-1406.

- 1. Nature of contract
- 2. Agreement of parties
- 3. Validity of marriage
- 4. Common-law marriage
- 5. Miscellaneous

1. Nature of contract

Although this section denotes marriage as a "civil contract," persons entering into matrimony establish a social status, not a contractual relation. *Edmunds v. Edwards*, 205 Neb. 255, 287 N.W.2d 420 (1980).

Where consent is obtained by fraud, marriage may be annulled. *Zutavern v. Zutavern*, 155 Neb. 395, 52 N.W.2d 254 (1952).

Marriage is a civil contract which, if procured by fraud, may be set aside. *Hudson v. Hudson*, 151 Neb. 210, 36 N.W.2d 851 (1949).

State is always a party. *Willits v. Willits*, 76 Neb. 228, 107 N.W. 379 (1906).

Consent of state is necessary. *Eaton v. Eaton*, 66 Neb. 676, 92 N.W. 995 (1902).

Marriage is a social status, and only in a limited sense is the relation contractual. *University of Michigan v. McGuckin*, 64 Neb. 300, 89 N.W. 778 (1902).

2. Agreement of parties

Consent of parties mentally competent is required. *Kutch v. Kutch*, 88 Neb. 114, 129 N.W. 169 (1910).

Mental weakness alone does not avoid contract. *Aldrich v. Steen*, 71 Neb. 33, 98 N.W. 445 (1904).

3. Validity of marriage

It is not a ground for annulment that license was wrongfully obtained where parties are competent and marriage is fully consummated. *Baker v. Baker*, 112 Neb. 738, 200 N.W. 1003 (1924).

Marriages valid in Indian tribe under Indian customs, are valid here. *Ortley v. Ross*, 78 Neb. 339, 110 N.W. 982 (1907).

Marriage is valid where minds of competent parties meet. *University of Michigan v. McGuckin*, 62 Neb. 489, 87 N.W. 180 (1901).

Where marriage is celebrated in good faith, it is binding though parties had agreed it should not be. *Hills v. State*, 61 Neb. 589, 85 N.W. 836 (1901).

4. Common-law marriage

Since 1923, common-law marriages cannot be made in this state. *Collins v. Hoag & Rollins*, 122 Neb. 805, 241 N.W. 766 (1932), reversing 121 Neb. 716, 238 N.W. 351 (1931).

5. Miscellaneous

Agreements to separate are against public policy. *Brun v. Brun*, 64 Neb. 782, 90 N.W. 860 (1902).

42-102 Minimum age; affliction with venereal disease, disqualification.

At the time of the marriage the male must be of the age of seventeen years or upward, and the female of the age of seventeen years or upward. No person who is afflicted with a venereal disease shall marry in this state.

Source: R.S.1866, c. 34, § 2, p. 254; R.S.1913, § 1541; C.S.1922, § 1490; Laws 1923, c. 40, § 1, p. 154; C.S.1929, § 42-102; R.S.1943, § 42-102; Laws 1963, c. 242, § 1, p. 735; Laws 1965, c. 230, § 1, p. 673; Laws 1971, LB 728, § 1; Laws 1978, LB 165, § 1.

Cross References

Marriage ends person's minority, see section 43-2101.

Marriage of one afflicted with venereal disease is not void but voidable. *Christensen v. Christensen*, 144 Neb. 763, 14 N.W.2d 613 (1944).

Where party afflicted with venereal disease enters into marriage with full knowledge thereof, such party is barred from seeking annulment. *Christensen v. Christensen*, 144 Neb. 763, 14 N.W.2d 613 (1944).

If parties are of the age of consent, the marriage is valid, even though license was wrongfully obtained. *Baker v. Baker*, 112 Neb. 738, 200 N.W. 1003 (1924).

Prior to 1923, marriage was valid even if there was no license. *Melcher v. Melcher*, 102 Neb. 790, 169 N.W. 720 (1918).

Father of minor who brings suit to annul marriage of son under age is not liable for child support. *Caulk v. Caulk*, 91 Neb. 638, 136 N.W. 845 (1912).

Marriage of infant under age is voidable, but is valid until annulled by court. *Willits v. Willits*, 76 Neb. 228, 107 N.W. 379 (1906).

42-103 Marriages; when void.

Marriages are void (1) when either party has a husband or wife living at the time of the marriage, (2) when either party, at the time of marriage, is mentally incompetent to enter into the marriage relation, and (3) when the parties are related to each other as parent and child, grandparent and grandchild, brother and sister of half as well as whole blood, first cousins when of whole blood, uncle and niece, and aunt and nephew. This subdivision extends to children and relatives born out of wedlock as well as those born in wedlock.

Source: R.S.1866, c. 34, § 3, p. 254; Laws 1911, c. 76, § 1, p. 322; Laws 1913, c. 72, § 1, p. 216; R.S.1913, § 1542; C.S.1922, § 1491; C.S.1929, § 42-103; R.S.1943, § 42-103; Laws 1963, c. 243, § 1, p. 736; Laws 1976, LB 990, § 1; Laws 1986, LB 1177, § 14; Laws 1989, LB 22, § 1.

Cross References

Bigamy, penalty, see section 28-701.

Incest, penalty, see section 28-703.

Incestuous marriages are void, see section 28-702.

1. Void marriage, party has spouse
2. Void marriage, mental illness
3. Void marriage, related parties
4. Miscellaneous

1. Void marriage, party has spouse

A marriage contract between a man and a woman, one of whom is married, is void. *Boersen v. Huffman*, 189 Neb. 469, 203 N.W.2d 489 (1973); *Scott v. Scott*, 153 Neb. 906, 46 N.W.2d 627 (1951), 23 A.L.R.2d 1431 (1951).

Marriage within six months of divorce is void, but cohabitation after impediment is removed, though removal is unknown, validates. *Aldrich v. Steen*, 71 Neb. 33, 98 N.W. 445 (1904); *Eaton v. Eaton*, 66 Neb. 676, 92 N.W. 995 (1902).

Applicant for widow's social security benefits denied titlement where evidence revealed purported marriage to deceased consummated during interlocutory period of deceased's former divorce. *McGuire v. Califano*, 440 F.Supp. 1031 (D. Neb. 1977).

2. Void marriage, mental illness

In action to annul marriage, mental illness of party was not of such nature as to render marriage void. *Homan v. Homan*, 181 Neb. 259, 147 N.W.2d 630 (1967).

Absolute inability to contract, insanity or idiocy, but not mental weakness alone, will make marriage void. *Aldrich v. Steen*, 71 Neb. 33, 98 N.W. 445 (1904).

3. Void marriage, related parties

Marriage in Iowa of first cousins, residents of Nebraska, is valid here. *Staley v. State*, 89 Neb. 701, 131 N.W. 1028 (1911).

4. Miscellaneous

Marriages are void under this section only if there existed at the time of marriage such a want of understanding as to render the party incapable of assenting thereto. *Edmunds v. Edwards*, 205 Neb. 255, 287 N.W.2d 420 (1980).

This section declares what marriages are void. *Baker v. Baker*, 112 Neb. 738, 200 N.W. 1003 (1924).

42-104 Solemnization; license; application; requirements.

Prior to the solemnization of any marriage in this state, a license for that purpose shall be obtained from a county clerk in the State of Nebraska. Applications for a marriage license made with the county court prior to January 1, 1987, shall be processed and licenses shall be issued by the county court according to the law and procedures in effect on the date each application was made. No marriage hereafter contracted shall be recognized as valid unless such license has been previously obtained and used within one year from the date of issuance and unless such marriage is solemnized by a person authorized by law to solemnize marriages. Each party shall present satisfactory documentary proof of and shall swear or affirm to the application giving: (1) Full name of each applicant and residence; and (2) the place, date, and year of birth of each.

Source: R.S.1866, c. 34, § 4, p. 254; R.S.1913, § 1543; C.S.1922, § 1492; Laws 1923, c. 40, § 2, p. 154; Laws 1925, c. 84, § 1, p. 261; C.S.1929, § 42-104; Laws 1943, c. 103, § 9, p. 348; R.S.1943, § 42-104; Laws 1971, LB 42, § 1; Laws 1971, LB 728, § 2; Laws 1975, LB 295, § 1; Laws 1986, LB 525, § 4; Laws 1988, LB 1126, § 2.

1. Common-law marriage
2. Miscellaneous

1. Common-law marriage

By legislative enactment, common-law marriages in Nebraska are not recognized. *Ropken v. Ropken*, 169 Neb. 352, 99 N.W.2d 480 (1959); *Scott v. Scott*, 153 Neb. 906, 46 N.W.2d 627 (1951), 23 A.L.R.2d 1431 (1951).

Unless entered into prior to 1923, a common-law marriage entered into in this state is not valid. *Bouelle v. Soo-Crete, Inc.*, 165 Neb. 731, 87 N.W.2d 371 (1958); *Ragan v. Ragan*, 158 Neb. 51, 62 N.W.2d 121 (1954).

Since 1923, common-law marriages in this state are prohibited. *Bowman v. Bowman*, 163 Neb. 336, 79 N.W.2d 554 (1956).

Common-law marriage in another state was not established. *Abramson v. Abramson*, 161 Neb. 782, 74 N.W.2d 919 (1956).

Common-law marriage was recognized as valid prior to act of 1923. *Harrison v. Cargill Commission Co.*, 126 Neb. 185, 252 N.W. 899 (1924).

Amendment of 1923 whereby common-law marriages were banned was upheld as constitutional. *Collins v. Hoag & Rollins*, 122 Neb. 805, 241 N.W. 766 (1932), reversing 121 Neb. 716, 238 N.W. 351 (1931).

2. Miscellaneous

The failure to obtain a license to marry voids a marriage performed without it. *Randall v. Randall*, 216 Neb. 541, 345 N.W.2d 319 (1984).

Where marriage ceremony is invalid, subsequent cohabitation after removal of impediment will not validate marriage. *Binger v. Binger*, 158 Neb. 444, 63 N.W.2d 784 (1954).

Under 1923 amendment to this section, a valid marriage can be contracted in this state only when the parties have previously obtained a license to marry, and when the marriage has been solemnized by a person authorized by law to solemnize marriages. *Walden v. Walden*, 122 Neb. 804, 241 N.W. 766 (1932), reversing 121 Neb. 715, 238 N.W. 356 (1931).

Provisions of this section are limited to marriages solemnized in Nebraska. *Allen v. Allen*, 121 Neb. 635, 237 N.W. 662 (1931).

Where parties are of the age of consent and otherwise competent, the fact that license is wrongfully obtained is no ground for annulment. *Baker v. Baker*, 112 Neb. 738, 200 N.W. 1003 (1924).

Prior to 1923, the fact that there was no license, or that it was wrongfully obtained, did not invalidate marriage. *Melcher v. Melcher*, 102 Neb. 790, 169 N.W. 720 (1918).

42-105 Marriage of minor; conditions upon which a license may be issued.

When either party is a minor, no license shall be granted without the written consent under oath of: (1) Either one of the parents of such minor, if the parents are living together; (2) the parent having the legal custody of such minor, if the parents are living separate and apart from each other; (3) the surviving parent, if one of the parents of such minor is deceased; or (4) the

guardian, conservator, or person under whose care and government such minor may be, if both parents of such minor are deceased or if such guardian, conservator, or person has the legal and actual custody of such minor. The county clerk shall be justified in issuing the license, without further proof, upon receiving an affidavit setting forth the facts with reference to the conditions above specified and giving consent to the marriage, signed by the person authorized to give written consent under such circumstances.

Source: R.S.1866, c. 34, § 5, p. 254; R.S.1913, §§ 1543, 1544; C.S.1922, §§ 1492, 1493; Laws 1923, c. 40, § 2, p. 154; Laws 1925, c. 84, § 1, p. 261; C.S.1929, §§ 42-104, 42-105; R.S.1943, § 42-105; Laws 1945, c. 99, § 1, p. 327; Laws 1975, LB 481, § 28; Laws 1986, LB 525, § 5.

Above section relates to the obtaining of license, and does not go to validity of marriage. Baker v. Baker, 112 Neb. 738, 200 N.W. 1003 (1924).

42-106 License issued by county clerk; contents; marriage record; forms.

When an application is made for a license to the county clerk, he or she shall, upon the granting of such license, state in the license the information contained in the application as provided in section 42-104. The license shall, prior to the issuing thereof, be entered of record in the office of the county clerk in a suitable book to be provided for that purpose.

The forms for the application, license, and certificate of marriage shall be provided by the Department of Health and Human Services at actual cost as determined by the department.

Source: R.S.1866, c. 34, § 6, p. 254; Laws 1869, § 1, p. 167; R.S.1913, § 1545; C.S.1922, § 1494; C.S.1929, § 42-106; R.S.1943, § 42-106; Laws 1971, LB 728, § 3; Laws 1986, LB 525, § 6; Laws 1989, LB 344, § 3; Laws 1996, LB 1044, § 96; Laws 2007, LB296, § 55.

Cross References

Fee for proceedings, see section 33-110.

42-107 License; issuance prohibited, when.

If the required proof is not given, if it shall appear that either of the parties is legally incompetent to enter into such contract or that there is any impediment in the way, or if either party is a minor and the consent mentioned in section 42-105 shall not be given, the county clerk shall refuse to grant a license.

Source: R.S.1866, c. 34, § 7, p. 255; R.S.1913, § 1546; C.S.1922, § 1495; C.S.1929, § 42-107; R.S.1943, § 42-107; Laws 1971, LB 728, § 4; Laws 1986, LB 525, § 7.

42-108 Marriage ceremony; who may perform; return; contents.

Every judge, retired judge, clerk magistrate, or retired clerk magistrate, and every preacher of the gospel authorized by the usages of the church to which he or she belongs to solemnize marriages, may perform the marriage ceremony in this state. Every such person performing the marriage ceremony shall make a return of his or her proceedings in the premises, showing the names and residences of at least two witnesses who were present at such marriage. The return shall be made to the county clerk who issued the license within fifteen

days after such marriage has been performed. The county clerk shall record the return or cause it to be recorded in the same book where the marriage license is recorded.

Source: R.S.1866, c. 34, § 8, p. 255; Laws 1869, § 2, p. 168; R.S.1913, § 1547; C.S.1922, § 1496; Laws 1927, c. 77, § 1, p. 242; C.S. 1929, § 42-108; R.S.1943, § 42-108; Laws 1951, c. 124, § 1, p. 542; Laws 1971, LB 42, § 2; Laws 1972, LB 1032, § 249; Laws 1973, LB 226, § 28; Laws 1981, LB 55, § 1; Laws 1986, LB 525, § 8; Laws 2006, LB 1115, § 28.

While certain named classes of persons and officials are authorized to perform the marriage ceremony, they are not the only persons that have that authority. *Collins v. Hoag & Rollins*, 122 Neb. 805, 241 N.W. 766 (1932).

Performance of ceremony is not obligatory on clergyman or judges. *Douglas County v. Vinsonhaler*, 82 Neb. 810, 118 N.W. 1058 (1908).

42-109 Ceremony; requirements.

In the solemnization of marriage no particular form shall be required, except that the parties shall solemnly declare in the presence of the magistrate or minister and the attending witnesses, that they take each other as husband and wife; and in any case there shall be at least two witnesses, besides the minister or magistrate present at the ceremony.

Source: R.S.1866, c. 34, § 9, p. 255; R.S.1913, § 1548; C.S.1922, § 1497; C.S.1929, § 42-109.

Presence of clergyman or magistrate is not indispensable. *Gibson v. Gibson*, 24 Neb. 394, 39 N.W. 450 (1888).

42-110 Marriage certificate; provided to parties; form.

Whenever a marriage shall have been solemnized pursuant to the provisions of sections 42-101 to 42-117, the minister or magistrate who solemnized the same shall give to each of the parties, on request, a certificate under his hand, specifying the names, ages and places of residence of the parties married, the names and residences of at least two witnesses who were present at such marriage, and the time and place thereof.

Source: R.S.1866, c. 34, § 10, p. 255; R.S.1913, § 1549; C.S.1922, § 1498; C.S.1929, § 42-110.

42-111 Repealed. Laws 1951, c. 124, § 2.

42-112 Returns; record.

The county clerk of each county in the state shall record all such returns of such marriages in a book to be kept for that purpose within one month after receiving the returns.

Source: R.S.1866, c. 34, § 12, p. 255; R.S.1913, § 1551; C.S.1922, § 1500; C.S.1929, § 42-112; R.S.1943, § 42-112; Laws 1986, LB 525, § 9.

Cross References

County clerk, reports to Department of Health and Human Services, see section 71-614.
Department of Health and Human Services, marriage records, duties, see section 71-616.

42-113 Violations; penalty.

If any justice, minister, or other person whose duty it is to make and transmit to the county clerk such certificate shall neglect to make and deliver the same;

if the county clerk shall neglect to record such certificate; if any person shall undertake to join others in marriage, knowing that he or she is not legally authorized so to do or knowing of any legal impediment to the proposed marriage; if any person authorized to solemnize any marriage shall willfully and knowingly make a false certificate of any marriage to the county clerk; or if the county clerk shall willfully and knowingly make a false record of any certificate of marriage, he or she shall be guilty of a Class I misdemeanor.

Source: R.S.1866, c. 34, § 13, p. 255; R.S.1913, § 1552; C.S.1922, § 1501; C.S.1929, § 42-113; R.S.1943, § 42-113; Laws 1977, LB 40, § 225; Laws 1986, LB 525, § 10.

42-114 Want of jurisdiction; marriage not void, when.

No marriage solemnized before any person professing to be a minister of the gospel, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected on account of any want of jurisdiction or authority in such supposed minister; *Provided*, the marriage be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

Source: R.S.1866, c. 34, § 14, p. 256; R.S.1913, § 1533; C.S.1922, § 1502; C.S.1929, § 42-114; R.S.1943, § 42-114; Laws 1972, LB 1032, § 250.

This section authorizes anyone to perform a valid marriage ceremony if he holds himself out to be a minister or justice of the peace, provided the marriage is consummated with a full belief on the part of either of the parties that they have been lawfully joined in marriage. *Collins v. Hoag & Rollins*, 122 Neb. 805, 241 N.W. 766 (1932).

If person before whom marriage solemnized had no authority to perform same but professed to have and was believed to have by both parties so married, or either of them, marriage is valid. *Haggin v. Haggin*, 35 Neb. 375, 53 N.W. 209 (1892).

42-115 Marriage according to custom of religious society; certificate; transmission to county clerk.

It shall be lawful for every religious society to join together in marriage such persons as are of the society, according to the rites and customs of the society to which they belong. The clerk or keeper of the minutes, proceedings, or other book of the religious society in which such marriage shall be had, or if there be no such clerk or keeper of the minutes, then the moderator or person presiding in such society, shall make out and transmit to the county clerk of the county a certificate of the marriage, and the same shall be recorded in the same manner as is provided in sections 42-108 to 42-112.

Source: R.S.1866, c. 34, § 15, p. 256; R.S.1913, § 1554; C.S.1922, § 1503; C.S.1929, § 42-115; R.S.1943, § 42-115; Laws 1986, LB 525, § 11.

Marriage solemnized under this section is valid. *Collins v. Hoag & Rollins*, 122 Neb. 805, 241 N.W. 766 (1932).

42-116 Marriage certificate and record as evidence.

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

Source: R.S.1866, c. 34, § 16, p. 256; R.S.1913, § 1555; C.S.1922, § 1504; C.S.1929, § 42-116; R.S.1943, § 42-116; Laws 2006, LB 1115, § 29.

Proof of marriage may be made by either party. *Bailey v. State*, 36 Neb. 808, 55 N.W. 241 (1893).

Proof of official character of person performing ceremony is unnecessary; marriage may be proved by eyewitness. *Lord v. State*, 17 Neb. 526, 23 N.W. 507 (1885).

42-117 Marriage contracted out of state; when valid.

All marriages contracted without this state, which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places in this state.

Source: R.S.1866, c. 34, § 17, p. 257; R.S.1913, § 1556; C.S.1922, § 1505; C.S.1929, § 42-117.

Residents of this state cannot enter into common-law marriage by temporary sojourns in another state. *Binger v. Binger*, 158 Neb. 444, 63 N.W.2d 784 (1954).

Where law of South Dakota was not pleaded, remarriage in South Dakota within three months after entry of divorce decree in Nebraska was invalid. *Scott v. Scott*, 153 Neb. 906, 46 N.W.2d 627 (1951), 23 A.L.R.2d 1431 (1951).

Marriage in Colorado was valid even though no license was obtained. *Allen v. Allen*, 121 Neb. 635, 237 N.W. 662 (1931).

Even though parties have left this state to evade our laws, a marriage is valid unless expressly declared void. *Staley v. State*, 89 Neb. 701, 131 N.W. 1028 (1911); *State v. Hand*, 87 Neb. 189, 126 N.W. 1002 (1910).

If marriage is valid where celebrated, it is valid in this state. *Hills v. State*, 61 Neb. 589, 85 N.W. 836 (1901); *Bailey v. State*, 36 Neb. 808, 55 N.W. 241 (1893); *Gibson v. Gibson*, 24 Neb. 394, 39 N.W. 450 (1888).

42-118 Marriages; when voidable.

In case of a marriage solemnized when either of the parties is under the age of legal consent, if they shall separate during such nonage, and not cohabit together afterwards, or in case the consent of one of the parties was obtained by force or fraud, and there shall have been no subsequently voluntary cohabitation of the parties, the marriage shall be deemed voidable.

Source: R.S.1866, c. 16, § 2, p. 128; R.S.1913, § 1557; C.S.1922, § 1506; C.S.1929, § 42-118.

Fraud sufficient to vitiate a marriage must go to the essence of the marriage relation. *Zutavern v. Zutavern*, 155 Neb. 395, 52 N.W.2d 254 (1952).

Marriage may be set aside for fraud. *Hudson v. Hudson*, 151 Neb. 210, 36 N.W.2d 851 (1949).

In annulment suit, plaintiff must not only show consent obtained by force or fraud but must prove that there was no subsequent voluntary cohabitation of the parties. *Kanaly v. Bronson*, 97 Neb. 322, 149 N.W. 781 (1914).

Father of minor who brings suit to annul marriage of son under age is not liable for child support. *Caulk v. Caulk*, 91 Neb. 638, 136 N.W. 845 (1912).

Disparity in age of the contracting parties is not one of the statutory causes for annulment. *Kutch v. Kutch*, 85 Neb. 702, 124 N.W. 108 (1909).

Where marriage is annulled for nonage of male, it is proper to make order for support of wife and child. *Willits v. Willits*, 76 Neb. 228, 107 N.W. 379 (1906).

42-119 Repealed. Laws 2004, LB 1207, § 49.

42-120 Repealed. Laws 2004, LB 1207, § 49.

42-121 Repealed. Laws 1998, LB 1073, § 179.

42-121.01 Repealed. Laws 1988, LB 804, § 1.

42-122 Repealed. Laws 1983, LB 497, § 2.

42-123 Repealed. Laws 1983, LB 497, § 2.

42-124 Repealed. Laws 1971, LB 728, § 5.

42-125 Repealed. Laws 1983, LB 497, § 2.

42-126 Repealed. Laws 1983, LB 497, § 2.

42-127 Repealed. Laws 1983, LB 497, § 2.

42-128 Repealed. Laws 1983, LB 497, § 2.**ARTICLE 2****WIFE'S CONTRACTS, DEBTS, AND SEPARATE PROPERTY**

Section

- 42-201. Wife's separate property; not available for husband or his debts; exception.
 42-202. Married woman; capacity to contract; same as married man.
 42-203. Married woman; capacity to carry on business; earnings.
 42-204. Married woman; marriage solemnized out of state; property rights.
 42-205. Sections, how construed.
 42-206. Debts of wife contracted before marriage; husband not liable.
 42-207. Married woman; not bound by covenant in joint deed.

42-201 Wife's separate property; not available for husband or his debts; exception.

The property, real and personal, which any woman in the state may own at the time of her marriage, rents, issues, profits or proceeds thereof and real, personal or mixed property which shall come to her by descent, devise or the gift of any person except her husband or which she shall acquire by purchase or otherwise shall remain her sole and separate property, notwithstanding her marriage, and shall not be subject to disposal by her husband or liable for his debts; *Provided*, all property of a married woman, except ninety percent of her wages, not exempt by statute from sale on execution or attachment, regardless of when or how said property has been or may hereafter be acquired, shall be liable for the payment of all debts contracted for necessities furnished the family of said married woman after execution against the husband for such indebtedness has been returned unsatisfied for want of goods and chattels, lands and tenements whereon to levy and make the same.

Source: Laws 1871, § 1, p. 68; Laws 1875, § 1, p. 88; Laws 1887, c. 49, § 1, p. 478; R.S.1913, § 1560; C.S.1922, § 1509; C.S.1929, § 42-201; R.S.1943, § 42-201; Laws 1945, c. 100, § 1, p. 328.

Cross References

Executions and exemptions, see sections 25-1501 to 25-15,105.

1. Separate property of wife
2. Liability for debts of husband
3. Liability for necessities
4. Miscellaneous

1. Separate property of wife

Property conveyed by husband to wife became her separate property and was a valid gift. *Graff v. Graff*, 179 Neb. 345, 138 N.W.2d 644 (1965).

Legislation providing separate property rights of married woman had bearing on amendment of Homestead Act. *Edgerton v. Hamilton County*, 150 Neb. 821, 36 N.W.2d 258 (1949).

Where the contract of a married woman does not expressly bind her separate estate for payment of a debt, the question of her intention must be determined as a fact from all evidence and surrounding circumstances. *Federal Land Bank of Omaha v. Plumer*, 139 Neb. 301, 297 N.W. 541 (1941).

A valid provision in a contract, whereby a married woman expressly and unequivocally binds her separate estate, is conclusive proof of such intention, and cannot be contradicted by parol evidence. *Fidelity & Deposit Co. v. Lapidus*, 136 Neb. 473, 286 N.W. 386 (1939).

Statutes have removed common-law disability of married woman to contract only in cases where contract has reference

to her separate property, trade or business, or was made on the faith or credit thereof, and with intent on her part thereby to bind her separate property. *John Fletcher College v. Estate of Pailing*, 121 Neb. 847, 238 N.W. 750 (1931).

Estate of husband in deceased wife's property is subject to her debts. *Miller v. Hanna*, 89 Neb. 224, 131 N.W. 226 (1911).

Mortgage on separate estate without consideration, to secure debt of husband or third person, is void. *Conkling v. Levie*, 66 Neb. 132, 94 N.W. 987 (1902).

A wife may own personal property the same as married man, and joint possession of both raises no presumption that husband is owner. *Booknau v. Clark*, 58 Neb. 610, 79 N.W. 159 (1899); *Oberfelder v. Kavanaugh*, 29 Neb. 427, 45 N.W. 471 (1890).

Wife has absolute control over property owned by her at time of marriage. *Broadwater v. Jacoby*, 19 Neb. 77, 26 N.W. 629 (1886).

It is no defense that husband alone received consideration for mortgage. *Wilson v. Neu*, 1 Neb. Unof. 42, 95 N.W. 502 (1901).

Property coming to the wife by gift from the husband is excepted from the wife's separate estate. *United States v. Sode*, 93 F.Supp. 398 (D. Neb. 1950).

2. Liability for debts of husband

Separate estate of wife is not liable for husband's debts, though in husband's possession and assessed in his name. *Taggart v. Fowler*, 25 Neb. 152, 40 N.W. 954 (1888).

Property purchased with own savings is not subject to husband's debts. *Callahan v. Powers*, 24 Neb. 731, 40 N.W. 292 (1888).

Property of wife is not subject to sale for ordinary debts of husband. *Leighton v. Stuart*, 19 Neb. 546, 26 N.W. 198 (1886).

3. Liability for necessities

The term family herein includes a husband residing in same household with other members and medical services for him are necessities for which wife may be liable. *Nichol v. Clema*, 188 Neb. 74, 195 N.W.2d 233 (1972).

Husband is not bound without his assent to a contract made by his wife relating to a subject other than necessities of life. *Lincoln v. Knudsen*, 163 Neb. 390, 79 N.W.2d 716 (1956).

Statute makes property of married woman liable for debts for necessities but no personal liability is imposed on her where she has no separate estate. *Dreamer v. Oberlander*, 122 Neb. 335, 240 N.W. 435 (1932).

Property acquired by wife after divorce is not liable for debt contracted by husband for family necessities prior to divorce. *Deitz Lumber Co. v. Anderson*, 116 Neb. 205, 216 N.W. 667 (1927).

Property of married woman is not liable for payment of debts contracted for family necessities until after execution issued against husband for same has been returned unsatisfied. *Scott v. House*, 93 Neb. 325, 140 N.W. 631 (1913).

Necessaries includes medical expenses of husband. *Leake v. Lucas*, 65 Neb. 359, 91 N.W. 374 (1902); on rehearing, 65 Neb. 365, 93 N.W. 1019 (1902).

Statute of limitations does not start to run until return of execution against husband is unsatisfied. *Noreen v. Hansen*, 64 Neb. 858, 90 N.W. 937 (1902).

In action against wife on note given for necessities, petition must allege execution against husband returned unsatisfied. *Fulton v. Ryan*, 60 Neb. 9, 82 N.W. 105 (1900).

Wife is surety for necessities of life, but is not bound until execution is returned unsatisfied. *Small v. Sandall*, 48 Neb. 318,

67 N.W. 156 (1896); *George v. Edney*, 36 Neb. 604, 54 N.W. 986 (1893).

Exempt property is not liable for debts for necessities. *Schaller v. Kurtz*, 25 Neb. 655, 41 N.W. 642 (1889).

4. Miscellaneous

This section does not limit the county court's jurisdiction to determine the custody of a minor child whose custody is subject to a preexisting district court order where the county court's jurisdiction is invoked by the county attorney acting to protect the child pursuant to section 43-205. *Schleuter v. McCuiston*, 203 Neb. 101, 277 N.W.2d 667 (1979).

Husband remains primarily liable for expenses of last illness and burial of wife. In re *Estate of White*, 150 Neb. 167, 33 N.W.2d 470 (1948).

Where wife is joint tenant of property, she may exercise her rights with respect to consenting or objecting to proposed special assessments independent of her husband. *Bonner v. City of Imperial*, 149 Neb. 721, 32 N.W.2d 267 (1948).

A married woman cannot sue husband for personal injuries or recover against husband's employer for husband's negligence for which husband is liable to employer. *Emerson v. Western Seed & Irrigation Co.*, 116 Neb. 180, 216 N.W. 297 (1927).

Presence of wife raises no presumption that tort committed by husband was committed as her agent, even though with reference to separate estate. *Carnahan v. Cummings*, 105 Neb. 337, 180 N.W. 558 (1920).

Contract between husband and wife that she receive compensation for services outside of domestic duties, is valid and enforceable as against him or his estate. In re *Estate of Cormick*, 100 Neb. 669, 160 N.W. 989 (1916).

Equitable rule sustaining gifts by solvent husband or wife is still in force. *First Nat. Bank of Wahoo v. Havlik*, 51 Neb. 668, 71 N.W. 291 (1897); *Studebaker Bros. Mfg. Co. v. Welch*, 51 Neb. 228, 70 N.W. 920 (1897); *Dayton Spice-Mills Co. v. Sloan*, 49 Neb. 622, 68 N.W. 1040 (1896).

Wife may become creditor of husband. *Lipscomb v. Lyon*, 19 Neb. 511, 27 N.W. 731 (1886).

Common-law rights of husband and wife exist except as modified by statute. *Aultman, Taylor & Co. v. Obermeyer*, 6 Neb. 260 (1877).

A married woman of age at time of registration of land under Torrens Act who was served with process is bound by the decree. *Jones v. York County*, 26 F.2d 623 (8th Cir. 1928).

42-202 Married woman; capacity to contract; same as married man.

A married woman may bargain, sell, and convey her real and personal property. Such a woman may enter into any contract in the same manner, to the same extent, and with like effect as a married man. The obligations of her contracts shall be the same as a married man.

Source: Laws 1871, § 2, p. 68; R.S.1913, § 1561; C.S.1922, § 1510; C.S.1929, § 42-202; R.S.1943, § 42-202; Laws 1957, c. 172, § 1, p. 594.

- 1. Power over separate property
- 2. Liability as surety
- 3. Contracts prior to 1957 amendment
- 4. Mortgages
- 5. Conveyances
- 6. Pleading coverture prior to 1957 amendment
- 7. Mechanic's lien
- 8. Miscellaneous

1. Power over separate property

Rights of wife with respect to property held in joint tenancy are not different from those of her husband. *Bonner v. City of Imperial*, 149 Neb. 721, 32 N.W.2d 267 (1948).

Legislature has placed a married man and woman on a parity with reference to real and personal property. *Focht v. Wakefield*, 145 Neb. 568, 17 N.W.2d 627 (1945).

Husband cannot sell wife's property, but she may sell it to same extent as married man. *Marsh v. Marsh*, 92 Neb. 189, 137 N.W. 1122 (1912).

A married woman has same power over separate property as husband has over his. *Kloke v. Martin*, 55 Neb. 554, 76 N.W. 168 (1898); *Melick v. Varney*, 41 Neb. 105, 59 N.W. 521 (1894); *Farwell v. Cramer*, 38 Neb. 61, 56 N.W. 716 (1893).

2. Liability as surety

When a bank has given extension of time upon indebtedness of husband and wife by taking a new note therefor, such extension is sufficient consideration to support wife's contract to bind separate estate. *Harbine Bank of Fairbury v. McCune*, 131 Neb. 419, 268 N.W. 358 (1936).

Under former law, note by married woman as husband's surety, was binding on her only on showing her intention to bind separate estate. *First Nat. Bank of Alexandria, S.D. v. Ernst*, 117 Neb. 34, 219 N.W. 798 (1928).

Under former law, wife had power to contract with reference to separate estate only, and it was not presumed that she intended to charge same. *Northwall & Co. v. Osgood*, 80 Neb. 764, 115 N.W. 308 (1908); *Farmers' Bank v. Boyd*, 67 Neb. 497, 93 N.W. 676 (1903); *Citizens State Bank of Wood River v. Smout*, 62 Neb. 223, 86 N.W. 1068 (1901); *Westervelt v. Baker*, 56 Neb. 63, 76 N.W. 440 (1898); *State Nat. Bank v. Smith*, 55 Neb. 54, 75 N.W. 51 (1898); *First Nat. Bank of Sutton v. Grosshans*, 54 Neb. 773, 75 N.W. 51 (1898); *Stenger Benevolent Assn. v. Stenger*, 54 Neb. 427, 74 N.W. 846 (1898); *Grand Island Banking Co. v. Wright*, 53 Neb. 574, 74 N.W. 82 (1898).

Separate estate of wife was bound by guaranty on note regardless of disposition of proceeds. *Kitchen v. Chapin*, 64 Neb. 144, 89 N.W. 632 (1902).

Under former law, wife might be surety, if she intended to bind her separate estate. *McKell v. Merchants' Nat. Bank*, 62 Neb. 608, 87 N.W. 317 (1901); *First Nat. Bank of Chicago v. Stoll*, 57 Neb. 758, 78 N.W. 254 (1899).

Wife may be surety on husband's note. *Spatz v. Martin*, 46 Neb. 917, 65 N.W. 1063 (1896).

Evidence was sufficient to show joint note charged separate estate. *Bowen v. Foss*, 28 Neb. 373, 44 N.W. 450 (1889).

Under former law, wife was not liable as surety unless she intended to bind separate estate. *The State Savings Bank of St. Joseph, Mo. v. Scott*, 10 Neb. 83, 4 N.W. 314 (1880).

Creation of debt is prima facie evidence of intent to charge separate estate. *Webb v. Hoselton*, 4 Neb. 308 (1876).

3. Contracts prior to 1957 amendment

Where the contract of a married woman does not expressly bind her separate estate for payment of a debt, the question of her intention must be determined as a fact from all evidence and surrounding circumstances. *Federal Land Bank of Omaha v. Plumer*, 139 Neb. 301, 297 N.W. 541 (1941).

A married woman may enter into a business partnership with another as part of her own trade or business, and when she does, she becomes bound as partner and is liable for partnership debts whether contracted by herself or another member of the firm. *Plattsmouth State Bank v. John Bauer & Co.*, 133 Neb. 35, 274 N.W. 204 (1937).

General money judgment on contract executed by married woman during coverture, binding separate estate, is enforceable only against property or proceeds she possessed at time of making of contract. *Giltner State Bank v. Talich*, 115 Neb. 236, 212 N.W. 536 (1927).

A married woman may contract to pay tuition essential to an educational course for herself in osteopathy, though she has no separate estate. *Still College v. Morris*, 93 Neb. 328, 140 N.W. 272 (1913).

Contract binding separate estate includes only property then owned, unless otherwise specified. *Marsh v. Marsh*, 92 Neb. 189, 137 N.W. 1122 (1912).

The contract of a married woman can only be enforced against the separate estate which she possessed at the date of the contract. *Parratt v. Hartsuff*, 75 Neb. 706, 106 N.W. 966 (1906); *McKell v. Merchants' Nat. Bank*, 62 Neb. 608, 87 N.W. 317 (1901); *Kocher v. Cornell*, 59 Neb. 315, 80 N.W. 911 (1899).

A married woman may contract to same extent as formerly in equity. *Kocher v. Cornell*, 59 Neb. 315, 80 N.W. 911 (1899).

In an action against a married woman on a note executed by her as surety, coverture is a complete defense unless it is shown that she intended to bind separate estate. *Smith v. Bond*, 56 Neb. 529, 76 N.W. 1062 (1898); *Kershaw v. Barrett*, 3 Neb. Unof. 36, 90 N.W. 764 (1902).

Married woman has power to contract with reference to separate estate only. *Grand Island Banking Co. v. Wright*, 53 Neb. 574, 74 N.W. 82 (1898).

A married woman is not liable as maker of note unless she intended to bind separate estate. *Barnum v. Young*, 10 Neb. 309, 4 N.W. 1054 (1880).

A married woman may contract with husband and sue him on contract. *May v. May*, 9 Neb. 16, 2 N.W. 221 (1879).

4. Mortgages

A married woman may mortgage her separate estate to indemnify the sureties upon an official bond of her husband. *Bode v. Jussen*, 93 Neb. 482, 140 N.W. 768 (1913).

Contemporaneous loan to husband is consideration. *Holmes v. Hull*, 50 Neb. 656, 70 N.W. 241 (1897); *Watts v. Gantt*, 42 Neb. 869, 61 N.W. 104 (1894); *Briggs v. First Nat. Bank of Beatrice*, 41 Neb. 17, 59 N.W. 351 (1894); *Smith v. Spaulding*, 40 Neb. 339, 58 N.W. 952 (1894).

A married woman may mortgage separate estate to secure husband's debt. *Nelson v. Bevins*, 19 Neb. 715, 28 N.W. 331 (1886); *Stevenson v. Craig*, 12 Neb. 464, 12 N.W. 1 (1882).

Mortgage to secure money, embezzled by husband to prevent his punishment, was not executed under duress. *Mundy v. Whittemore*, 15 Neb. 647, 19 N.W. 694 (1884).

Under former law, a consideration must exist for mortgage by married woman of her separate estate to secure husband's debt. *Kansas Mfg. Co. v. Gandy*, 11 Neb. 448, 9 N.W. 569 (1881).

Under former law, where there was no proof of intention to bind separate estate, deficiency judgment on foreclosure should be refused. *Morris v. Linton*, 4 Neb. Unof. 550, 95 N.W. 11 (1903); *Farmers Bank v. Normand*, 3 Neb. Unof. 643, 92 N.W. 723 (1902).

5. Conveyances

Husband may convey directly to wife. *Currier v. Teske*, 84 Neb. 60, 120 N.W. 1015 (1909); *Lavigne v. Tobin*, 52 Neb. 686, 72 N.W. 1040 (1897); *Furrow v. Athey*, 21 Neb. 671, 33 N.W. 208 (1887).

A conveyance by a married woman of her separate property, not her homestead, is valid between the parties, although not acknowledged. *Linton v. Cooper*, 53 Neb. 400, 73 N.W. 731 (1898).

Contract between husband and wife is valid if it is made voluntarily upon consideration. *Greene v. Greene*, 42 Neb. 634, 60 N.W. 937 (1894).

A married woman may give power of attorney to husband, authorizing him to convey her separate estate. *Benschoter v. Atkins*, 25 Neb. 645, 41 N.W. 639 (1889); *Benschoter v. Lalk*, 24 Neb. 251, 38 N.W. 746 (1888).

§ 42-202

HUSBAND AND WIFE

A married woman is liable on covenants of warranty in deed conveying her separate estate, though husband joins. *Real v. Hollister*, 17 Neb. 661, 24 N.W. 333 (1885).

Deed unacknowledged is void. *Roode v. State*, 5 Neb. 174 (1876).

6. Pleading coverture prior to 1957 amendment

Plea of coverture must negative conditions under which party might contract. *First Nat. Bank of Chicago v. Stoll*, 57 Neb. 758, 78 N.W. 254 (1899).

Answer must allege that contract did not concern her separate estate. *Gillespie v. Smith*, 20 Neb. 455, 30 N.W. 526 (1886).

7. Mechanic's lien

Under former law, where contract was made with husband and not ratified by wife, mechanic's lien on separate estate of wife was invalid. *Rust-Owen Lumber Co. v. Holt*, 60 Neb. 80, 82 N.W. 112 (1900).

There can be a valid mechanic's lien for improvements on separate estate. *Howell v. Hathaway*, 28 Neb. 807, 44 N.W. 1136 (1890).

8. Miscellaneous

Wife may make independent contract for services of attorney in divorce suit, but husband is only liable upon court approval of application for allowance of fees. *Auld v. Auld*, 122 Neb. 576, 240 N.W. 756 (1932).

Legislation was designed to remove disabilities from married woman, so as to place both sexes in equal position before the law. *Emerson v. Western Seed & Irrigation Co.*, 116 Neb. 180, 216 N.W. 297 (1927).

This section has no reference to the right of a married woman to testify. *Greene v. Greene*, 42 Neb. 634, 60 N.W. 937 (1894).

Under former law, whether contract was made in reference to separate estate was for jury. *Godfrey v. Megahan*, 38 Neb. 748, 57 N.W. 284 (1894).

Deed by married woman of sixteen is binding. *Ward v. Laverly*, 19 Neb. 429, 27 N.W. 393 (1886).

Property coming to the wife by gift from the husband is excepted from the wife's separate estate. *United States v. Sode*, 93 F.Supp. 398 (D. Neb. 1950).

42-203 Married woman; capacity to carry on business; earnings.

Any married woman may carry on trade or business, and perform any labor or services on her sole and separate account; and the earnings of any married woman, from her trade, business, labor or services, shall be her sole and separate property, and may be used and invested by her in her own name.

Source: Laws 1871, § 4, p. 68; R.S.1913, § 1562; C.S.1922, § 1511; C.S.1929, § 42-203.

1. Earnings of wife
2. Carrying on business
3. Miscellaneous

1. Earnings of wife

A married woman may recover for loss of earning capacity. *Montgomery v. Miller*, 83 Neb. 625, 120 N.W. 197 (1909).

A married woman may recover for loss of future earnings from labor through permanent injury, though not engaged in business now. *Bliss v. Beck*, 80 Neb. 290, 114 N.W. 162 (1907).

Earnings as seamstress do not belong to husband. *Riley v. Lidtke*, 49 Neb. 139, 68 N.W. 356 (1896).

The married woman's act does not deprive the husband of his right of action for loss of services of the wife. *Omaha & R. V. Ry. v. Chollette*, 41 Neb. 578, 59 N.W. 921 (1894).

2. Carrying on business

Under former act, married woman was only partially emancipated from common-law disability to contract. *Marmet v. Marmet*, 160 Neb. 366, 70 N.W.2d 301 (1955).

A married woman may enter into a business partnership with another as part of her own trade or business, and when she does she becomes bound as partner and is liable for partnership debts whether contracted by herself or another member of the firm. *Plattsmouth State Bank v. John Bauer & Co.*, 133 Neb. 35, 274 N.W. 204 (1937).

The word business is applicable to any particular employment, occupation, or profession, followed as a means of livelihood. *Mergenthaler Linotype Co. v. McNamee*, 125 Neb. 71, 249 N.W. 92 (1933).

Common-law disability of married woman to make contracts has been removed only in cases where the contract has refer-

ence to her separate property, trade or business, or was made with intent to bind her separate estate. *Farm Mortgage & Loan Co. v. Beale*, 113 Neb. 293, 202 N.W. 877 (1925).

Husband may act as agent in managing business. *Harris v. Weir-Shugart Co.*, 51 Neb. 483, 70 N.W. 1118 (1897).

A married woman may carry on business and contract in own name. *Shortel v. Young*, 23 Neb. 408, 36 N.W. 572 (1888).

3. Miscellaneous

Wife was not bound by husband's covenant not to acquire competitive business. *Adams v. Adams*, 156 Neb. 778, 58 N.W.2d 172 (1953).

Where the contract of a married woman does not expressly bind her separate estate for payment of a debt, the question of her intention must be determined as a fact from all evidence and surrounding circumstances. *Federal Land Bank of Omaha v. Plumer*, 139 Neb. 301, 297 N.W. 541 (1941).

Collective bargaining agreement between railroad and union that married women should not be employed does not violate this section, and is not against public policy. *Brisbin v. E. L. Oliver Lodge No. 335*, 134 Neb. 517, 279 N.W. 277 (1938).

Statute limiting right of married woman to contract, has no application to note executed in and governed by laws of another state. *Farmers State Bank of Hayfield, Minn. v. Butler*, 101 Neb. 635, 164 N.W. 562 (1917).

A married woman is eligible to hold office of county treasurer. *State ex rel. Jordan v. Quible*, 86 Neb. 417, 125 N.W. 619 (1910).

42-204 Married woman; marriage solemnized out of state; property rights.

Any woman who shall have been married out of this state shall, if her husband afterwards becomes a resident of this state, enjoy all the rights as to

property which she may have acquired by the laws of any other state, territory or country, or which she may have acquired by virtue of any marriage contract or settlement made out of this state.

Source: Laws 1871, § 5, p. 68; R.S.1913, § 1563; C.S.1922, § 1512; C.S.1929, § 42-204.

42-205 Sections, how construed.

Nothing contained in sections 42-201 to 42-205 shall invalidate any marriage settlement or contract.

Source: Laws 1871, § 6, p. 68; R.S.1913, § 1564; C.S.1922, § 1513; C.S.1929, § 42-205.

42-206 Debts of wife contracted before marriage; husband not liable.

The property of the husband shall not be liable for any debts contracted by the wife before marriage.

Source: Laws 1877, § 1, p. 33; R.S.1913, § 1565; C.S.1922, § 1514; C.S.1929, § 42-206.

Husband, separated from wife and paying temporary alimony, is not liable for necessities furnished wife. *Wise Memorial Hospital Assn. v. Peyton*, 99 Neb. 48, 154 N.W. 838 (1915).

42-207 Married woman; not bound by covenant in joint deed.

A married woman shall not be bound by any covenant in a joint deed of herself and husband.

Source: R.S.1866, c. 43, § 53, p. 291; R.S.1913, § 1566; C.S.1922, § 1515; C.S.1929, § 42-207.

Wife joining with husband in conveyance of his property, in order to release her interest in same, is not liable in damages for breach of covenants of warranty. *Pauley v. Knouse*, 109 Neb. 716, 192 N.W. 195 (1923).

Wife is liable on covenant of warranty on conveyance of separate estate, though husband joins. *Real v. Hollister*, 17 Neb. 661, 24 N.W. 333 (1885).

Wife is not liable on covenants in mortgage which she signed to release dower rights. *Pochin v. Conley*, 74 Neb. 429, 104 N.W. 878 (1905).

ARTICLE 3

DIVORCE, ALIMONY, AND CHILD SUPPORT

Cross References

Constitutional provision:

Legislature shall not pass local or special laws for granting divorces, see Article III, section 18, Constitution of Nebraska.

Clerk of district court, divorces and annulments, reports to Department of Health and Human Services, see section 71-615.

Divorce records, Department of Health and Human Services, duties, see section 71-616.

Income tax refund or lottery prize, setoff for child support debt, see sections 77-27,160 to 77-27,173.

(a) GENERAL PROVISIONS

Section	
42-301.	Repealed. Laws 1972, LB 820, § 35.
42-302.	Repealed. Laws 1972, LB 820, § 35.
42-302.01.	Repealed. Laws 1972, LB 820, § 35.
42-302.02.	Repealed. Laws 1972, LB 820, § 35.
42-303.	Repealed. Laws 1972, LB 820, § 35.
42-304.	Repealed. Laws 1972, LB 820, § 35.
42-305.	Repealed. Laws 1972, LB 820, § 35.
42-305.01.	Repealed. Laws 1972, LB 820, § 35.
42-305.02.	Repealed. Laws 1972, LB 820, § 35.

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Section

- 42-305.03. Repealed. Laws 1972, LB 820, § 35.
- 42-306. Repealed. Laws 1972, LB 820, § 35.
- 42-307. Repealed. Laws 1972, LB 820, § 35.
- 42-308. Repealed. Laws 1972, LB 820, § 35.
- 42-309. Repealed. Laws 1972, LB 820, § 35.
- 42-310. Repealed. Laws 1972, LB 820, § 35.
- 42-311. Repealed. Laws 1972, LB 820, § 35.
- 42-312. Repealed. Laws 1972, LB 820, § 35.
- 42-313. Repealed. Laws 1972, LB 820, § 35.
- 42-314. Repealed. Laws 1972, LB 820, § 35.
- 42-315. Repealed. Laws 1972, LB 820, § 35.
- 42-316. Repealed. Laws 1972, LB 820, § 35.
- 42-317. Repealed. Laws 1972, LB 820, § 35.
- 42-318. Repealed. Laws 1972, LB 820, § 35.
- 42-318.01. Repealed. Laws 1972, LB 820, § 35.
- 42-319. Repealed. Laws 1972, LB 820, § 35.
- 42-319.01. Repealed. Laws 1972, LB 820, § 35.
- 42-319.02. Repealed. Laws 1972, LB 820, § 35.
- 42-320. Repealed. Laws 1972, LB 820, § 35.
- 42-321. Repealed. Laws 1972, LB 820, § 35.
- 42-322. Repealed. Laws 1972, LB 820, § 35.
- 42-323. Repealed. Laws 1972, LB 820, § 35.
- 42-324. Repealed. Laws 1972, LB 820, § 35.
- 42-325. Repealed. Laws 1972, LB 820, § 35.
- 42-326. Repealed. Laws 1972, LB 820, § 35.
- 42-327. Repealed. Laws 1972, LB 820, § 35.
- 42-328. Repealed. Laws 1972, LB 820, § 35.
- 42-329. Repealed. Laws 1972, LB 820, § 35.
- 42-330. Repealed. Laws 1972, LB 820, § 35.
- 42-331. Repealed. Laws 1972, LB 820, § 35.
- 42-332. Repealed. Laws 1972, LB 820, § 35.
- 42-333. Repealed. Laws 1972, LB 820, § 35.
- 42-334. Repealed. Laws 1972, LB 820, § 35.
- 42-335. Repealed. Laws 1972, LB 820, § 35.
- 42-336. Repealed. Laws 1972, LB 820, § 35.
- 42-337. Repealed. Laws 1972, LB 820, § 35.
- 42-338. Repealed. Laws 1972, LB 820, § 35.
- 42-339. Repealed. Laws 1972, LB 820, § 35.
- 42-340. Repealed. Laws 1972, LB 820, § 35.

(b) UNIFORM DIVORCE RECOGNITION ACT

- 42-341. Decree of another jurisdiction; no force or effect; when.
- 42-342. Residence; prima facie evidence.
- 42-343. Sections, how construed.
- 42-344. Act, how cited.

(c) CURATIVE ACT

- 42-345. Decree of divorce; prior to August 27, 1951; validity.
- 42-346. Decree of divorce; validity.

(d) DOMESTIC RELATIONS ACTIONS

- 42-347. Terms, defined.
- 42-348. Proceedings; where brought; transfer of proceedings; orders; how treated.
- 42-349. Dissolution; action; conditions.
- 42-349.01. Repealed. Laws 2007, LB 554, § 49.
- 42-350. Legal separation; amendment of pleadings; when.
- 42-351. County or district court; jurisdiction.
- 42-352. Proceedings; complaint; filing; service.
- 42-353. Complaint; contents.
- 42-354. Repealed. Laws 2004, LB 1207, § 49.
- 42-355. Defendant; proper service or appearance.

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- Section
42-356. Hearings.
42-357. Temporary and ex parte orders; violation; penalty.
42-358. Attorney for minor child; appointment; powers; child or spousal support; records; income withholding; contempt proceedings; fees; evidence; appeal.
- 42-358.01. Delinquent support order payments; records.
42-358.02. Delinquent child support payments; interest; rate; report; Title IV-D Division; duties.
42-358.03. Permanent child support payments; failure to pay; work release program.
42-358.04. Delinquent permanent child support payments; remarriage; effect.
42-358.05. Child or spousal support; performance of decree; court powers.
42-358.06. Delinquent permanent child or spousal support payments; lien.
42-358.07. Clerk of the district court; nonperformance of duties; removal from office.
42-358.08. Information regarding absent parent; duty to furnish; enforcement.
42-358.09. Repealed. Laws 1983, LB 417, § 2.
42-359. Applications for spousal support or alimony; financial statements.
42-360. Reconciliation; transfer of action; when; counseling; costs.
42-361. Marriage irretrievably broken; findings.
42-362. Spouse mentally ill; guardian ad litem; attorney; appointment; order for support.
42-363. Waiting period.
42-364. Action involving child support, child custody, parenting time, visitation, or other access; parenting plan; legal custody and physical custody determination; rights of parents; child support; termination of parental rights; court; duties; modification proceedings; use of school records as evidence.
- 42-364.01. Child support; withholding of earnings; court; powers.
42-364.02. Child support; withholding of earnings; application; who may file.
42-364.03. Child support; withholding of earnings; hearing notice; interrogatories.
42-364.04. Child support; withholding of earnings; service of documents.
42-364.05. Child support; withholding of earnings; court; jurisdiction.
42-364.06. Child support; withholding of earnings; court order.
42-364.07. Child support; withholding of earnings; attorney's fee.
42-364.08. Child support; withholding of earnings; limitations.
42-364.09. Child support; withholding of earnings; priority.
42-364.10. Child support; withholding of earnings; order; dissolution; revocation; modification; service.
42-364.11. Child support; withholding of earnings; terms, defined.
42-364.12. Child support; withholding of earnings; employer; civil contempt; liability for damages; injunction.
42-364.13. Support order; requirements.
42-364.14. Parent-employee; consent to withholding of earnings; procedure.
42-364.15. Enforcement of parenting time, visitation, or other access orders; procedure; costs.
42-364.16. Child support guidelines; establishment; use.
42-364.17. Dissolution, legal separation, or order establishing paternity; incorporate financial arrangements.
- 42-365. Decree; alimony; division of property; criteria; modification; revocation; termination.
42-366. Property settlements; effect; enforcement; modification.
42-367. Temporary allowance; costs; payment.
42-368. Decree of separation; support order; modification; revocation.
42-369. Support or alimony; presumption; items includable; payments; disbursement; enforcement; health insurance.
42-370. Contempt proceedings; attorney's fees; costs.
42-371. Judgments and orders; liens; release; subordination; procedure; time limitation on lien; security; attachment; priority.
42-371.01. Duty to pay child support; termination, when; procedure; State Court Administrator; duties.
42-372. Decree; appeals.
42-372.01. Decree; when final.

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Section

- 42-372.02. Decree; assignment of real estate; affidavit and certificate; filing.
- 42-372.03. Legal separation decree; application to set aside decree.
- 42-373. Annulments; procedure.
- 42-374. Annulment; conditions.
- 42-375. Annulments; persons under disability; who may bring action; denial, when.
- 42-376. Doubtful marriage; procedure.
- 42-377. Legitimacy of children.
- 42-378. Nullity of marriage; procedure; costs.
- 42-379. Repealed. Laws 1997, LB 229, § 46.
- 42-380. Restoration of former name; procedure.
- 42-381. Minor child; rights of parents.

(e) CHILD SUPPORT TASK FORCE

- 42-382. Repealed. Laws 1999, LB 1, § 1.

(f) CHILD SUPPORT COMMISSION

- 42-383. Repealed. Laws 2002, LB 1062, § 72.
- 42-384. Repealed. Laws 2002, LB 1062, § 72.
- 42-385. Repealed. Laws 2002, LB 1062, § 72.
- 42-386. Repealed. Laws 2002, LB 1062, § 72.

(a) GENERAL PROVISIONS

42-301 Repealed. Laws 1972, LB 820, § 35.

42-302 Repealed. Laws 1972, LB 820, § 35.

42-302.01 Repealed. Laws 1972, LB 820, § 35.

42-302.02 Repealed. Laws 1972, LB 820, § 35.

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42-304 Repealed. Laws 1972, LB 820, § 35.

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42-314 Repealed. Laws 1972, LB 820, § 35.

- 42-315 Repealed. Laws 1972, LB 820, § 35.
- 42-316 Repealed. Laws 1972, LB 820, § 35.
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- 42-318.01 Repealed. Laws 1972, LB 820, § 35.
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- 42-319.01 Repealed. Laws 1972, LB 820, § 35.
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- 42-337 Repealed. Laws 1972, LB 820, § 35.
- 42-338 Repealed. Laws 1972, LB 820, § 35.
- 42-339 Repealed. Laws 1972, LB 820, § 35.
- 42-340 Repealed. Laws 1972, LB 820, § 35.

(b) UNIFORM DIVORCE RECOGNITION ACT

42-341 Decree of another jurisdiction; no force or effect; when.

A divorce from the bonds of matrimony obtained in another jurisdiction shall be of no force or effect in this state, if both parties to the marriage were domiciled in this state at the time the proceeding for the divorce was commenced except as provided in section 30-2353.

Source: Laws 1949, c. 124, § 1, p. 331; Laws 1975, LB 481, § 29.

Dominican Republic divorce decree involving Nebraska domiciliaries held of no effect and not entitled to comity. *Weber v. Weber*, 200 Neb. 659, 265 N.W.2d 436 (1978).

This section does not contravene full faith and credit clause of federal Constitution. *Zenker v. Zenker*, 161 Neb. 200, 72 N.W.2d 809 (1955).

Divorce obtained in foreign state is of no force and effect in this state if both parties were domiciled in this state at the time the proceeding was commenced. *Yost v. Yost*, 161 Neb. 164, 72 N.W.2d 689 (1955).

42-342 Residence; prima facie evidence.

Proof that a person obtaining a divorce from the bonds of matrimony in another jurisdiction was (1) domiciled in this state within twelve months prior to the commencement of the proceeding therefor, and resumed residence in this state within eighteen months after the date of his departure therefrom, or (2) at all times after his departure from this state, and until his return maintained a place of residence within this state, shall be prima facie evidence that the person was domiciled in this state when the divorce proceeding was commenced.

Source: Laws 1949, c. 124, § 2, p. 331.

Rule as to prima facie evidence applied to Florida decree. *Yost v. Yost*, 161 Neb. 164, 72 N.W.2d 689 (1955).

42-343 Sections, how construed.

Sections 42-341 to 42-344 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them.

Source: Laws 1949, c. 124, § 3, p. 331.

42-344 Act, how cited.

Sections 42-341 to 42-344 may be cited as the Uniform Divorce Recognition Act.

Source: Laws 1949, c. 124, § 4, p. 332.

(c) CURATIVE ACT

42-345 Decree of divorce; prior to August 27, 1951; validity.

When any district court in this state shall have entered of record a decree of divorce prior to August 27, 1951, it shall be conclusively presumed that the decree, and all instruments and proceedings in connection therewith, are valid in all respects, notwithstanding some defect or defects as may appear on the face of the record or the absence of any record of such court, unless an action is brought within two years from August 27, 1951, attacking the validity thereof.

Source: Laws 1951, c. 122, § 1, p. 536.

42-346 Decree of divorce; validity.

When any district court in this state has entered a decree of divorce after August 27, 1951, and when any county court in this state has entered a decree

of divorce on or after October 1, 1997, it shall be conclusively presumed that the decree, and all instruments and proceedings in connection therewith are valid in all respects, notwithstanding some defect or defects as may appear on the face of the record or the absence of any record of such court, unless an action is brought within two years from the entry of such decree of divorce attacking the validity thereof.

Source: Laws 1951, c. 122, § 2, p. 536; Laws 1996, LB 1296, § 9.

(d) DOMESTIC RELATIONS ACTIONS

42-347 Terms, defined.

For purposes of sections 42-347 to 42-381, unless the context otherwise requires:

(1) Authorized attorney means an attorney (a) employed by the county subject to the approval of the county board, (b) employed by the Department of Health and Human Services, or (c) appointed by the court, who is authorized to investigate and prosecute child and spousal support cases. An authorized attorney shall represent the state as provided in section 43-512.03;

(2) Custody includes both legal custody and physical custody;

(3) Dissolution of marriage means the termination of a marriage by decree of a court of competent jurisdiction upon a finding that the marriage is irretrievably broken. The term dissolution of marriage shall be considered synonymous with divorce, and whenever the term divorce appears in the statutes it means dissolution of marriage pursuant to sections 42-347 to 42-381;

(4) Joint legal custody has the same meaning as in section 43-2922;

(5) Joint physical custody has the same meaning as in section 43-2922;

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

(7) Legal separation means a decree of a court of competent jurisdiction providing that two persons who have been legally married shall thereafter live separate and apart and providing for any necessary adjustment of property, support, and custody rights between the parties but not dissolving the marriage;

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

(9) Spousal support, when used in the context of income withholding or any provisions of law which might lead to income withholding, means alimony or maintenance support for a spouse or former spouse when ordered as a part of an order, decree, or judgment which provides for child support and the child and spouse or former spouse are living in the same household;

(10) State Disbursement Unit has the same meaning as in section 43-3341;

(11) Support order has the same meaning as in section 43-1717; and

(12) Title IV-D Division has the same meaning as in section 43-3341.

Source: Laws 1972, LB 820, § 1; Laws 1985, Second Spec. Sess., LB 7, § 8; Laws 1987, LB 573, § 1; Laws 1989, LB 401, § 2; Laws 1994, LB 1224, § 42; Laws 1996, LB 1044, § 98; Laws 1997, LB 229, § 7; Laws 1997, LB 307, § 15; Laws 2000, LB 972, § 7; Laws 2007, LB554, § 28.

That the parties must be married in order for the court to legally separate them is implicit in subsection (3) of this section. *Bogardi v. Bogardi*, 249 Neb. 154, 542 N.W.2d 417 (1996).

Child support orders entered under sections 42-347 to 42-379 must give effect to child support orders entered under section

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43-512.04. *Robbins v. Robbins*, 219 Neb. 151, 361 N.W.2d 519 (1985).

The Nebraska divorce laws are not unconstitutional under the due process or equal protection clauses of the United States and Nebraska Constitutions. *Roberts v. Roberts*, 200 Neb. 256, 263 N.W.2d 449 (1978).

An unqualified allowance of alimony in gross before July 6, 1972, is not subject to modification. *Kasper v. Kasper*, 195 Neb. 754, 240 N.W.2d 591 (1976).

Divorce action pending on appeal is tried de novo on the record in the Supreme Court and decided under terms of the newly effective no fault marriage dissolution act. *Hassler v. Hassler*, 190 Neb. 86, 206 N.W.2d 40 (1973).

Where district court labeled award "spousal support," and parties had no children, it in fact awarded alimony. *Mastrocesare v. Mastrocesare*, 2 Neb. App. 231, 507 N.W.2d 683 (1993).

42-348 Proceedings; where brought; transfer of proceedings; orders; how treated.

All proceedings under sections 42-347 to 42-381 shall be brought in the district court of the county in which one of the parties resides. Proceedings may be transferred to a separate juvenile court or county court sitting as a juvenile court which has acquired jurisdiction pursuant to section 43-2,113. Certified copies of orders filed with the clerk of the court pursuant to such section shall be treated in the same manner as similar orders issued by the court.

Source: Laws 1972, LB 820, § 2; Laws 1985, Second Spec. Sess., LB 7, § 9; Laws 1996, LB 1296, § 10; Laws 1997, LB 229, § 8.

If one of the parties to a dissolution action has had a Nebraska domicile for the duration prescribed by section 42-349, a party may commence a dissolution action under this section in the county where one of the parties lives and is not required to commence the action in the domiciliary county of either party to the dissolution action. *Huffman v. Huffman*, 232 Neb. 742, 441 N.W.2d 899 (1989).

A district court cannot acquire jurisdiction over dissolution of marriage proceedings unless one of the parties is a resident of the county in which the court is located at the time the original petition is filed. *Small v. Small*, 229 Neb. 344, 427 N.W.2d 42 (1988).

42-349 Dissolution; action; conditions.

No action for dissolution of marriage may be brought unless at least one of the parties has had actual residence in this state with a bona fide intention of making this state his or her permanent home for at least one year prior to the filing of the complaint, or unless the marriage was solemnized in this state and either party has resided in this state from the time of marriage to filing the complaint. Persons serving in the armed forces of the United States who have been continuously stationed at any military base or installation in this state for one year or, if the marriage was solemnized in this state, have resided in this state from the time of marriage to the filing of the complaint shall for the purposes of sections 42-347 to 42-381 be deemed residents of this state.

Source: Laws 1972, LB 820, § 3; Laws 1997, LB 229, § 9; Laws 2004, LB 1207, § 18.

One who proves he or she met the durational residency requirement shall be permitted the inference that such residency was with the intention to make Nebraska a permanent home, absent a showing that the residency was a sham and not bona fide. *Rector v. Rector*, 224 Neb. 800, 401 N.W.2d 167 (1987).

This section is not unconstitutional. *Ashley v. Ashley*, 191 Neb. 824, 217 N.W.2d 926 (1974).

42-349.01 Repealed. Laws 2007, LB 554, § 49.

42-350 Legal separation; amendment of pleadings; when.

If a complaint for legal separation is filed before residence requirements for dissolution of marriage have been complied with, either party, upon complying with such requirements, may amend his or her pleadings to request a dissolution of marriage, and notice of such amendment shall be given in the same manner as for an original action under sections 42-347 to 42-381.

Source: Laws 1972, LB 820, § 4; Laws 1997, LB 229, § 10; Laws 2004, LB 1207, § 19.

After residency requirement has been satisfied, dissolution of marriage may be requested by amendment. *Ashley v. Ashley*, 191 Neb. 824, 217 N.W.2d 926 (1974).

42-351 County or district court; jurisdiction.

(1) In proceedings under sections 42-347 to 42-381, the court shall have jurisdiction to inquire into such matters, make such investigations, and render such judgments and make such orders, both temporary and final, as are appropriate concerning the status of the marriage, the custody and support of minor children, the support of either party, the settlement of the property rights of the parties, and the award of costs and attorney’s fees. The court shall determine jurisdiction for child custody proceedings under the Uniform Child Custody Jurisdiction and Enforcement Act.

(2) When final orders relating to proceedings governed by sections 42-347 to 42-381 are on appeal and such appeal is pending, the court that issued such orders shall retain jurisdiction to provide for such orders regarding support, custody, parenting time, visitation, or other access, orders shown to be necessary to allow the use of property or to prevent the irreparable harm to or loss of property during the pendency of such appeal, or other appropriate orders in aid of the appeal process. Such orders shall not be construed to prejudice any party on appeal.

Source: Laws 1972, LB 820, § 5; Laws 1984, LB 276, § 1; Laws 1991, LB 732, § 100; Laws 1992, LB 360, § 10; Laws 1996, LB 1296, § 11; Laws 1997, LB 229, § 11; Laws 2002, LB 876, § 73; Laws 2003, LB 148, § 42; Laws 2007, LB554, § 29.

Cross References

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

- 1. Jurisdiction of court
- 2. Investigations
- 3. Custody of children
- 4. Attorneys’ fees
- 5. Miscellaneous

1. Jurisdiction of court

Full and complete general jurisdiction over the entire marital relationship and all related matters, including child custody and support, is vested in the district court in which a petition for dissolution of a marriage is properly filed. *Knerr v. Swigerd*, 243 Neb. 591, 500 N.W.2d 839 (1993); *Nemec v. Nemec*, 219 Neb. 891, 367 N.W.2d 705 (1985); *Robbins v. Robbins*, 219 Neb. 151, 361 N.W.2d 519 (1985).

Full and complete general jurisdiction over child custody and support is vested in the district court in which a petition for dissolution of a marriage is properly filed. *Smith v. Smith*, 242 Neb. 812, 497 N.W.2d 44 (1993).

The district court in which a divorce is granted maintains continuing jurisdiction over the marital relationship and all related matters, including child custody and support, unless and until the case is transferred to another court. *State ex rel. Storz v. Storz*, 235 Neb. 368, 455 N.W.2d 182 (1990).

Where minor children are affected by a divorce proceeding, the district court has complete jurisdiction over the custody, support, and welfare of those children. *Farmer v. Farmer*, 200 Neb. 308, 263 N.W.2d 664 (1978).

This section does not allow a district court to retain jurisdiction to permanently modify a decree concerning an issue which is pending appeal from a previous order concerning the same issue. *Bayliss v. Bayliss*, 8 Neb. App. 269, 592 N.W.2d 165 (1999).

Generally, once an appeal has been perfected, the trial court has no jurisdiction to determine any issues regarding the subject matter of the litigation. However, if a supersedeas bond has not been filed, the court retains jurisdiction to enforce the terms of the judgment. *Kricsfeld v. Kricsfeld*, 8 Neb. App. 1, 588 N.W.2d 210 (1999).

2. Investigations

In a divorce case, ex parte investigative reports are not evidence, and cannot be the basis for any adjudication. *Jorgensen v. Jorgensen*, 194 Neb. 271, 231 N.W.2d 360 (1975).

Error, if any, in such use as was made of the testimony of an independent investigator and her report which was submitted to the court and filed but not received in evidence, was harmless since the award of custody was amply supported by the record. *Kockrow v. Kockrow*, 191 Neb. 657, 217 N.W.2d 89 (1974).

Investigation was authorized and petitioner had opportunity to explore and introduce evidence with reference to the report, and even if it was in part inadmissible it is presumed the court did not base its decision thereon. *Christensen v. Christensen*, 191 Neb. 355, 215 N.W.2d 111 (1974).

3. Custody of children

The best interests and welfare of children is paramount in custody cases and the court may place the children in its custody if continuance thereof so requires. *Broadstone v. Broadstone*, 190 Neb. 299, 207 N.W.2d 682 (1973).

Under the divorce law it was held that when the court had placed custody of the children in the court, with possession and care in a parent, it could summarily modify the possession of the parent or parents in the best interests of the children. *Benson v. Benson*, 190 Neb. 87, 206 N.W.2d 51 (1973).

4. Attorneys' fees

A court has no authority under this section to fix the amount of attorney fees which the parties are to pay their respective attorneys. *Griffin v. Vandersnick*, 210 Neb. 590, 316 N.W.2d 299 (1982).

Adultery of party will not as a matter of law prevent an award of attorney's fees nor affect the payment of costs. *Lockard v. Lockard*, 193 Neb. 400, 227 N.W.2d 581 (1975).

5. Miscellaneous

A district court has no authority to include a child who is more than 19 years of age in its child support calculations. *Henderson v. Henderson*, 264 Neb. 916, 653 N.W.2d 226 (2002).

This section does not authorize a district court to modify, sua sponte, a final order from which no appeal has been taken. *Martin v. Martin*, 261 Neb. 125, 621 N.W.2d 511 (2001).

Under certain circumstances, an order that a part of child support payments be held in escrow while an appeal to the Supreme Court is pending is an abuse of discretion. *Phelps v. Phelps*, 239 Neb. 618, 477 N.W.2d 552 (1991).

A decree in a divorce case, insofar as minor children are concerned, is never final in the sense that it cannot be changed. *Bartlett v. Bartlett*, 193 Neb. 76, 225 N.W.2d 413 (1975).

42-352 Proceedings; complaint; filing; service.

A proceeding under sections 42-347 to 42-381 shall be commenced by filing a complaint in the district court. The proceeding may be heard by the county court or the district court as provided in section 25-2740. Summons shall be served upon the other party to the marriage by personal service or in the manner provided in section 25-517.02.

Source: Laws 1972, LB 820, § 6; Laws 1983, LB 447, § 46; Laws 1984, LB 845, § 25; Laws 1996, LB 1296, § 12; Laws 1997, LB 229, § 12; Laws 2004, LB 1207, § 20.

Action to modify alimony obligation must satisfy the requirements of this section. *Osborn v. Osborn*, 4 Neb. App. 802, 550 N.W.2d 58 (1996).

42-353 Complaint; contents.

The pleadings required by sections 42-347 to 42-381 shall be governed by the rules of pleading in civil actions promulgated under section 25-801.01. The complaint shall include the following:

- (1) The name and address of the plaintiff and his or her attorney, except that a plaintiff who is living in an undisclosed location because of safety concerns is only required to disclose the county and state of his or her residence and, in such case, shall provide an alternative address for the mailing of notice;
- (2) The name and address, if known, of the defendant;
- (3) The date and place of marriage;
- (4) The name and year of birth of each child whose custody or welfare may be affected by the proceedings and whether (a) a parenting plan as provided in the Parenting Act has been developed and (b) child custody, parenting time, visitation, or other access or child support is a contested issue;
- (5) If the plaintiff is a party to any other pending action for divorce, separation, or dissolution of marriage, a statement as to where such action is pending;
- (6) Reference to any existing restraining orders, protection orders, or criminal no-contact orders regarding any party to the proceedings;
- (7) A statement of the relief sought by the plaintiff, including adjustment of custody, property, and support rights; and
- (8) An allegation that the marriage is irretrievably broken.

Source: Laws 1972, LB 820, § 7; Laws 1997, LB 229, § 13; Laws 2004, LB 1207, § 21; Laws 2007, LB221, § 1; Laws 2007, LB554, § 30; Laws 2008, LB1014, § 29.
Operative date April 17, 2008.

Cross References

Complaint, include whether to be heard by county or district court, see section 25-2740.
Parenting Act, see section 43-2920.

The mere pendency of another action does not necessarily ipso facto require that a demurrer be sustained and the second action dismissed. *Miller v. Miller*, 213 Neb. 219, 328 N.W.2d 210 (1982).

Where a petition for dissolution of marriage was filed in the maiden name of a woman who had never adopted the surname

of her husband and the parties were otherwise entitled to a decree of dissolution it was error for the trial court to refuse to enter the decree in the maiden name of the wife. *Simmons v. O'Brien*, 201 Neb. 778, 272 N.W.2d 273 (1978).

42-354 Repealed. Laws 2004, LB 1207, § 49.

42-355 Defendant; proper service or appearance.

No marriage shall be dissolved or legal separation decreed unless the defendant has been properly served with process or entered an appearance in the case.

Source: Laws 1972, LB 820, § 9; Laws 1983, LB 447, § 48; Laws 2004, LB 1207, § 22.

42-356 Hearings.

Hearings shall be held in open court upon the oral testimony of witnesses or upon the depositions of such witnesses taken as in other actions. The court may in its discretion close the hearing and may restrict the availability of the evidence or bill of exceptions.

Source: Laws 1972, LB 820, § 10.

Notice and hearing required to modify custody of child except where court retained custody in original order. *Brandl v. Brandl*, 197 Neb. 778, 251 N.W.2d 155 (1977).

In matters pertaining to dissolution, such as custody, hearings shall be held in open court upon the oral testimony of witnesses

or upon the depositions of such witnesses taken as in other actions. Where a modification of custody is concerned, a judicial determination of the best interests of the children must be based on evidence preserved in the record. *Burns v. Burns*, 2 Neb. App. 795, 514 N.W.2d 848 (1994).

42-357 Temporary and ex parte orders; violation; penalty.

The court may order either party to pay to the clerk of the district court or to the State Disbursement Unit, as provided in section 42-369, a sum of money for the temporary support and maintenance of the other party and minor children if any are affected by the action and to enable such party to prosecute or defend the action. The court may make such order after service of process and claim for temporary allowances is made in the complaint or by motion by the plaintiff or by the defendant in a responsive pleading; but no such order shall be entered before three days after notice of hearing has been served on the other party or notice waived. During the pendency of any proceeding under sections 42-347 to 42-381 after the complaint is filed, upon application of either party and if the accompanying affidavit of the party or his or her agent shows to the court that the party is entitled thereto, the court may issue ex parte orders (1) restraining any person from transferring, encumbering, hypothecating, concealing, or in any way disposing of real or personal property except in the usual course of business or for the necessities of life, and the party against whom such order is directed shall upon order of the court account for all unusual expenditures made after such order is served upon him or her, (2) enjoining any party from molesting or disturbing the peace of the other party or any minor children affected by the action, and (3) determining the temporary custody of any minor children of the marriage, except that no restraining order enjoining any party from molesting or disturbing the peace of any minor child shall issue unless, at the same time, the court determines that the party

requesting such order shall have temporary custody of such minor child. Ex parte orders issued pursuant to subdivisions (1) and (3) of this section shall remain in force for no more than ten days or until a hearing is held thereon, whichever is earlier. After motion, notice to the party, and hearing, the court may order either party excluded from the premises occupied by the other upon a showing that physical or emotional harm would otherwise result. Any restraining order issued excluding either party from the premises occupied by the other shall specifically set forth the location of the premises and shall be served upon the adverse party by the sheriff in the manner prescribed for serving a summons, and a return thereof shall be filed in the court. Any person who knowingly violates such an order after service shall be guilty of a Class II misdemeanor. In the event a restraining order enjoining any party from molesting or disturbing the peace of any minor children is issued, upon application and affidavit setting out the reason therefor, the court shall schedule a hearing within seventy-two hours to determine whether the order regarding the minor children shall remain in force. Section 25-1064 shall not apply to the issuance of ex parte orders pursuant to this section. Any judge of the county court or district court may grant a temporary ex parte order in accordance with this section.

Source: Laws 1972, LB 820, § 11; Laws 1974, LB 1015, § 2; Laws 1983, LB 371, § 1; Laws 1984, LB 276, § 2; Laws 1986, LB 516, § 14; Laws 1988, LB 1030, § 42; Laws 1989, LB 330, § 3; Laws 1996, LB 1296, § 13; Laws 1997, LB 229, § 14; Laws 2000, LB 972, § 8; Laws 2004, LB 1207, § 23; Laws 2008, LB1014, § 30. Operative date April 17, 2008.

Cross References

Arrest for violation of this section, see section 42-928.

Where husband used moneys out of a joint account after being served with a restraining order, but was not ordered by the court to account for these expenditures which did not appear unusual, his failure to account for his expenditures did not entitle the wife to a return of the money. *Blaser v. Blaser*, 225 Neb. 104, 402 N.W.2d 875 (1987).

An accounting is not the sole remedy available for a violation of a hypothecation order entered pursuant to this section. *Jessen v. Jessen*, 5 Neb. App. 914, 567 N.W.2d 612 (1997).

42-358 Attorney for minor child; appointment; powers; child or spousal support; records; income withholding; contempt proceedings; fees; evidence; appeal.

(1) The court may appoint an attorney to protect the interests of any minor children of the parties. Such attorney shall be empowered to make independent investigations and to cause witnesses to appear and testify on matters pertinent to the welfare of the children. The court shall by order fix the fee, including disbursements, for such attorney, which amount shall be taxed as costs and paid by the parties as ordered. If the court finds that the party responsible is indigent, the court may order the county to pay the costs.

(2) Following entry of any decree, the court having jurisdiction over the minor children of the parties may at any time appoint an attorney, as friend of the court, to initiate contempt proceedings for failure of any party to comply with an order of the court directing such party to pay temporary or permanent child support. The county attorney or authorized attorney may be appointed by the court for the purposes provided in this section, in which case the county attorney or authorized attorney shall represent the state.

(3) The clerk of each district court shall maintain records of support orders. The Title IV-D Division of the Department of Health and Human Services shall maintain support order payment records pursuant to section 43-3342.01 and the clerk of each district court shall maintain records of payments received pursuant to sections 42-369 and 43-3342.01. For support orders in all cases issued before September 6, 1991, and for support orders issued or modified on or after September 6, 1991, in cases in which no party has applied for services under Title IV-D of the federal Social Security Act, as amended, each month the Title IV-D Division shall certify all cases in which the support order payment is delinquent in an amount equal to the support due and payable for a one-month period of time. The Title IV-D Division shall provide the case information in electronic format, and upon request in print format, to the judge presiding over domestic relations cases and to the county attorney or authorized attorney. A rebuttable presumption of contempt shall be established if a prima facie showing is made that the court-ordered child or spousal support is delinquent. In cases in which one of the parties receives services under Title IV-D of the federal Social Security Act, as amended, the Title IV-D Division shall certify all such delinquent support order payments to the county attorney or the authorized attorney.

In each case certified, if income withholding has not been implemented it shall be implemented pursuant to the Income Withholding for Child Support Act. If income withholding is not feasible and no other action is pending for the collection of support payments, the court shall appoint an attorney to commence contempt of court proceedings. If the county attorney or authorized attorney consents, he or she may be appointed for such purpose. The contempt proceeding shall be instituted within ten days following appointment, and the case shall be diligently prosecuted to completion. The court shall by order fix the fee, including disbursements, for such attorney, which amount shall be taxed as costs and paid by the parties as ordered. Any fees allowed for the services of any county attorney or authorized attorney shall be paid to the Department of Health and Human Services when there is an assignment of support to the department pursuant to section 43-512.07 or when an application for child support services is on file with a county attorney or authorized attorney. If the court finds the party responsible is indigent, the court may order the county to pay the costs.

(4) If, at the hearing, the person owing child or spousal support is called for examination as an adverse party and such person refuses to answer upon the ground that his or her testimony may be incriminating, the court may, upon the motion of the county attorney or authorized attorney, require the person to answer and produce the evidence. In such a case the evidence produced shall not be admissible in any criminal case against such person nor shall any evidence obtained because of the knowledge gained by such evidence be so admissible.

(5) The court may order access to all revenue information maintained by the Department of Revenue or other agencies concerning the income of persons liable or who pursuant to this section and sections 42-358.08 and 42-821 may be found liable to pay child or spousal support payments.

(6) Any person aggrieved by a determination of the court may appeal such decision to the Court of Appeals.

Source: Laws 1972, LB 820, § 12; Laws 1974, LB 961, § 1; Laws 1975, LB 212, § 1; Laws 1976, LB 926, § 1; Laws 1978, LB 960, § 1;

Laws 1985, Second Spec. Sess., LB 7, § 10; Laws 1991, LB 457, § 1; Laws 1991, LB 732, § 101; Laws 1992, LB 1184, § 11; Laws 1994, LB 1224, § 43; Laws 1996, LB 1044, § 99; Laws 1996, LB 1155, § 7; Laws 1997, LB 307, § 16; Laws 2000, LB 972, § 9; Laws 2002, LB 1062, § 2; Laws 2005, LB 396, § 1; Laws 2007, LB296, § 56.

Cross References

Income Withholding for Child Support Act, see section 43-1701.

1. Appointment of guardian ad litem
2. Evidence admissible
3. Miscellaneous

1. Appointment of guardian ad litem

This section authorizes a court to appoint an attorney or guardian ad litem to protect the interests of minor children and allows the attorney or guardian ad litem to recover his or her fees. *Mitchell v. French*, 267 Neb. 656, 676 N.W.2d 361 (2004).

An attorney appointed under this section is an advocate for the minor child and is not a guardian ad litem. An attorney appointed under this section shall act as attorney for the minor child, but shall not testify in the proceedings. From June 1, 1998, forward, when appointing a guardian ad litem or an attorney to represent the interests of the minor pursuant to this section in forums other than the juvenile court, the appointing court, in the order making the appointment, shall specify whether the person appointed is to act as a guardian ad litem or as an attorney pursuant to this section. One person may not serve in both capacities. *Betz v. Betz*, 254 Neb. 341, 575 N.W.2d 406 (1998).

Under subsection (1) of this section, the appointment of a guardian ad litem in a marital dissolution proceeding is a matter within the sound discretion of the trial court. *Ritter v. Ritter*, 234 Neb. 203, 450 N.W.2d 204 (1990).

Appointment of a guardian ad litem is a discretionary matter. Generally, adequate representation by counsel for the respective parties, independent investigative power of the court, and continuing jurisdiction over minors protect the children's interests adequately. *Chalupa v. Chalupa*, 220 Neb. 704, 371 N.W.2d 706 (1985).

The court has authority to appoint a guardian ad litem to protect the interest of a minor child. *Nye v. Nye*, 213 Neb. 364, 329 N.W.2d 346 (1983).

When there is adequate representation of both parties to the dissolution, the trial court has made an independent investigation of the children's situation, and the court has continuing jurisdiction over the children, it is not error for the court to deny a request to appoint a guardian ad litem for the children. *Deacon v. Deacon*, 207 Neb. 193, 297 N.W.2d 757 (1980).

When it appears that minor children in a divorce action may have interests, independent of the parents, in the outcome of the litigation, the district court should ordinarily appoint counsel to represent them. *Ford v. Ford*, 191 Neb. 548, 216 N.W.2d 176 (1974).

District court may appoint attorney for minor children and limits on its discretion to do so must evolve case by case. *Pieck v. Pieck*, 190 Neb. 419, 209 N.W.2d 191 (1973).

2. Evidence admissible

Issues of visitation and previous failure to enforce a child support order are not relevant to proceedings under section 42-358, R.R.S.1943, or section 42-364.01, R.R.S.1943. *Eliker v. Eliker*, 206 Neb. 764, 295 N.W.2d 268 (1980).

In a divorce case, ex parte investigative reports are not evidence, and cannot be the basis for any adjudication. *Jorgensen v. Jorgensen*, 194 Neb. 271, 231 N.W.2d 360 (1975).

3. Miscellaneous

This section allows for payment of guardian ad litem fees by a county only if a court finds that the party responsible is indigent. *Mitchell v. French*, 267 Neb. 656, 676 N.W.2d 361 (2004).

This section is applicable to cases that begin as paternity actions in which the only controverted issues are custody and child support. *Mitchell v. French*, 267 Neb. 656, 676 N.W.2d 361 (2004).

A finding of indigency is a matter within the initial discretion of the trial court, and such a finding will not be set aside on appeal in the absence of an abuse of discretion by the trial court. *Mathews v. Mathews*, 267 Neb. 604, 676 N.W.2d 42 (2004).

Under subsection (1) of this section, a person is indigent if he or she is unable to pay the guardian ad litem or attorney fees without prejudicing, in a meaningful way, his or her financial ability to provide the necessities of life, such as food, clothing, shelter, medical care, et cetera, for himself or herself or his or her legal dependents. *Mathews v. Mathews*, 267 Neb. 604, 676 N.W.2d 42 (2004).

A proceeding brought under this section is civil in nature. *Eliker v. Eliker*, 206 Neb. 764, 295 N.W.2d 268 (1980).

Counsel, appointed for children, participated in trial and appeal, and his fee was taxed to appellant as costs. *Hermance v. Hermance*, 194 Neb. 720, 235 N.W.2d 231 (1975).

Under subsection (3) of this section, the clerk of the district court must certify that the court-ordered child support is delinquent in an amount equal to the support due and owing payable for a 1-month period of time and report this amount to the county attorney or authorized attorney. *McKibbin v. State*, 5 Neb. App. 570, 560 N.W.2d 507 (1997).

The language of subsection (1) of this section requires that the fees and disbursements of an attorney appointed pursuant to subsection (1) "shall" be taxed as costs and paid by the parties as ordered. The county "may" be ordered to pay the amount so taxed as costs, but only upon a finding that the party responsible is indigent. *Brackhan v. Brackhan*, 3 Neb. App. 143, 524 N.W.2d 74 (1994).

42-358.01 Delinquent support order payments; records.

Records of delinquencies in support order payments shall be kept by the Title IV-D Division of the Department of Health and Human Services or by the clerks of the district courts pursuant to their responsibilities under law.

Source: Laws 1975, LB 212, § 3; Laws 2000, LB 972, § 10; Laws 2007, LB296, § 57.

42-358.02 Delinquent child support payments; interest; rate; report; Title IV-D Division; duties.

(1) All delinquent child support payments shall draw interest at the rate specified in section 45-103 in effect on the date of the most recent order or decree. Such interest shall be computed as simple interest.

(2) All child support payments shall become delinquent the day after they are due and owing, except that no obligor whose child support payments are automatically withheld from his or her paycheck shall be regarded or reported as being delinquent or in arrears if (a) any delinquency or arrearage is solely caused by a disparity between the schedule of the obligor's regular pay dates and the scheduled date the child support is due, (b) the total amount of child support to be withheld from the paychecks of the obligor and the amount ordered by the support order are the same on an annual basis, and (c) the automatic deductions for child support are continuous and occurring. Interest shall not accrue until thirty days after such payments are delinquent.

(3) The court shall order the determination of the amount of interest due, and such interest shall be payable in the same manner as the support payments upon which the interest accrues subject to subsection (2) of this section or unless it is waived by agreement of the parties. The Title IV-D Division of the Department of Health and Human Services shall compute interest and identify delinquencies pursuant to this section on the payments received by the State Disbursement Unit pursuant to section 42-369. The Title IV-D Division shall provide the case information in electronic format, and upon request in print format, to the judge presiding over domestic relations cases and to the county attorney or authorized attorney.

(4) Support order payments shall be credited in the following manner:

(a) First, to the payments due for the current month in the following order: Child support payments, then spousal support payments, and lastly medical support payments;

(b) Second, toward any payment arrearage owing, in the following order: Child support payment arrearage, then spousal support payment arrearage, and lastly medical support payment arrearage; and

(c) Third, toward the interest on any payment arrearage, in the following order: Child support payment arrearage interest, then spousal support payment arrearage interest, and lastly medical support payment arrearage interest.

(5) Interest which may have accrued prior to September 6, 1991, shall not be affected or altered by changes to this section which take effect on such date. All delinquent child support payments and all decrees entered prior to such date shall draw interest at the effective rate as prescribed by this section commencing as of such date.

Source: Laws 1975, LB 212, § 4; Laws 1981, LB 167, § 31; Laws 1983, LB 371, § 2; Laws 1984, LB 845, § 26; Laws 1985, Second Spec. Sess., LB 7, § 11; Laws 1987, LB 569, § 1; Laws 1991, LB 457, § 2; Laws 1997, LB 18, § 1; Laws 2000, LB 972, § 11; Laws 2005, LB 396, § 2; Laws 2007, LB296, § 58.

The district court erred, as a matter of law, in failing to account for the Effective date of the amended statute as triggering a change in the applicable interest rate. Prior to September 6, 1991, interest on delinquent child support payments accrues

at a rate determined by section 45-104.01, and as of September 6, 1991, interest on delinquent child support payments accrues at a rate determined by section 45-103. *Welch v. Welch*, 246 Neb. 435, 519 N.W.2d 262 (1994).

42-358.03 Permanent child support payments; failure to pay; work release program.

Any person found guilty of contempt of court for failure to pay permanent child support payments and imprisoned therefor shall be committed to a court-supervised work release program. Ninety percent of earnings realized from such program shall be applied to payment of delinquencies in support payments minus appropriate deductions for the cost of work release.

Source: Laws 1975, LB 212, § 5.

42-358.04 Delinquent permanent child support payments; remarriage; effect.

Remarriage of the person entitled to collect under a permanent child support decree shall not work to cut off delinquent payments due under such decree.

Source: Laws 1975, LB 212, § 6.

42-358.05 Child or spousal support; performance of decree; court powers.

After a hearing on the issue, the court may order immediate implementation of income withholding pursuant to the Income Withholding for Child Support Act or require the posting of a bond at the time that a temporary or permanent child support or spousal support decree is issued to insure performance of the decree.

Source: Laws 1975, LB 212, § 7; Laws 1985, Second Spec. Sess., LB 7, § 12.

Cross References

Income Withholding for Child Support Act, see section 43-1701.

42-358.06 Delinquent permanent child or spousal support payments; lien.

A lien upon the property of one who is delinquent in permanent child or spousal support payments may be instituted and enforced according to the terms of section 42-371.

Source: Laws 1975, LB 212, § 8; Laws 1985, Second Spec. Sess., LB 7, § 13.

42-358.07 Clerk of the district court; nonperformance of duties; removal from office.

Any clerk of the district court who fails to perform his or her duties under sections 42-358 to 42-358.07 or the Income Withholding for Child Support Act shall be removed from office after conviction for such offense.

Source: Laws 1975, LB 212, § 9; Laws 1985, Second Spec. Sess., LB 7, § 14.

Cross References

Income Withholding for Child Support Act, see section 43-1701.

42-358.08 Information regarding absent parent; duty to furnish; enforcement.

Notwithstanding any other provision of law regarding the confidentiality of records and when not prohibited by the federal Privacy Act of 1974, Public Law 93-579, as amended, each department and agency of state, county, and city government and each employer or other payor as defined in section 43-1709 shall, upon request, furnish to any court-appointed individuals, the county attorney, any authorized attorney, or the Department of Health and Human Services an absent parent's address, social security number, amount of income, health insurance information, and employer's name and address for the exclusive purpose of establishing and collecting child or spousal support. Information so obtained shall be used for no other purpose. This section may be enforced by filing a court action.

Source: Laws 1976, LB 926, § 2; Laws 1985, Second Spec. Sess., LB 7, § 15; Laws 1994, LB 1224, § 44; Laws 1996, LB 1044, § 100; Laws 1996, LB 1296, § 14; Laws 1997, LB 229, § 15; Laws 1997, LB 307, § 17.

42-358.09 Repealed. Laws 1983, LB 417, § 2.

42-359 Applications for spousal support or alimony; financial statements.

Applications for spousal support or alimony shall be accompanied by a statement of the applicant's financial condition and, to the best of his or her knowledge, a statement of the other party's financial condition. Such other party may file his or her statement, if he or she so desires, and shall do so if ordered by the court. Statements shall be under oath and shall show income from salary or other sources, assets, debts and payments thereon, living expenses, and other relevant information. Required forms for financial statements may be furnished by the court.

Source: Laws 1972, LB 820, § 13; Laws 2007, LB554, § 31; Laws 2008, LB1014, § 31.

Operative date April 17, 2008.

The filing of a financial statement as required under this section is waived if the parties proceed without objection to hearing and trial without such filing. Danielson v. Danielson, 204 Neb. 776, 285 N.W.2d 494 (1979).

42-360 Reconciliation; transfer of action; when; counseling; costs.

No decree shall be entered under sections 42-347 to 42-381 unless the court finds that every reasonable effort to effect reconciliation has been made. Proceedings filed pursuant to sections 42-347 to 42-381 shall be subject to transfer to a conciliation court pursuant to section 42-822 or 42-823, in counties where such a court has been established. In counties having no conciliation court, the court hearing proceedings under sections 42-347 to 42-381 may refer the parties to qualified marriage counselors or family service agencies, or other persons or agencies determined by the court to be qualified to provide conciliation services, if the court finds that there appears to be some reasonable possibility of a reconciliation being effected. In no case shall the court order marriage counseling upon the request of only one of the parties to the dissolution or his or her attorney. If both parties agree to attend counseling but do not agree on an assignment of the costs of such counseling, the court, after receiving an application for such costs and upon a showing that the parties cannot agree on an assignment of such costs, shall assign such costs in a temporary or permanent order.

Source: Laws 1972, LB 820, § 14; Laws 1984, LB 845, § 27; Laws 1997, LB 229, § 16.

It is only when there exists a reasonable possibility of reconciliation that the statutes require efforts be made to effect it. *Condrey v. Condrey*, 190 Neb. 513, 209 N.W.2d 357 (1973).

42-361 Marriage irretrievably broken; findings.

(1) If both of the parties state under oath or affirmation that the marriage is irretrievably broken, or one of the parties so states and the other does not deny it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken.

(2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the complaint and the prospect of reconciliation, and shall make a finding whether the marriage is irretrievably broken.

Source: Laws 1972, LB 820, § 15; Laws 2004, LB 1207, § 24.

Pursuant to subsection (1) of this section, dissolutions of marriage require that a hearing be conducted in open court and that oral testimony of witnesses or depositions of witnesses be received into evidence; relying upon pleadings alone is insufficient. *Brunges v. Brunges*, 255 Neb. 837, 587 N.W.2d 554 (1998).

A court must be presented with some form of evidence, be it oral testimony or depositions, in order to make a meaningful finding whether a marriage is irretrievably broken. *Wilson v. Wilson*, 238 Neb. 219, 469 N.W.2d 750 (1991).

In a case where the evidence was undisputed that the parties had not lived together for a long period of time, the trial court was correct in finding that the parties' marriage was irretrievably broken. *Witcig v. Witcig*, 206 Neb. 307, 292 N.W.2d 788 (1980).

The finding that marriage was irretrievably broken based upon criminal history of defendant and plaintiff's categorical refusal to effect reconciliation was not unreasonable. *Condrey v. Condrey*, 190 Neb. 513, 209 N.W.2d 357 (1973).

42-362 Spouse mentally ill; guardian ad litem; attorney; appointment; order for support.

When the pleadings or evidence in any action pursuant to sections 42-347 to 42-381 indicate that either spouse is mentally ill, a guardian ad litem or an attorney, or both, shall be appointed to represent the interests of such spouse. Such guardian's fee or attorney's fee, or both, shall be taxed as costs when allowed by the court and shall be paid by the county if the parties are unable to do so. When a marriage is dissolved and the evidence indicates that either spouse is mentally ill, the court may, at the time of dissolving the marriage or at any time thereafter, make such order for the support and maintenance of such mentally ill person as it may deem necessary and proper, having due regard to the property and income of the parties, and the court may require the party ordered to provide support and maintenance to file a bond or otherwise give security for such support. Such an order for support may be entered upon the application of the guardian or guardian ad litem or of any person, county, municipality, or institution charged with the support of such mentally ill person. The order for support may, if necessary, be revised from time to time on like application.

Source: Laws 1972, LB 820, § 16; Laws 1997, LB 229, § 17; Laws 1999, LB 24, § 1.

A former wife was not entitled to have her marriage dissolution decree vacated for the trial court's failure to appoint a guardian ad litem for her, as a mentally ill party, where the wife was represented by counsel throughout the dissolution proceedings, the wife did not appeal from decree, the wife did not allege that she could not communicate effectively with her counsel, and the record did not show that her interests were adversely affected by the fact that the guardian ad litem was not appointed. *Hartman v. Hartman*, 265 Neb. 515, 657 N.W.2d 646 (2003).

Statute contemplates that the guardian ad litem or one charged with support of a mentally ill spouse apply for a

support order. Reasonableness is the test governing awards of support and maintenance. Awards are reviewed de novo in Supreme Court and affirmed absent an abuse of discretion. Payments continue until spouse recovers or remarries. *Black v. Black*, 223 Neb. 203, 388 N.W.2d 815 (1986).

Although support and maintenance to a mentally ill spouse in some respects parallels alimony, the two are not the same in all respects. The condition which triggers the support and maintenance to be paid under this section is the mental illness; thus, the payment of such support and maintenance should continue

so long as, and only so long as, the mental illness continues or the mentally ill individual acquires another spouse. *Kearney v. Kearney*, 11 Neb. App. 88, 644 N.W.2d 171 (2002).

Reasonableness is the ultimate criterion to be applied in testing whether support and maintenance is to be awarded to a mentally ill spouse under the provisions of this section and, if so, the amount and duration thereof. The support and maintenance to be awarded under this section is a matter initially entrusted to the discretion of the trial judge, which award, on

appeal, is reviewed de novo on the record and affirmed in the absence of an abuse of that discretion. *Kearney v. Kearney*, 11 Neb. App. 88, 644 N.W.2d 171 (2002).

This section empowers the court to order the payment of such support and maintenance to a mentally ill spouse as it may deem necessary and proper, giving due consideration to the property and income of the parties. *Kearney v. Kearney*, 11 Neb. App. 88, 644 N.W.2d 171 (2002).

42-363 Waiting period.

No suit for divorce shall be heard or tried until sixty days after perfection of service of process, at which time the suit may be heard or tried and a decree may be entered.

Source: Laws 1972, LB 820, § 17; Laws 1974, LB 1015, § 3; Laws 1989, LB 23, § 1.

The waiting period for obtaining a divorce is a jurisdictional requirement. A divorce decree entered after expiration of the 60-day waiting period but based upon evidence adduced at a hearing held prior to expiration of the waiting period is null and void. *Wymore v. Wymore*, 239 Neb. 940, 479 N.W.2d 778 (1992).

If no attempt is made to have an appellate court review the decree within six months after it is entered, the decree becomes

final. As such, it is res judicata as to the rights of the parties. Neither what the parties thought the judge meant nor what the judge thought he or she meant, after time for appeal has passed, is of any relevance. What the decree, as it became final, means as a matter of law as determined from the four corners of the decree is what is relevant. *Neujahr v. Neujahr*, 223 Neb. 722, 393 N.W.2d 47 (1986).

42-364 Action involving child support, child custody, parenting time, visitation, or other access; parenting plan; legal custody and physical custody determination; rights of parents; child support; termination of parental rights; court; duties; modification proceedings; use of school records as evidence.

(1) In an action under Chapter 42 involving child support, child custody, parenting time, visitation, or other access, the parties and their counsel, if represented, shall develop a parenting plan as provided in the Parenting Act. If the parties and counsel do not develop a parenting plan, the complaint shall so indicate as provided in section 42-353 and before July 1, 2010, the case may be referred to mediation, specialized alternative dispute resolution, or other alternative dispute resolution process and on or after such date the case shall be referred to mediation or specialized alternative dispute resolution as provided in the Parenting Act. The decree in an action involving the custody of a minor child shall include the determination of legal custody and physical custody based upon the best interests of the child, as defined in the Parenting Act, and child support. Such determinations shall be made by incorporation into the decree of (a) a parenting plan developed by the parties, if approved by the court, or (b) a parenting plan developed by the court based upon evidence produced after a hearing in open court if no parenting plan is developed by the parties or the plan developed by the parties is not approved by the court. The decree shall conform to the Parenting Act. The social security number of each parent and the minor child shall be furnished to the clerk of the district court but shall not be disclosed or considered a public record.

(2) In determining legal custody or physical custody, the court shall not give preference to either parent based on the sex of the parent and, except as provided in section 43-2933, no presumption shall exist that either parent is more fit or suitable than the other. Custody shall be determined on the basis of the best interests of the child, as defined in the Parenting Act. Unless parental rights are terminated, both parents shall continue to have the rights stated in section 42-381.

(3) Custody of a minor child may be placed with both parents on a joint legal custody or joint physical custody basis, or both, (a) when both parents agree to such an arrangement in the parenting plan and the court determines that such an arrangement is in the best interests of the child or (b) if the court specifically finds, after a hearing in open court, that joint physical custody or joint legal custody, or both, is in the best interests of the minor child regardless of any parental agreement or consent.

(4) In determining the amount of child support to be paid by a parent, the court shall consider the earning capacity of each parent and the guidelines provided by the Supreme Court pursuant to section 42-364.16 for the establishment of child support obligations. Upon application, hearing, and presentation of evidence of an abusive disregard of the use of child support money paid by one party to the other, the court may require the party receiving such payment to file a verified report with the court, as often as the court requires, stating the manner in which such money is used. Child support paid to the party having custody of the minor child shall be the property of such party except as provided in section 43-512.07. The clerk of the district court shall maintain a record, separate from all other judgment dockets, of all decrees and orders in which the payment of child support or spousal support has been ordered, whether ordered by a district court, county court, separate juvenile court, or county court sitting as a juvenile court. Orders for child support in cases in which a party has applied for services under Title IV-D of the federal Social Security Act, as amended, shall be reviewed as provided in sections 43-512.12 to 43-512.18.

(5) Whenever termination of parental rights is placed in issue:

(a) The court shall transfer jurisdiction to a juvenile court established pursuant to the Nebraska Juvenile Code unless a showing is made that the county court or district court is a more appropriate forum. In making such determination, the court may consider such factors as cost to the parties, undue delay, congestion of dockets, and relative resources available for investigative and supervisory assistance. A determination that the county court or district court is a more appropriate forum shall not be a final order for the purpose of enabling an appeal. If no such transfer is made, the court shall appoint an attorney as guardian ad litem to protect the interests of any minor child. The court may terminate the parental rights of one or both parents after notice and hearing when the court finds such action to be in the best interests of the minor child, as defined in the Parenting Act, and it appears by the evidence that one or more of the grounds for termination of parental rights stated in section 43-292 exist; and

(b) The court shall inform a parent who does not have legal counsel of the parent's right to retain counsel and of the parent's right to retain legal counsel at county expense if such parent is unable to afford legal counsel. If such parent is unable to afford legal counsel and requests the court to appoint legal counsel, the court shall immediately appoint an attorney to represent the parent in the termination proceedings. The court shall order the county to pay the attorney's fees and all reasonable expenses incurred by the attorney in protecting the rights of the parent. At such hearing, the guardian ad litem shall take all action necessary to protect the interests of the minor child. The court shall fix the fees and expenses of the guardian ad litem and tax the same as costs but may order the county to pay on finding the responsible party indigent and unable to pay.

(6) Modification proceedings relating to support, custody, parenting time, visitation, other access, or removal of children from the jurisdiction of the court shall be commenced by filing a complaint to modify. Modification of a parenting plan is governed by the Parenting Act. Proceedings to modify a parenting plan shall be commenced by filing a complaint to modify. Such actions may be referred to mediation, specialized alternative dispute resolution, or other alternative dispute resolution process before July 1, 2010, and on and after such date shall be referred to mediation or specialized alternative dispute resolution as provided in the Parenting Act. Service of process and other procedure shall comply with the requirements for a dissolution action.

(7) In any proceeding under this section relating to custody of a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence.

Source: Laws 1983, LB 138, § 1; Laws 1985, LB 612, § 1; Laws 1985, Second Spec. Sess., LB 7, § 16; Laws 1991, LB 457, § 3; Laws 1991, LB 715, § 1; Laws 1993, LB 629, § 21; Laws 1994, LB 490, § 1; Laws 1996, LB 1296, § 15; Laws 1997, LB 752, § 96; Laws 2004, LB 1207, § 25; Laws 2006, LB 1113, § 35; Laws 2007, LB554, § 32; Laws 2008, LB1014, § 32.
Operative date April 17, 2008.

Cross References

Nebraska Juvenile Code, see section 43-2,129.
Parenting Act, see section 43-2920.
Violation of custody, penalty, see section 28-316.

- 1. Custody of children
- 2. Termination of parental rights
- 3. Child support
- 4. Change in custody
- 5. Visitation
- 6. Miscellaneous

1. Custody of children

This section mandates that custody of minor children be determined on the basis of their best interests. In determining a child's best interests under this section, courts may consider factors such as general considerations of moral fitness of the child's parents, including the parents' sexual conduct; respective environments offered by each parent; the emotional relationship between child and parents; the age, sex, and health of the child and parents; the effect on the child as the result of continuing or disrupting an existing relationship; the attitude and stability of each parent's character; parental capacity to provide physical care and satisfy educational needs of the child; the child's preferential desire regarding custody if the child is of sufficient age of comprehension regardless of chronological age, and when such child's preference for custody is based on sound reasons; and the general health, welfare, and social behavior of the child. In addition, this section requires courts to consider credible evidence of abuse inflicted on any family or household member as one of the factors in its custody determination. Davidson v. Davidson, 254 Neb. 357, 576 N.W.2d 779 (1998).

Custody determinations which are controlled by this section are considered special proceedings. State ex rel. Reitz v. Ringer, 244 Neb. 976, 510 N.W.2d 294 (1994).

In the absence of a contrary statutory provision, in a child custody controversy between a biological or adoptive parent and one who is neither biological nor an adoptive parent of the child involved in the controversy, a fit biological or adoptive parent has a superior right to custody of the child. Stuhr v. Stuhr, 240 Neb. 239, 481 N.W.2d 212 (1992).

When a court retains legal custody of a child pursuant to this section, the question of whether to change physical custody is determined by the best interests of the child without the necessity

of showing any change of circumstances otherwise required for a change in legal custody of the child. Grindle v. Grindle, 237 Neb. 302, 465 N.W.2d 749 (1991).

An inquiry regarding "the best interests of the children" includes, but is not limited to, a consideration of the relationship of the children to each parent and the general health, welfare, and social behavior of the children; the Supreme Court also looks to the moral fitness of the parents, including their sexual conduct; the respective environments each offers; the emotional relationship between the child and the parents; the age, sex, and health of the child and parents; the effect on the child as the result of continuing or disrupting an existing relationship; the attitude and stability of each parent's character; and the capacity of each parent to provide physical care and to satisfy the needs of the child. McDougall v. McDougall, 236 Neb. 873, 464 N.W.2d 189 (1991).

A parent's status as the primary caretaker is an important factor to be considered when determining the custody of a child. However, it is not determinative in a child custody proceeding and is just one of several factors set forth in this section. Applegate v. Applegate, 236 Neb. 418, 461 N.W.2d 419 (1990).

As a general rule, a custodial parent in a marital dissolution proceeding may determine the nature and extent of the education for a child unless there is an affirmative showing that the custodial parent's decision has injured or harmed, or will jeopardize, the child's safety, well-being, or health, whether physical or mental. Von Tersch v. Von Tersch, 235 Neb. 263, 455 N.W.2d 130 (1990).

Under subsection (1) of this section, when custody of a minor child is an issue in a proceeding to dissolve the marriage of the child's parents, child custody is determined by parental fitness

and the child's best interests; child custody is denied to an unfit parent or a fit parent when the best interests of the child require such denial of custody. Parental unfitness means a personal deficiency or incapacity which has prevented, or will probably prevent, performance of a reasonable parental obligation in child rearing and which has caused, or probably will result in, detriment to a child's well-being. *Ritter v. Ritter*, 234 Neb. 203, 450 N.W.2d 204 (1990).

In determining a child's best interests under subsection (1) of this section, the court may consider factors such as general considerations of moral fitness of the child's parents, including the parent's sexual conduct; respective environments offered by each parent; the emotional relationship between a child and parents; the age, sex, and health of the child and parents; the effect on a child as the result of continuing or disrupting an existing relationship; the attitude and stability of each parent's character; parental capacity to provide physical care and satisfy educational needs of the child; the child's preferential desire regarding custody if the child is of sufficient age of comprehension regardless of chronological age, and when such child's preference is based on sound reasons; and the general health, welfare, and social behavior of the child. *Miles v. Miles*, 231 Neb. 782, 438 N.W.2d 139 (1989).

The "tender years" doctrine is no longer controlling in child custody matters in light of subdivision (2) of this section. *Vance v. Vance*, 231 Neb. 334, 436 N.W.2d 177 (1989).

If a parent is fit to have custody of a child involved in a dissolution proceeding, a court's acquired and retained legal custody of such child should be a rare disposition warranted only in the extraordinary situation where the court lacks adequate information concerning the best interests of the child in relation to the custody question. *Ensrud v. Ensrud*, 230 Neb. 720, 433 N.W.2d 192 (1988).

Parental agreement is a prerequisite for joint custody pursuant to subsection (3) of this section. *Ensrud v. Ensrud*, 230 Neb. 720, 433 N.W.2d 192 (1988).

When a court has retained legal custody of a child pursuant to this section, a question whether to change physical custody is determined by the best interests of the child without the necessity of showing any change of circumstances otherwise required for a change in legal custody of the child. *Clark v. Clark*, 228 Neb. 440, 422 N.W.2d 793 (1988); *Christen v. Christen*, 228 Neb. 268, 422 N.W.2d 92 (1988).

The district court may maintain legal custody of minor children, while awarding physical custody to a parent or other party. *Grindle v. Grindle*, 226 Neb. 807, 415 N.W.2d 150 (1987); *Peterson v. Peterson*, 224 Neb. 557, 399 N.W.2d 792 (1987).

Joint custody is not favored by the courts of this state and will be reserved for only the rarest of cases. *Wilson v. Wilson*, 224 Neb. 589, 399 N.W.2d 802 (1987).

This section does not require that a court derive a minor child's wishes only from the child's testimony, as opposed to evidence from some source other than the child's testimony which adequately establishes the child's desires and wishes regarding custody and visitation. *Smith v. Smith*, 222 Neb. 752, 386 N.W.2d 873 (1986).

Although former subsection (3) of this section permits joint custody, such an award is not favored and must be reserved for the most rare cases. *Korf v. Korf*, 221 Neb. 484, 378 N.W.2d 173 (1985).

The best interests of the child include, but are not limited to, the general health, welfare, and social behavior of the child. *Mettenbrink v. Mettenbrink*, 220 Neb. 650, 371 N.W.2d 310 (1985).

In order for error to be predicated upon the district court's failure to interview children as to their custody preference, an offer of proof is necessary. *Krohn v. Krohn*, 217 Neb. 158, 347 N.W.2d 869 (1984).

The polar star by which all child custody determinations must be guided is the best interests and welfare of the child. *Moeller v. Moeller*, 215 Neb. 360, 338 N.W.2d 749 (1983).

Under the facts of this case, the best interests of the children required approval of an application by the custodial parent to remove the minor children to the State of Louisiana. *Gottschall v. Gottschall*, 210 Neb. 679, 316 N.W.2d 610 (1982).

Where the issue of child custody is involved, both the mother and father have an equal right to custody, and the court shall not give preference to either parent on the basis of the sex of the parent. Although the courts should preserve an attitude of impartiality between religions and will not disqualify a parent solely because of his or her religious beliefs, the court does have a duty to consider whether such beliefs threaten the health and well-being of the child, and it is proper for the court to examine the impact of the parent's beliefs on the child. *Burnham v. Burnham*, 208 Neb. 498, 304 N.W.2d 58 (1981).

Under section 42-364(2), R.R.S.1943, neither parent is presumed to be more fit than the other to have custody of the parties' minor children. *Kringel v. Kringel*, 207 Neb. 241, 298 N.W.2d 150 (1980).

The right of a parent to the custody of his minor child is not lightly to be set aside in favor of more distant relatives or unrelated parties, and the courts may not deprive a parent of such custody unless he is shown to be unfit or to have forfeited his superior right to such custody. *Nielsen v. Nielsen*, 207 Neb. 141, 296 N.W.2d 483 (1980).

The trial court was correct in finding that the best interests of the child required placing custody with his grandmother rather than with either parent. *Whitlatch v. Whitlatch*, 206 Neb. 527, 293 N.W.2d 856 (1980).

The tender age of the child is a factor to consider in a child custody dispute, however, there is no presumption of fitness based on sex of the parent. *Turner v. Turner*, 205 Neb. 6, 286 N.W.2d 100 (1979).

A decree placing legal custody of a minor child in the court with possession in one of the parents is not required to state specific provisions for monitoring that possession. *Berry v. Berry*, 202 Neb. 540, 276 N.W.2d 200 (1979).

An award of custody in a dissolution proceeding will not be upheld when the evidence is insufficient to show the requirements of the best interest of the child. *Lautenschlager v. Lautenschlager*, 201 Neb. 741, 272 N.W.2d 40 (1978).

Personal observations by the court are insufficient to support an award of custody in a dissolution proceeding in the absence of evidence establishing the best interest of the child. *Lautenschlager v. Lautenschlager*, 201 Neb. 741, 272 N.W.2d 40 (1978).

When the trial court disapproves a stipulation for custody or support in a dissolution proceeding, an opportunity should be given to the parties to secure and to present evidence relevant to a complete reexamination of the question of custody and the best interest of the child if such evidence has not previously been presented to the court. *Lautenschlager v. Lautenschlager*, 201 Neb. 741, 272 N.W.2d 40 (1978).

Where custody of the child is in issue, a comparative standard of fitness of each parent is the proper test, and custody shall be determined by the best interests of the child. *Long v. Long*, 200 Neb. 405, 263 N.W.2d 825 (1978).

In a custody dispute over twelve and fourteen year old siblings, no preference exists favoring the fitness of either parent, and where both are qualified, the court (1) favors leaving children together where possible, and (2) considers the children's expressed parental preference. *Boroff v. Boroff*, 197 Neb. 641, 250 N.W.2d 613 (1977).

Under the facts in this case, the best interests of the child appear to be served by the more stable situation in the father's home. *Peterson v. Peterson*, 196 Neb. 328, 243 N.W.2d 51 (1976).

Under ordinary circumstances, neither parent has superior right over the other to custody of minor children. *Knight v. Knight*, 196 Neb. 63, 241 N.W.2d 360 (1976).

Each parent of minor children born in lawful wedlock, or lawfully adopted, has an equal and joint right to their custody. *Young v. Young*, 195 Neb. 163, 237 N.W.2d 135 (1976).

Adultery of party is not necessarily determinative of who shall be awarded custody of children. *Lockard v. Lockard*, 193 Neb. 400, 227 N.W.2d 581 (1975).

The court may place custody of minor children in the court in order to facilitate judicial supervision and summary power to act swiftly in the best interests of the children. *Bartlett v. Bartlett*, 193 Neb. 76, 225 N.W.2d 413 (1975).

The ultimate standard is that custody and visitation of minor children shall be determined on the basis of their best interests and considerations of public policy do not, in all cases, prevent the splitting of custody between the parents upon divorce. *Braeman v. Braeman*, 192 Neb. 510, 222 N.W.2d 811 (1974).

Under the no fault divorce statute, the father and mother of minor children have an equal and joint right to their custody and control, and while the father has the primary responsibility to support his children, the court has the responsibility of adjusting the equities between the parties. *Kockrow v. Kockrow*, 191 Neb. 657, 217 N.W.2d 89 (1974).

In awarding custody of children upon divorce, the paramount consideration is the best interests and welfare of the children. *Christensen v. Christensen*, 191 Neb. 355, 215 N.W.2d 111 (1974); *Schuller v. Schuller*, 191 Neb. 266, 214 N.W.2d 617 (1974).

The best interests and welfare of children is paramount in custody cases and the court may place the children in its custody if continuance thereof so requires. *Broadstone v. Broadstone*, 190 Neb. 299, 207 N.W.2d 682 (1973).

Subsection (5) of this section clearly gives the trial court the authority to order joint custody, even where one of the parents refuses to consent, if the court holds a hearing and specifically finds that joint custody is in the child's best interests. *Kay v. Ludwig*, 12 Neb. App. 868, 686 N.W.2d 619 (2004).

In determining a child's best interests under this section, courts may consider factors such as general considerations of moral fitness of the child's parents, including the parents' sexual conduct; respective environments offered by each parent; the emotional relationship between the child and parents; the age, sex, and health of the child and parents; the effect on the child as the result of continuing or disrupting an existing relationship; the attitude and stability of each parent's character; parental capacity to provide physical care and satisfy educational needs of the child; the child's preferential desire regarding custody if the child is of sufficient age of comprehension regardless of chronological age, and when such child's preference for custody is based on sound reasons; and the general health, welfare, and social behavior of the child. *Coffey v. Coffey*, 11 Neb. App. 788, 661 N.W.2d 327 (2003).

Custody determinations, which are controlled by this section, are considered special proceedings. *Michael B. v. Donna M.*, 11 Neb. App. 346, 652 N.W.2d 618 (2002).

2. Termination of parental rights

The standard for termination of parental rights set out in this section, "best interests and welfare of the children", is unconstitutionally vague. *Linn v. Linn*, 205 Neb. 218, 286 N.W.2d 765 (1980).

Under Nebraska statutes, a termination of parental rights can only be decreed by a juvenile court in a proceeding brought for that purpose. *Sosso v. Sosso*, 196 Neb. 242, 242 N.W.2d 621 (1976).

The termination of parental rights to children is an issue separate and apart from the award of custody usually made in a proceeding for dissolution of a marriage. *Perkins v. Perkins*, 194 Neb. 201, 231 N.W.2d 133 (1975).

Under subsection (7) of this section, the standard of proof for termination of parental rights is clear and convincing evidence. Under subsection (7) of this section, the Nebraska rules of evidence do apply to termination proceedings in district court. *Joyce S. v. Frank S.*, 6 Neb. App. 23, 571 N.W.2d 801 (1997).

3. Child support

Although this section does not permit a district court in a dissolution action to order child support beyond the age of majority, the district court has the authority to enforce the terms of an approved settlement which may include an agreement to support a child beyond the age of majority. *Wood v. Wood*, 266 Neb. 580, 667 N.W.2d 235 (2003).

Pursuant to subsection (6) of this section, when a minor child is living with, and being supported by, both of his or her natural parents, the statutory responsibility for that child's support is solely that of the natural parents, and not that of an ex-steparent. *Weinand v. Weinand*, 260 Neb. 146, 616 N.W.2d 1 (2000).

Pursuant to subsection (6) of this section, when earning capacity is used as a basis for an initial determination of child support under the Nebraska Child Support Guidelines, there must be some evidence that the parent is capable of realizing such capacity through reasonable effort. *State v. Porter*, 259 Neb. 366, 610 N.W.2d 23 (2000).

Although this section does not permit a district court in a dissolution action to order child support beyond the age of majority, the district court has the authority to enforce the terms of an approved settlement, which may include an agreement to support a child beyond the age of majority. *Zetterman v. Zetterman*, 245 Neb. 255, 512 N.W.2d 622 (1994).

Only parents may be ordered to pay child support or expenses for child care pursuant to a decree of marital dissolution. *Pattrin v. Pattrin*, 239 Neb. 844, 479 N.W.2d 122 (1992).

Child support payments are a vested property right of the payee as each accrues, and a court, therefore, may not forgive or modify past-due child support, but may modify the amount of future payments. *Berg v. Berg*, 238 Neb. 527, 471 N.W.2d 435 (1991).

Under former subsection (4) of this section, parental earning capacity is a factor to be considered with the best interests of a child in determining the amount of child support. A determination of the best interests of a child or children includes a judicial decision based on evidence, not exclusively on a parental stipulation for disposition of a question concerning the parties' child or children. *Schulze v. Schulze*, 238 Neb. 81, 469 N.W.2d 139 (1991).

This section does not compel the direct support of an adult handicapped child. *Meyers v. Meyers*, 222 Neb. 370, 383 N.W.2d 784 (1986).

Earning capacity, as used in this section, means the overall capability of a parent to make child support payments based on the overall situation of the parent making such payments, including investment income, and is not limited to the ability to earn a wage. *Lainson v. Lainson*, 219 Neb. 170, 362 N.W.2d 53 (1985).

The law in Nebraska imposes upon the trial court the obligation to approve a decree, and grants to the court the continuing jurisdiction to modify child support. *Johnson v. Johnson*, 215 Neb. 689, 340 N.W.2d 393 (1983).

When a change of circumstances is proven calling for a modification of child support payments, said modification is to be determined under the same factors applied in an original establishment of support payments, including the cost to the noncustodial parent of exercising reasonable visitation rights. *Harb v. Harb*, 209 Neb. 875, 312 N.W.2d 279 (1981).

A mother, who is not granted custody of a minor child, may be required to pay child support. The court is required to consider the earning capacity of each parent, together with other attendant circumstances. *Meysenburg v. Meysenburg*, 208 Neb. 456, 303 N.W.2d 783 (1981).

Subject to section 42-364, R.R.S.1943, Reissue 1974, and section 42-365, R.R.S.1943, Reissue 1978, amount of support can be modified after the decree has been entered. *State v. Easley*, 207 Neb. 443, 299 N.W.2d 439 (1980).

The signing of a consent to adoption does not, in itself, release the consenting parent from an obligation to support the child and the court's earlier opinion in *Smith v. Smith*, 201 Neb. 21,

265 N.W.2d 855 (1978), should not be read that way. *Williams v. Williams*, 206 Neb. 630, 294 N.W.2d 357 (1980).

The father has the primary responsibility for child support but the ability of the mother to support the children must also be considered. The trial court has the responsibility to adjust the equities between the parties. *Scarpino v. Scarpino*, 201 Neb. 564, 270 N.W.2d 913 (1978).

The rising cost of supporting children, together with great increase in an ex-husband's income, were sufficiently substantial changes of circumstances to justify a court order modifying the amount of child support. *Pfeiffer v. Pfeiffer*, 201 Neb. 56, 266 N.W.2d 82 (1978).

In the best interests of the children, subsequent changes in child support may be made by the court when required after notice and hearing. *Greenfield v. Greenfield*, 200 Neb. 608, 264 N.W.2d 675 (1978).

In addition to other things, in determining the amount of child support to be paid by a parent, the court shall consider the earning capacity of each parent. *Lynch v. Lynch*, 195 Neb. 804, 241 N.W.2d 123 (1976).

Financial position of husband and estimated cost of support must be considered together with all attendant circumstances in determining amount of child support. *Hermance v. Hermance*, 194 Neb. 720, 235 N.W.2d 231 (1975).

Child support allowances may be changed when required after notice and hearing. *Wheeler v. Wheeler*, 193 Neb. 615, 228 N.W.2d 594 (1975).

This section construed with former section 13-102, authorizes court to modify child support in paternity action in interests of children. *Riederer v. Siciunas*, 193 Neb. 580, 228 N.W.2d 283 (1975).

A judgment for child support may be modified only upon a showing of a material change in facts or circumstances which has occurred since the judgment was entered. *Gray v. Gray*, 192 Neb. 392, 220 N.W.2d 542 (1974).

In the absence of a showing of bad faith, it is an abuse of discretion for a court to award retroactive child support when the evidence shows the obligated parent does not have the ability to pay the retroactive support and still meet current obligations. *Cooper v. Cooper*, 8 Neb. App. 532, 598 N.W.2d 474 (1999).

Pursuant to subsection (6) of this section, the trial court did not abuse its discretion when considering the earning capacity of a mother, who chose to work only part time in order to spend more time with her children, rather than her actual income when no specific evidence showed an inability to spend adequate time with the children while she was working 40 hours per week. *Cooper v. Cooper*, 8 Neb. App. 532, 598 N.W.2d 474 (1999).

Per subsection (6) of this section, the entire net amount received from personal injury settlement award constituted income for child support purposes. *Mehne v. Hess*, 4 Neb. App. 935, 553 N.W.2d 482 (1996).

Past expenses, such as for medical care and other reasonable and necessary expenses, are to be considered in the modification of the amount of child support payable in the future. *Hoover v. Hoover*, 2 Neb. App. 239, 508 N.W.2d 316 (1993).

4. Change in custody

Where facts relevant to the determination of best interests of minor children are not available to the court at the time of the initial custody determination, such facts may be considered upon a subsequent application for modification of a custody order. *State ex rel. Laughlin v. Hugelman*, 219 Neb. 254, 361 N.W.2d 581 (1985).

A decree fixing custody of minor children will not be modified unless there has been a change of circumstances indicating that the person having custody is unfit for that purpose or that the best interests of the children require such action. *Taufest v. Taufest*, 215 Neb. 233, 338 N.W.2d 49 (1983).

Notice and hearing required to modify custody of child except where court retained custody in original order. *Brandl v. Brandl*, 197 Neb. 778, 251 N.W.2d 155 (1977).

Trial court properly considered adultery and cohabitation of natural parent in action modifying decree awarding custody of minor. *Bartley v. Bartley*, 197 Neb. 246, 248 N.W.2d 39 (1976).

Under this section, the trial court on its own motion may make subsequent changes in a divorce decree in relation to minor children and their maintenance when required, but only after notice and opportunity to be heard. *Francis v. Francis*, 195 Neb. 417, 238 N.W.2d 468 (1976).

Pursuant to subsection (2) of this section, sexual activity by a parent, whether it is heterosexual or homosexual, is governed by the rule that to establish a material change in circumstances justifying a change in custody, there must be a showing that the minor child or children were exposed to such activity or were adversely affected or damaged by reason of such activity and that a change of custody is in the child or children's best interests. *Hassenstab v. Hassenstab*, 6 Neb. App. 13, 570 N.W.2d 368 (1997).

Pursuant to this section, a district court may obtain and retain legal custody of a minor child and grant a parent physical custody. The best interests of the child determine whether a change of physical custody is necessary. It is not necessary to show any change of circumstances otherwise required for a change in legal custody of the child. *Vorderstrasse v. Vorderstrasse*, 2 Neb. App. 256, 508 N.W.2d 872 (1993).

5. Visitation

The only statutory authority conferred on district courts to deal with children in dissolution actions is that contained in this section. This section confers jurisdiction upon the district court in the course of dissolution proceedings to grant visitation rights to an ex-stepparent who stood in loco parentis to the former stepchild. *Hickenbottom v. Hickenbottom*, 239 Neb. 579, 477 N.W.2d 8 (1991).

A noncustodial parent's access to her children should not be denied unless the court is convinced that visitation would be detrimental to the children's best interests and, in any case, only under extraordinary circumstances. *Deacon v. Deacon*, 207 Neb. 193, 297 N.W.2d 757 (1980).

The fact children do not want to visit their noncustodial parent is not, in itself, sufficient reason to deny that parent's visitation rights when the visitation appears to be in the children's best interests and it also appears that the custodial parent has influenced the children against the other parent. *Deacon v. Deacon*, 207 Neb. 193, 297 N.W.2d 757 (1980).

The right of visitation is subject to continuous review by the court. *Murdoch v. Murdoch*, 206 Neb. 327, 292 N.W.2d 795 (1980).

Generally, visitation relates to continuing and fostering the normal parental relationship of the noncustodial parent with the minor child or children of the marriage. *Heyne v. Kucirek*, 203 Neb. 59, 277 N.W.2d 439 (1979).

In determining reasonable visitation rights, the primary consideration is the best interest and welfare of the child, considering age, health, welfare, educational and social needs, the need for a stable home environment free of unsettling influences, the fitness of the noncustodial parent for such visitation, and the relationship of the child to that parent. *Heyne v. Kucirek*, 203 Neb. 59, 277 N.W.2d 439 (1979).

Trial court did not abuse discretion in limiting visitation rights of father, who was serving life sentence, by denying father's application for order requiring former wife to make minor children available for visitation. *Casper v. Casper*, 198 Neb. 615, 254 N.W.2d 407 (1977).

The best interests of the child are paramount in decisions concerning child visitation modifications. *Walters v. Walters*, 12 Neb. App. 340, 673 N.W.2d 585 (2004).

The primary consideration in all visitation disputes is the best interests of the child, which interests surpass considerations of

strictly legal rights of the parents. *Davis v. Davis*, 7 Neb. App. 78, 578 N.W.2d 907 (1998).

A hearing defining specific rights of visitation requires the presentation of evidence concerning the visitation schedule and evidence which explains how and why the visitation schedule would be in the best interests of the children. *Norris v. Norris*, 2 Neb. App. 570, 512 N.W.2d 407 (1994).

6. Miscellaneous

Potential reduction of movant's indebtedness to the IRS if granted ex-wife's tax dependency deductions in exchange for larger child support payments does not constitute sufficient change of circumstances to justify modification of divorce decree. A tax dependency exemption is nearly identical to an award of child support or alimony and is thus capable of being modified as an order of support. *Hall v. Hall*, 238 Neb. 686, 472 N.W.2d 217 (1991).

Courts have a duty to consider whether religious beliefs threaten the health and well-being of a child. *LeDoux v. LeDoux*, 234 Neb. 479, 452 N.W.2d 1 (1990).

The only statutory authority conferred on district courts to deal with children in dissolution actions is that contained in this section. *Meyers v. Meyers*, 222 Neb. 370, 383 N.W.2d 784 (1986).

It would be unreasonable to conclude that the district court should not have retained jurisdiction where the district court had presided over proceedings for ten years. *R.D.N. v. T.N.*, 218 Neb. 830, 359 N.W.2d 777 (1984).

Under this section the trial court, on its own motion, may make subsequent changes or modifications in a decree of dissolution of a marriage in relation to any minor children and their maintenance when required, but only after a notice to the

parties and an opportunity to be heard. *Taufest v. Taufest*, 215 Neb. 233, 338 N.W.2d 49 (1983).

Allowances of alimony in the amount of ten thousand dollars annually plus child support of four hundred dollars per month, which would require approximately seventy-five percent of former husband's present net income, were beyond the reasonable reach and capacity of former husband; and considering property division made by the trial court and the circumstances of the parties, such allowances were excessive and represented an abuse of discretion. *Petersen v. Petersen*, 208 Neb. 1, 301 N.W.2d 592 (1981).

In a divorce action, a court may not order a party to award specific property to a child but the parties may agree to such a provision. *Lockwood v. Lockwood*, 205 Neb. 818, 290 N.W.2d 636 (1980).

This section authorizes the court to make changes in a divorce decree after term of court to cover children conceived during marriage but born after the divorce. *Perkins v. Perkins*, 198 Neb. 401, 253 N.W.2d 42 (1977).

In determining a child's best interests in custody and visitation matters, factors to be considered include the relationship of the minor child to each parent; the desires and wishes of the minor child; the general health, welfare, and social behavior of the minor child; and credible evidence of abuse. *Schnell v. Schnell*, 12 Neb. App. 321, 673 N.W.2d 578 (2003).

Although this section provides that the trial court on its own motion may make subsequent changes or modifications in a decree of dissolution of a marriage in relation to any minor children and their maintenance when required, such changes may be made only after notice to the parties and an opportunity to be heard. *Templeton v. Templeton*, 9 Neb. App. 937, 622 N.W.2d 424 (2001).

42-364.01 Child support; withholding of earnings; court; powers.

In any proceeding when a district court, county court, or separate juvenile court has ordered, temporarily or permanently, a parent, referred to as parent-employee in sections 42-364.01 to 42-364.12, to pay any amount for the support of a minor child, that court shall, following application, hearing, and findings, as required by sections 42-364.02 to 42-364.12, order the employer of such parent:

- (1) To withhold, from the parent-employee's nonexempt, disposable earnings presently due and to be due in the future, such amounts as shall reduce and satisfy the parent-employee's previous arrearage in child support payments arising from the parent-employee's failure to comply fully with an order previously entered to pay child support, the parent-employee's obligation to pay child support as ordered by the court as such obligation accrues in the future;
- (2) To pay to the parent-employee, on his or her regularly scheduled payday such earnings then due which are not ordered withheld;
- (3) To deduct from the sums so withheld an amount set by the court, but not to exceed two dollars and fifty cents in any calendar month, as compensation for the employer's reasonable cost incurred in complying with such order;
- (4) To remit within seven calendar days after the date the obligor is paid such sums withheld, less the deduction as allowed by the court pursuant to subdivision (3) of this section, to the State Disbursement Unit;
- (5) To refrain from dismissing, demoting, disciplining, and in any way penalizing the parent-employee on account of the proceeding to collect child support, on account of any order or orders entered by the court in such proceeding, and on account of employer compliance with such order or orders; and

(6) To notify in writing the clerk of the court entering such order of the termination of the employment of such parent-employee, the last-known address of the parent-employee, and the name and address of the parent-employee's new employer, if known, and to provide such written notification within thirty days after the termination of employment.

Source: Laws 1974, LB 1015, § 6; Laws 1983, LB 371, § 4; Laws 2000, LB 972, § 12.

Issues of visitation and previous failure to enforce a child support order are not relevant to proceedings under section 42-358, R.R.S.1943, or section 42-364.01, R.R.S.1943. *Eliker v. Eliker*, 206 Neb. 764, 295 N.W.2d 268 (1980).

Sections 42-364.01 to 42-364.12 amend section 25-1588, R.R.S.1943, insofar as it contains no limitations on garnishment

of disposable earnings in aid of an order for support of a person, and is inconsistent with the provisions of these sections. *Ferry v. Ferry*, 201 Neb. 595, 271 N.W.2d 450 (1978).

42-364.02 Child support; withholding of earnings; application; who may file.

Any person having a direct interest in the welfare of a minor child may file an application, with the court that has previously ordered a parent to pay any amount for the support of the minor child, requesting the court to hold a hearing on such application and to enter an order as allowed by the provisions of section 42-364.01. Persons having a direct interest in the welfare of a child shall include a parent or legal guardian of the child, a person having custody of the child pursuant to an order of a court of competent jurisdiction, a county attorney, a deputy or assistant county attorney, and an employee of a county welfare office. No court, even if it has custody of a minor child, may initiate such an application.

Source: Laws 1974, LB 1015, § 7; Laws 1983, LB 371, § 5.

42-364.03 Child support; withholding of earnings; hearing notice; interrogatories.

Upon the filing of an application to withhold and transmit earnings, the court shall set a date, time, and place for a hearing thereon, which hearing shall be set not more than three weeks later than the date such application is filed. The applicant shall then cause to be served on the employer a copy of the application, a notice of hearing and interrogatories to be completed and returned by the employer to the court no later than three days prior to the hearing, which interrogatories when completed shall show whether the parent-employee is an employee of the employer, whether such parent-employee performs work or provides services or makes sales for the employer in Nebraska, the present length of employment of the parent-employee with the employer, the present pay period for such parent-employee, the average earnings for such parent-employee per pay period, the average disposable earnings for such parent-employee per pay period, and the name and address of the person, office or division of the employer responsible for the preparation of the parent-employee's earnings payments. The applicant shall also cause to be served on the parent-employee a copy of the application and a notice of hearing.

Source: Laws 1974, LB 1015, § 8.

42-364.04 Child support; withholding of earnings; service of documents.

Service of the documents required by the provisions of section 42-364.03 shall be made in the manner provided for service of a summons in a civil action, except that certified mail service may not be used.

Source: Laws 1974, LB 1015, § 9; Laws 1983, LB 447, § 49; Laws 1984, LB 845, § 28.

42-364.05 Child support; withholding of earnings; court; jurisdiction.

The court that entered the order requiring the parent to pay any amount for the support of a minor child and in which the application to withhold and transmit earnings is filed shall have jurisdiction of any employer who transacts any business in the state or contracts to supply services or things in the state and of the parent-employee and all the parent-employee's earnings if the parent-employee be a resident of the state, and, if the parent-employee not be a resident of the state, of those earnings of the parent-employee arising from the performance of work, the providing of services, or the sale of goods or services for the employer by the parent-employee in the state. Such court has jurisdiction regardless of where in the state the employer transacts business or contracts to supply services or things, or where the parent-employee resides or performs work, provides services, or sells goods and services. A failure of service, as required by the provisions of sections 42-364.03 and 42-364.04, upon the parent-employee shall not affect the court's jurisdiction of the earnings and of the employer.

Source: Laws 1974, LB 1015, § 10.

42-364.06 Child support; withholding of earnings; court order.

The court shall enter an order as allowed by section 42-364.01 at the hearing on the application for such order, if it finds that it has jurisdiction of the employer and the earnings of the parent-employee, that the parent-employee is an employee as defined in section 42-364.11 of the employer, and that the parent-employee has not complied in full with the previous order of the court requiring such parent-employee to pay for the support of a minor child. Noncompliance with a child support order shall not be found if the child support payments are automatically withheld from the paycheck if (1) any delinquency or arrearage is solely caused by a disparity between the schedule of the regular pay dates and the scheduled date the child support is due, (2) the total amount of child support to be withheld from the paychecks and the amount ordered by the support order are the same on an annual basis, and (3) the automatic deductions for child support are continuous and occurring. Nothing shall prohibit the court from continuing the order to withhold and transmit after the parent-employee has become current on the court-ordered obligation to pay child support. In fixing the amount to be withheld by the employer from the parent-employee's nonexempt, disposable earnings, the court shall determine that amount of earnings which, if paid over a reasonable period, would satisfy in full the child support arrearage existing as of the time of the hearing and would satisfy each child support obligation to come due in the future as such came due and would satisfy over a reasonable period of time the attorney's fee awarded, if any, pursuant to section 42-364.07. The court shall set flat amounts to be withheld, or, if the parent-employee's pay varies

substantially from pay period to pay period, it may set a percentage of the nonexempt, disposable earnings to be withheld.

Source: Laws 1974, LB 1015, § 11; Laws 1983, LB 371, § 6; Laws 1984, LB 845, § 29; Laws 1997, LB 18, § 2.

42-364.07 Child support; withholding of earnings; attorney's fee.

The court may award a reasonable attorney's fee to the applicant for the services of the applicant's attorney in obtaining the order to withhold and transmit earnings. Such fee shall be reasonably related to the time spent by the attorney in obtaining such order and not to the amounts collected or to be collected pursuant to such order. If the court awards an attorney's fee, it shall provide that such fee shall be paid from that portion of the amounts withheld and transmitted to the clerk of the court which the court designates as the attorney fee award.

Source: Laws 1974, LB 1015, § 12.

42-364.08 Child support; withholding of earnings; limitations.

The amount to be withheld from the parent-employee's disposable income under any order to withhold and transmit earnings entered pursuant to sections 42-364.01 to 42-364.12 shall not in any case exceed the maximum amount permitted to be withheld under section 303(b) of the Consumer Protection Credit Act, 15 U.S.C. 1673(b)(2)(A) and (B), nor shall any amount withheld to satisfy a child or spousal support arrearage, when added to the amount withheld to pay current support and the fee provided for in subdivision (3) of section 42-364.01, exceed such maximum amount.

Source: Laws 1974, LB 1015, § 13; Laws 1986, LB 600, § 8.

42-364.09 Child support; withholding of earnings; priority.

Any order to withhold and transmit earnings shall have priority over any attachment, execution, garnishment, or wage assignment, unless otherwise ordered by the court.

Source: Laws 1974, LB 1015, § 14.

42-364.10 Child support; withholding of earnings; order; dissolution; revocation; modification; service.

An order to withhold and transmit earnings shall dissolve without any court action thirty days after the parent-employee ceases employment with the employer. An order to withhold and transmit earnings may be revoked by the court upon application when the parent-employee is not in arrears of any court-ordered child support as of the date of the application. An order to withhold and transmit earnings may be modified or revoked by the court upon application and for good cause shown. All applications to revoke or modify shall be served upon the employer and all persons having an interest in the order to withhold and transmit earnings, by United States certified mail, return receipt requested, addressed to the last-known addresses of such persons.

Source: Laws 1974, LB 1015, § 15; Laws 1983, LB 371, § 7.

42-364.11 Child support; withholding of earnings; terms, defined.

For the purposes of sections 42-364.01 to 42-364.14, unless the context otherwise requires:

(1) Earnings shall mean compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and shall include any periodic payments pursuant to a pension or a retirement program and any payments made to an independent contractor for services performed;

(2) Disposable earnings shall mean that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld, excepting the amounts required to be deducted and withheld pursuant to sections 42-357 and 42-363 to 42-365 or those provisions allowing garnishment, attachment, or execution;

(3) Employer shall mean any person, partnership, limited liability company, firm, corporation, association, political subdivision, or department of the state in possession of earnings;

(4) Employee shall mean any person who is compensated by an employer for services performed, regardless of how such compensation is denominated, and shall include independent contractors who receive compensation for services;

(5) Workweek shall mean any seven consecutive days during which a parent-employee performs work, provides services, or sells goods or services for an employer; and

(6) Pay period shall mean that regular interval of time, whether it be daily, weekly, biweekly, semimonthly, monthly, or some other regular interval, for which an employer pays earnings to a parent-employee.

Source: Laws 1974, LB 1015, § 16; Laws 1983, LB 371, § 8; Laws 1993, LB 121, § 215; Laws 2004, LB 1207, § 26.

42-364.12 Child support; withholding of earnings; employer; civil contempt; liability for damages; injunction.

Any employer failing to make answer truthfully and completely to the interrogatories propounded pursuant to section 42-364.03 may be punished by the court for civil contempt. The court shall first afford such employer a reasonable opportunity to purge itself of such contempt. Any employer who shall fail or refuse to deliver earnings pursuant to an order to withhold and transmit earnings, when such employer has had in its possession such earnings, shall be personally liable for the amount of such earnings which the employer failed or refused to deliver, together with costs, interest, and reasonable attorney's fees. Any employer who fails to notify in writing the clerk of the court entering an order to withhold and transmit earnings of the termination of the parent-employee and the name and address of the parent-employee's new employer, if known, within thirty days after the termination of employment, may be punished by the court for civil contempt. Any employer who dismisses, demotes, disciplines, or in any way penalizes a parent-employee on account of any proceeding to collect child support, on account of any order or orders entered by the court in such proceeding, or on account of the employer's compliance with such order or orders, shall be liable to the parent-employee for all damages, together with costs, interest thereon, and a reasonable attorney's fee, resulting from the employer's action and may be enjoined by any court of competent jurisdiction from continuing such action. Any proceeding to punish

an employer for contempt, to hold the employer liable for earnings not withheld and transmitted, to hold the employer liable for actions taken against the parent-employee, or to enjoin the employer from continuing such actions, must be commenced within ninety days after the employer's act or failure to act upon which such proceeding is based.

Source: Laws 1974, LB 1015, § 17.

42-364.13 Support order; requirements.

(1) Any order for support entered by the court shall specifically provide that any person ordered to pay a judgment shall be required to furnish to the clerk of the district court his or her address, telephone number, and social security number, the name of his or her employer, whether or not such person has access to employer-related health insurance coverage and, if so, the health insurance policy information, and any other information the court deems relevant until such judgment is paid in full. The person shall also be required to advise the clerk of any changes in such information between the time of entry of the decree and the payment of the judgment in full. If both parents are parties to the action, such order shall provide that each be required to furnish to the clerk of the district court all of the information required by this subsection. Failure to comply with this section shall be punishable by contempt.

(2) All support orders entered by the court shall include the year of birth of any child for whom the order requires the provision of support.

(3) Until the Title IV-D Division of the Department of Health and Human Services has operative the statewide automated data processing and retrieval system necessary for centralized collection and disbursement of support order payments:

(a) If any case contains an order or judgment for child, medical, or spousal support, the order shall include the following statements:

In the event that the (plaintiff or defendant) fails to pay any child, medical, or spousal support payment, as such failure is certified each month by the district court clerk in cases in which court-ordered support is delinquent in an amount equal to the support due and payable for a one-month period of time, he or she shall be subject to income withholding and may be required to appear in court on a date to be determined by the court and show cause why such payment was not made. In the event that the (plaintiff or defendant) fails to pay and appear as ordered, a warrant shall be issued for his or her arrest.

(b) If the court orders income withholding regardless of whether or not payments are in arrears pursuant to section 43-1718.01 or 43-1718.02, the statement in this subsection may be altered to read as follows:

In the event that the (plaintiff or defendant) fails to pay any child, medical, or spousal support payment, as such failure is certified each month by the district court clerk in cases in which court-ordered support is delinquent in an amount equal to the support due and payable for a one-month period of time, he or she may be required to appear in court on a date to be determined by the court and show cause why such payment was not made. In the event that the (plaintiff or defendant) fails to pay and appear as ordered, a warrant shall be issued for his or her arrest.

(4) When the Title IV-D Division of the Department of Health and Human Services has operative the statewide automated data processing and retrieval

system necessary for centralized collection and disbursement of support order payments:

(a) If any case contains an order or judgment for child, medical, or spousal support, the order shall include the following statements:

In the event that the (plaintiff or defendant) fails to pay any child, medical, or spousal support payment, as such failure is certified each month by the State Disbursement Unit in cases in which court-ordered support is delinquent in an amount equal to the support due and payable for a one-month period of time, he or she shall be subject to income withholding and may be required to appear in court on a date to be determined by the court and show cause why such payment was not made. In the event that the (plaintiff or defendant) fails to pay and appear as ordered, a warrant shall be issued for his or her arrest.

(b) If the court orders income withholding regardless of whether or not payments are in arrears pursuant to section 43-1718.01 or 43-1718.02, the statement in this subsection may be altered to read as follows:

In the event that the (plaintiff or defendant) fails to pay any child, medical, or spousal support payment, as such failure is certified each month by the State Disbursement Unit in cases in which court-ordered support is delinquent in an amount equal to the support due and payable for a one-month period of time, he or she may be required to appear in court on a date to be determined by the court and show cause why such payment was not made. In the event that the (plaintiff or defendant) fails to pay and appear as ordered, a warrant shall be issued for his or her arrest.

Source: Laws 1983, LB 371, § 9; Laws 1984, LB 845, § 30; Laws 1985, Second Spec. Sess., LB 7, § 17; Laws 1993, LB 523, § 1; Laws 1994, LB 1224, § 45; Laws 2000, LB 972, § 13; Laws 2004, LB 1207, § 27; Laws 2006, LB 1113, § 36; Laws 2007, LB296, § 59; Laws 2008, LB1014, § 34.
Operative date April 17, 2008.

42-364.14 Parent-employee; consent to withholding of earnings; procedure.

Nothing in the Income Withholding for Child Support Act or sections 42-364.01 to 42-364.13 shall be construed as prohibiting a parent-employee from consenting to an order to withhold and transmit earnings as part of a property settlement agreement incorporated into a decree dissolving a marriage or by agreement in a proceeding in the district court, county court, or separate juvenile court in which the payment of child support is an issue. If the parent-employee has consented to such an order, the court shall not be required to hold a separate hearing or make findings as provided in the act or such sections. The clerk of the court shall notify the employer, if any, of the parent-employee of any such order by first-class mail and file a record of such mailing in the court.

Source: Laws 1983, LB 371, § 10; Laws 2007, LB554, § 33.

Cross References

Income Withholding for Child Support Act, see section 43-1701.

42-364.15 Enforcement of parenting time, visitation, or other access orders; procedure; costs.

In any proceeding when a court has ordered a parent to pay, temporarily or permanently, any amount for the support of a minor child and in the same proceeding has ordered parenting time, visitation, or other access with any minor child on behalf of such parent, the court shall enforce its orders as follows:

(1) Upon the filing of a motion which is accompanied by an affidavit stating that either parent has unreasonably withheld or interfered with the exercise of the court order after notice to the parent and hearing, the court shall enter such orders as are reasonably necessary to enforce rights of either parent including the modification of previous court orders relating to parenting time, visitation, or other access. The court may use contempt powers to enforce its court orders relating to parenting time, visitation, or other access. The court may require either parent to file a bond or otherwise give security to insure his or her compliance with court order provisions; and

(2) Costs, including reasonable attorney's fees, may be taxed against a party found to be in contempt pursuant to this section.

Source: Laws 1983, LB 371, § 3; Laws 2000, LB 972, § 14; Laws 2007, LB554, § 34.

42-364.16 Child support guidelines; establishment; use.

The Supreme Court shall provide by court rule, as a rebuttable presumption, guidelines for the establishment of all child support obligations. Child support shall be established in accordance with such guidelines, which guidelines are presumed to be in the best interests of the child, unless the court finds that one or both parties have produced sufficient evidence to rebut the presumption that the application of the guidelines will result in a fair and equitable child support order.

Source: Laws 1985, Second Spec. Sess., LB 7, § 18; Laws 1994, LB 1224, § 46.

Cross References

Review of and recommendations for child support guidelines by the State Disbursement and Child Support Advisory Commission, see section 43-3342.05.

All orders for child support shall be established in accordance with the provisions of the Nebraska Child Support Guidelines unless the court finds that one or both parties have produced sufficient evidence to rebut the presumption that the application of the guidelines will result in a fair and equitable child support order. *Dueling v. Dueling*, 257 Neb. 862, 601 N.W.2d 516 (1999).

Generally, child support payments should be set according to the Nebraska Child Support Guidelines. *Bondi v. Bondi*, 255 Neb. 319, 586 N.W.2d 145 (1998).

Trial court did not abuse its discretion in considering expenses incurred by a person in raising offspring from a subsequent marriage in calculating that person's child support obligation to a former spouse. *Czaplewski v. Czaplewski*, 240 Neb. 629, 483 N.W.2d 751 (1992).

The court may deviate from the Nebraska Child Support Guidelines whenever application of the guidelines in an individual case would be unjust or inappropriate. *Knippelmier v. Knippelmier*, 238 Neb. 428, 470 N.W.2d 798 (1991).

The child support guidelines set out a rebuttable presumption of a fair and equitable child support order. *Stuczynski v. Stuczynski*, 238 Neb. 368, 471 N.W.2d 122 (1991).

The Nebraska Supreme Court's child support guidelines apply to any child support matter adjudicated from and after October 1, 1987. *Formanack v. Formanack*, 234 Neb. 325, 451 N.W.2d 250 (1990).

Child support payments should be set according to the Nebraska Child Support Guidelines established pursuant to this section, unless sufficient evidence rebuts the presumption that applying the guidelines will result in a fair and equitable child support order. *Pool v. Pool*, 9 Neb. App. 453, 613 N.W.2d 819 (2000).

The Nebraska Child Support Guidelines apply in juvenile cases where child support is ordered. In re *Interest of Tamika S. et al.*, 3 Neb. App. 624, 529 N.W.2d 147 (1995).

In general, child support payments should be set according to the guidelines, but the trial court may deviate from the guidelines in an individual case if application of the guidelines would be unjust or inappropriate. *McCall v. McCall*, 1 Neb. App. 373, 496 N.W.2d 8 (1992).

The Nebraska Child Support Guidelines constitute a material change of circumstances sufficient to justify consideration of proposed modification of child support orders entered before October 1, 1987, and may in some cases be retroactively applied to the date of the original ruling on the modification. *State ex rel. Crook v. Mendoza*, 1 Neb. App. 180, 491 N.W.2d 62 (1992).

42-364.17 Dissolution, legal separation, or order establishing paternity; incorporate financial arrangements.

A decree of dissolution, legal separation, or order establishing paternity shall incorporate financial arrangements for each party’s responsibility for reasonable and necessary medical, dental, and eye care, medical reimbursements, day care, extracurricular activity, education, and other extraordinary expenses of the child and calculation of child support obligations.

Source: Laws 2008, LB1014, § 33.
Operative date April 17, 2008.

42-365 Decree; alimony; division of property; criteria; modification; revocation; termination.

When dissolution of a marriage is decreed, the court may order payment of such alimony by one party to the other and division of property as may be reasonable, having regard for the circumstances of the parties, duration of the marriage, a history of the contributions to the marriage by each party, including contributions to the care and education of the children, and interruption of personal careers or educational opportunities, and the ability of the supported party to engage in gainful employment without interfering with the interests of any minor children in the custody of such party. Reasonable security for payment may be required by the court. A proceeding to modify or revoke an order for alimony for good cause shall be commenced by filing a complaint to modify. Service of process and other procedure shall comply with the requirements for a dissolution action. Amounts accrued prior to the date of filing of the complaint to modify may not be modified or revoked. A decree may not be modified to award alimony if alimony was not allowed in the original decree dissolving a marriage. A decree may not be modified to award additional alimony if the entire amount of alimony allowed in the original decree had accrued before the date of filing of the complaint to modify. Except as otherwise agreed by the parties in writing or by order of the court, alimony orders shall terminate upon the death of either party or the remarriage of the recipient.

While the criteria for reaching a reasonable division of property and a reasonable award of alimony may overlap, the two serve different purposes and are to be considered separately. The purpose of a property division is to distribute the marital assets equitably between the parties. The purpose of alimony is to provide for the continued maintenance or support of one party by the other when the relative economic circumstances and the other criteria enumerated in this section make it appropriate.

Source: Laws 1972, LB 820, § 19; Laws 1974, LB 1015, § 5; Laws 1980, LB 622, § 1; Laws 2004, LB 1207, § 28.

- 1. Award
- 2. Modification or revocation
- 3. Considerations
- 4. Miscellaneous

1. Award

The equitable division of property is a three-step process. The first step is to classify the parties’ property as marital or non-marital. The second step is to value the marital assets and marital liabilities of the parties. The third step is to calculate and divide the net marital estate between the parties in accordance with the principles contained in this section.

Gangwish v. Gangwish, 267 Neb. 901, 678 N.W.2d 503 (2004); Mathews v. Mathews, 267 Neb. 604, 676 N.W.2d 42 (2004).

The purpose of a property division is to distribute the marital assets equitably between the parties. Gangwish v. Gangwish, 267 Neb. 901, 678 N.W.2d 503 (2004).

Any alimony award included in a decree entered on or after July 1, 2004, will be governed by the language in this section unless the decree or a written agreement of the parties includes explicit language stating that the death of either party and/or remarriage of the alimony recipient shall not terminate the alimony order. *Holm v. Holm*, 267 Neb. 867, 678 N.W.2d 499 (2004).

The purpose of a property division is to distribute the marital assets equitably between the parties. Although the division of property is not subject to a precise mathematical formula, the general rule is to award a spouse one-third to one-half of the marital estate, the polestar being fairness and reasonableness as determined by the facts of each case. Equitable property division under this section is a three-step process. The first step is to classify the parties' property as marital or nonmarital. The second step is to value the marital assets and marital liabilities of the parties. The third step is to calculate and divide the net marital estate between the parties in accordance with the principles contained in this section. *Gibilisco v. Gibilisco*, 263 Neb. 27, 637 N.W.2d 898 (2002).

Equitable property division under this section is a three-step process. The first step is to classify the parties' property as marital or nonmarital. The second step is to value the marital assets and marital liabilities of the parties. The third step is to calculate and divide the net marital estate between the parties in accordance with the principles contained in this section. *Heald v. Heald*, 259 Neb. 604, 611 N.W.2d 598 (2000).

Alimony is proper when one spouse has earning potential far exceeding the other, who must receive further education or training to engage in gainful employment. *Druba v. Druba*, 238 Neb. 279, 470 N.W.2d 176 (1991).

Alimony is not to be used simply to equalize the income of the parties or to punish one of the parties; it may be used to assist the other party during a reasonable time to bridge that period of unavailability for employment or during that period to get proper training for employment. *Murrell v. Murrell*, 232 Neb. 247, 440 N.W.2d 237 (1989).

The ultimate test in determining correctness in the amount of alimony awarded as well as the appropriateness of the division of property is reasonableness as determined by the facts of each case. *Busekist v. Busekist*, 224 Neb. 510, 398 N.W.2d 722 (1987).

The test for the award of alimony is one of reasonableness as determined by the facts of each case. *Ray v. Ray*, 222 Neb. 324, 383 N.W.2d 752 (1986).

How property owned at marriage and acquired by gift or inheritance will be considered in determining division of property or award of alimony must depend upon the facts of the particular case and the equities involved. *Lord v. Lord*, 213 Neb. 557, 330 N.W.2d 492 (1983).

Alimony awards in gross are not excluded from the workings of this section. A provision in a court order which states that certain alimony payments shall be made "until the total alimony award. . . is paid in full" is not an order providing "otherwise". *Kingery v. Kingery*, 211 Neb. 795, 320 N.W.2d 441 (1982).

Allowances of alimony in the amount of ten thousand dollars annually plus child support of four hundred dollars per month, which would require approximately seventy-five percent of former husband's present net income, were beyond the reasonable reach and capacity of former husband; and considering property division made by the trial court and the circumstances of the parties, such allowances were excessive and represented an abuse of discretion. *Petersen v. Petersen*, 208 Neb. 1, 301 N.W.2d 592 (1981).

The award of alimony and the division of property are determined by the circumstances of the parties at the time of the dissolution of the marriage. *Amen v. Amen*, 207 Neb. 694, 301 N.W.2d 74 (1981).

Despite the language of section 42-379(3), R.R.S.1943, the provisions of section 42-365, R.R.S.1943, do not apply to awards of alimony in gross entered prior to July 6, 1972. *Chamberlin v. Chamberlin*, 206 Neb. 808, 295 N.W.2d 391 (1980).

The fixing of alimony or distribution of property rests in the sound discretion of the district court and in the absence of an abuse of discretion will not be disturbed on appeal. *Lockwood v. Lockwood*, 205 Neb. 818, 290 N.W.2d 636 (1980).

On appeal, judgment modified to allow wife alimony, in addition to settlement award fixed by trial court. *Brown v. Brown*, 199 Neb. 394, 259 N.W.2d 24 (1977).

Under this section a court may order payment of alimony by one party to the other having regard for the circumstances. *Essex v. Essex*, 195 Neb. 385, 238 N.W.2d 235 (1976).

Upon the dissolution of a marriage, the court may order the payment of such alimony by one party to the other as may be reasonable under the circumstances of the parties. *Walker v. Walker*, 193 Neb. 540, 227 N.W.2d 878 (1975).

A marital debt is one incurred during the marriage and before the date of separation by either spouse or both spouses for the joint benefit of the parties. *McGuire v. McGuire*, 11 Neb. App. 433, 652 N.W.2d 293 (2002).

In addition to the specific criteria listed in this section, a court setting alimony is to consider the income and earning capacity of each party, as well as the general equities of each situation. *Grams v. Grams*, 9 Neb. App. 994, 624 N.W.2d 42 (2001).

Although disparity in income or potential income may partially justify an award of alimony, it is error to award alimony under this section if the sole reason for the award of alimony is a disparity in the parties' incomes or potential incomes. *Kosiske v. Kosiske*, 8 Neb. App. 694, 600 N.W.2d 840 (1999).

A workers' compensation award is marital property to the extent it recompenses for the couple's loss of income during the marriage. To the extent that it compensates an employee for loss of premarriage or postdivorce earnings, it is that person's separate property. *Gibson-Voss v. Voss*, 4 Neb. App. 236, 541 N.W.2d 74 (1995).

The purpose of alimony is to provide for the continued maintenance or support of one party by the other when the relative economic circumstances and the other criteria enumerated in this section make it appropriate. *Kramer v. Kramer*, 1 Neb. App. 641, 510 N.W.2d 351 (1993).

2. Modification or revocation

A petition for the modification or termination of alimony shall be denied if the change in financial condition is due to fault or voluntary wastage or dissipation of one's talents and assets. *Pope v. Pope*, 251 Neb. 773, 559 N.W.2d 192 (1997).

A tax dependency exemption is nearly identical to an award of child support or alimony and is thus capable of being modified as an order of support. *Hall v. Hall*, 238 Neb. 686, 472 N.W.2d 217 (1991).

An increase in income is a circumstance that may be considered in determining whether alimony should be modified. *Northwall v. Northwall*, 238 Neb. 76, 469 N.W.2d 136 (1991).

In a proceeding to modify an alimony award, that matter is initially entrusted to the sound discretion of the trial judge, which matter, on appeal, will be reviewed de novo on the record and affirmed in the absence of an abuse of the trial judge's discretion. *Kelly v. Kelly*, 220 Neb. 441, 370 N.W.2d 161 (1985).

Alimony is not awarded as a reward to the receiving spouse or as punishment of the spouse against whom it is charged. It is an effort, insofar as is reasonably possible, to rectify the frequent economic imbalance in the earning power and standard of living of the divorced husband and wife. Its continuation is not dependent on the good conduct of either spouse. *Else v. Else*, 219 Neb. 878, 367 N.W.2d 701 (1985).

Good cause means a material and substantial change in circumstances and depends upon the circumstances of each case. *Creager v. Creager*, 219 Neb. 760, 366 N.W.2d 414 (1985).

Good cause for altering alimony provisions in a divorce decree is demonstrated by a material and substantial change of circumstances. An alimony recipient's obtaining employment after the date of the decree is a circumstance that permits the situation of the parties to be reexamined. In dissolution of marriage cases one may in good faith make an occupational

change even though that may reduce his ability to meet his financial obligations. *Cooper v. Cooper*, 219 Neb. 64, 361 N.W.2d 202 (1985).

A material change in circumstances, not within the reasonable contemplation of the parties at the time of the alimony award, and not accomplished by the mere passage of time, may constitute good cause to justify modification of the award. *Sholl v. Sholl*, 216 Neb. 289, 343 N.W.2d 742 (1984).

Where parties recognize that child support payments will terminate when the children reach majority, such termination is not such a change in circumstances as to modify an alimony award. *Sloss v. Sloss*, 212 Neb. 610, 324 N.W.2d 663 (1982).

An unqualified allowance of alimony in gross made before July 6, 1972, is not subject to modification. *Watley v. Watley*, 208 Neb. 155, 302 N.W.2d 690 (1981); *Bryant v. Bryant*, 191 Neb. 539, 216 N.W.2d 162 (1974); *Karrer v. Karrer*, 190 Neb. 610, 211 N.W.2d 116 (1973).

Subject to section 42-365, R.R.S.1943, Reissue 1978, and section 42-364, R.R.S.1943, Reissue 1974, amount of support can be modified after the decree has been entered. *State v. Easley*, 207 Neb. 443, 299 N.W.2d 439 (1980).

Based on the facts of this case, the wife is entitled to one half of the value of the property acquired during the twenty-seven-year marriage and the decree is modified accordingly. *Chrisp v. Chrisp*, 207 Neb. 348, 299 N.W.2d 162 (1980).

Alimony provisions may be modified, even if based upon property settlement agreements, unless the parties or the court provide otherwise in writing. *Euler v. Euler*, 207 Neb. 4, 295 N.W.2d 397 (1980).

The phrase "good cause" depends upon circumstances of individual case, and finding of its existence lies largely in discretion of officer or court to which decision is committed. *Chamberlin v. Chamberlin*, 206 Neb. 808, 295 N.W.2d 391 (1980).

Where the only changed circumstances are an increase in the payor spouse's gross income and a relief from debts through bankruptcy, the payor's petition to reduce alimony payments was properly denied. *Anderson v. Anderson*, 206 Neb. 655, 294 N.W.2d 372 (1980).

Where the decree expressly precludes modification, the award is such a definite and final adjustment of mutual rights and obligations as to be capable of a present vesting and to constitute an absolute judgment. *Van Pelt v. Van Pelt*, 206 Neb. 350, 292 N.W.2d 917 (1980).

Property distributions which are punitive in nature may be subject to modification. *Falcone v. Falcone*, 204 Neb. 800, 285 N.W.2d 694 (1979).

An alimony award may be modified if it appears the court abused its discretion in considering the circumstances of the parties and their relative earning capacities. *Jenks v. Jenks*, 200 Neb. 298, 263 N.W.2d 469 (1978).

The court did not err in ordering alimony should terminate upon death of either party or remarriage of the wife. *Van Bloom v. Van Bloom*, 196 Neb. 792, 246 N.W.2d 588 (1976).

Orders for alimony may be modified for good cause shown but nunc pro tunc decree entered without notice is a nullity. *Howard v. Howard*, 196 Neb. 351, 242 N.W.2d 884 (1976).

Unless amounts have accrued prior to date of service on a petition to modify, orders for alimony may be modified or revoked for good cause shown, but when alimony is not allowed in the original decree dissolving a marriage, such decree may not be modified to award alimony. *Haug v. Haug*, 195 Neb. 377, 238 N.W.2d 455 (1976).

Because alimony may be modified only for good cause shown, a petition for modification will be denied if a change in financial condition is due to fault or voluntary wastage or dissipation of one's talents and assets. *Lambert v. Lambert*, 9 Neb. App. 661, 617 N.W.2d 645 (2000).

Action to modify alimony obligation must satisfy the procedural requirements of section 42-352. *Osborn v. Osborn*, 4 Neb. App. 802, 550 N.W.2d 58 (1996).

3. Considerations

In considering the specific criteria of this section concerning an award of alimony, a court's polestar must be fairness and reasonableness as determined by the facts of each case. Alimony should not be used to equalize the incomes of the parties or to punish one of the parties. Alimony may be used to assist the other party during a reasonable time to bridge that period of unavailability for employment or during that period to get proper training for employment. In awarding alimony, a court should consider, in addition to the specific criteria listed in this section, the income and earning capacity of each party as well as the general equities of each situation. In entering a decree awarding alimony, the court may take into account all of the property owned by the parties at the time of entering the decree, whether accumulated by their joint efforts or acquired by inheritance, and make such award as is proper under all the circumstances disclosed by the record. *Bauerle v. Bauerle*, 263 Neb. 881, 644 N.W.2d 128 (2002).

Serious health problems experienced by either party may support an award of alimony which does not terminate according to the default provisions of this section. An alimony recipient's inability to work or improve his or her earning capacity is a circumstance which may support an award of alimony which does not terminate according to the default provisions of this section. An obligor spouse's tenuous financial condition or unique economic circumstances may support an award of alimony which does not terminate according to the default provisions of this section. The specific criteria in this section, such as duration of the marriage, contributions to the marriage, and contributions to the care and education of the children, are also circumstances which may support an award of alimony which does not terminate according to the default provisions of this section. *Bauerle v. Bauerle*, 263 Neb. 881, 644 N.W.2d 128 (2002).

The attainment by one spouse of a professional degree with aid from the other is one factor a district court may consider in the division of assets and award of alimony in a marital dissolution proceeding. *Schaefer v. Schaefer*, 263 Neb. 785, 642 N.W.2d 792 (2002).

The debts of the parties should be considered in making a property division pursuant to a divorce. While income tax liability incurred during the marriage should generally be treated as marital debt, an innocent spouse who filed separate tax returns and paid taxes in a timely fashion should not be forced to share in the statutory penalties for the late filings of a dilatory spouse. *Carter v. Carter*, 261 Neb. 881, 626 N.W.2d 576 (2001).

A party's separate property, while not subject to division in a property settlement, may properly be taken into account when determining alimony. *Ainslie v. Ainslie*, 249 Neb. 656, 545 N.W.2d 90 (1996).

In determining whether alimony should be awarded, the ultimate criterion is one of reasonableness, and the trial court should consider the enumerated factors in this section. *Thiltges v. Thiltges*, 247 Neb. 371, 527 N.W.2d 853 (1995).

When considering an award of alimony, the need for maintenance is not precluded by a baseline of income or level of employment potential. The ultimate test for determining correctness in the amount of alimony is reasonableness. In awarding alimony, a court should consider the income and earning capacity of each party as well as the general equities of each situation. *Kelly v. Kelly*, 246 Neb. 55, 516 N.W.2d 612 (1994).

When determining whether to award alimony, a court should consider what effect, if any, the marriage had on the spouses' ability to secure gainful employment in the future and the spouses' earning capacity. When a spouse sacrifices employment seniority for the sake of a marriage, a court may consider that loss of seniority as favoring an award of alimony. *Reichert v. Reichert*, 246 Neb. 31, 516 N.W.2d 600 (1994).

The debts of the parties should be considered in making a property division. Property division is not subject to a rigid mathematical formula, but, rather, turns upon the facts and circumstances of each case. The ultimate test for determining an appropriate division of marital property is one of reasonableness. In determining whether alimony should be awarded, in

what amount, and over what period of reasonableness. Regarding property division, when the marriage is of long duration and the parties are parents of all the children, the "one-third to one-half" rule is of particular significance. *Preston v. Preston*, 241 Neb. 181, 486 N.W.2d 902 (1992).

In determining whether alimony should be awarded, in what amount, and over what period of time, the ultimate criterion is one of reasonableness. *Stuczynski v. Stuczynski*, 238 Neb. 368, 471 N.W.2d 122 (1991).

The division of property and the awarding of alimony in dissolution cases are matters initially entrusted to the discretion of the trial judge. On appeal, such matters will be reviewed de novo on the record and affirmed in the absence of an abuse of discretion. The earning capacity of a spouse operating a business is an element to be considered in determining alimony. *Ritz v. Ritz*, 229 Neb. 859, 429 N.W.2d 707 (1988).

A division of property is not subject to a precise mathematical formula. Rather, an appropriate division of marital property must turn on reasonableness and the circumstances of each particular case in the light of the factors set forth in this section. *Keim v. Keim*, 228 Neb. 684, 424 N.W.2d 112 (1988); *Sullivan v. Sullivan*, 223 Neb. 273, 388 N.W.2d 516 (1986).

A division of property and the awarding of alimony are not subject to a precise mathematical formula. Rather, an appropriate division of marital property and amount of alimony must turn on reasonableness and the circumstances of each particular case in the light of the factors set forth in this section. *Kimbrough v. Kimbrough*, 228 Neb. 358, 422 N.W.2d 556 (1988).

The ultimate test for the division of property as well as an award of alimony is reasonableness as determined by the facts of each case. *Maricle v. Maricle*, 221 Neb. 552, 378 N.W.2d 855 (1985).

The division of property in a dissolution case is based on equitable principles, and its purpose is to divide the marital assets equitably. *Black v. Black*, 221 Neb. 533, 378 N.W.2d 849 (1985).

The actual earning capacity or ability of a spouse to engage in gainful employment is frequently more important than the profitability of a spouse's business in resolving questions of alimony. *Gleason v. Gleason*, 218 Neb. 629, 357 N.W.2d 465 (1984).

The ultimate criterion in determining alimony is one of reasonableness. *Pittman v. Pittman*, 216 Neb. 746, 345 N.W.2d 332 (1984); *Baird v. Baird*, 196 Neb. 124, 241 N.W.2d 543 (1976); *Mathias v. Mathias*, 194 Neb. 598, 234 N.W.2d 212 (1975); *Magruder v. Magruder*, 190 Neb. 573, 209 N.W.2d 585 (1973).

After looking at the overall circumstances of the parties, the court should attempt, if possible, to provide for the award of alimony for such period of time and under such conditions as would minimize any substantial and unnecessary disruption in the lives of the parties occasioned by reason of the dissolution of the marriage. *Pyke v. Pyke*, 212 Neb. 114, 321 N.W.2d 906 (1982).

In determining what amount of alimony is paid over what period of time, the ultimate criterion is reasonableness, and the Supreme Court is not inclined to disturb the trial court's award unless it is patently unfair on the record. *Johnson v. Johnson*, 209 Neb. 317, 307 N.W.2d 783 (1981).

There is no mathematical formula by which awards of alimony or division of property in an action for dissolution of marriage can be precisely determined. They are to be determined by the facts of each case and the court will consider all pertinent facts in reaching an award that is just and equitable. *Cole v. Cole*, 208 Neb. 562, 304 N.W.2d 398 (1981).

In making an award of alimony and a division of property the court should not consider the issue of whether the unilateral acts of one party to the marriage led to its irretrievable breakdown. *Campbell v. Campbell*, 202 Neb. 575, 276 N.W.2d 220 (1979).

In determining an award of alimony, the trial court must consider the circumstances of the parties, the duration of the marriage, and the ability of the supported party to engage in

gainful employment. *Gregg v. Gregg*, 193 Neb. 811, 229 N.W.2d 546 (1975); *Yelkin v. Yelkin*, 193 Neb. 789, 229 N.W.2d 59 (1975).

Among matters to be considered in making allowance of alimony are the circumstances of the parties, the duration of the marriage, the contributions to the marriage by each party, and the ability of the supported party to engage in gainful employment. *Tuttle v. Tuttle*, 193 Neb. 397, 227 N.W.2d 27 (1975).

Amount of alimony allowed, considered under rules of this section and circumstances in case, and approved. *Casselman v. Casselman*, 191 Neb. 138, 214 N.W.2d 278 (1974).

Division of property and award of alimony in a divorce action are to be determined by all pertinent facts in each case. *Bliven v. Bliven*, 190 Neb. 492, 209 N.W.2d 168 (1973).

Having regard for circumstances in each case, court may order payment of such alimony by one party to the other as may be reasonable. *Albrecht v. Albrecht*, 190 Neb. 392, 208 N.W.2d 669 (1973); *Corn v. Corn*, 190 Neb. 383, 208 N.W.2d 678 (1973).

An anomaly or substantial fluctuation in the income of one party should be considered in determining whether alimony should be awarded and in what amount and also in the calculation of child support. It was not error for a trial court to credit a party with the full amount of assets liquidated during the pendency of the divorce, to refuse to consider as debt the unproven balances of certain credit cards, or to opine that certain obligations and awards were in the nature of support and maintenance and therefore nondischargeable in bankruptcy, even though that is a matter properly left to the bankruptcy court. *Halouska v. Halouska*, 7 Neb. App. 730, 585 N.W.2d 490 (1998).

The fact that property is inherited and therefore excluded from division does not prevent the income it generates from being considered when determining alimony. *Ainslie v. Ainslie*, 4 Neb. App. 70, 538 N.W.2d 175 (1995).

4. Miscellaneous

The ultimate test for determining the appropriateness of a division of property is reasonableness as determined by the facts of each case. *Carter v. Carter*, 261 Neb. 881, 626 N.W.2d 576 (2001).

This section's language with regard to service of process was not repealed by implication as a result of an amendment to section 25-217, which states that an action is commenced on the date the petition is filed with the court. Only those amounts which have not accrued prior to the date of service of process are subject to modification. A decree under which all rights and obligations have accrued is not subject to modification in any respect. *Hamilton v. Hamilton*, 242 Neb. 687, 496 N.W.2d 507 (1993).

To be properly within the purview of this section as property divisible and distributable in a dissolution proceeding, goodwill must be a business asset with value independent of the presence or reputation of a particular individual; an asset which may be sold, transferred, conveyed, or pledged. *Taylor v. Taylor*, 222 Neb. 721, 386 N.W.2d 851 (1986).

Material change in circumstances in reference to modification of child support is analogous to modification of alimony for good cause. *Morisch v. Morisch*, 218 Neb. 412, 355 N.W.2d 784 (1984).

This section gives guidance to the trial court as to how the property of the parties is to be divided and whether alimony is to be awarded. *Ruhnke v. Ruhnke*, 218 Neb. 355, 355 N.W.2d 339 (1984).

Section 42-365, R.R.S.1943, Reissue 1978, is limited in its application to those situations in which, except for section 42-372, R.R.S.1943, Reissue 1978, the court could not otherwise modify or vacate the decree. *Howard v. Howard*, 207 Neb. 468, 299 N.W.2d 442 (1980).

A decree that provides that alimony is not terminable, as permitted by this section, creates an unqualified allowance of alimony in gross which is a definite and final adjustment of

rights and obligations between the parties capable of present vesting and constituting an absolute judgment. *Torrey v. Torrey*, 206 Neb. 485, 293 N.W.2d 402 (1980).

It was reasonable for the trial court to exclude from the marital property subject to division, property held jointly by the husband and his sister for which there was no evidence of any contribution by the husband and property held jointly by the husband and the parties' son when the evidence showed that the property was placed in joint ownership in order to provide for son's education and future needs. *Witcig v. Witcig*, 206 Neb. 307, 292 N.W.2d 788 (1980).

Remarriage of a party will not terminate alimony payments if there is a written agreement between the parties or a court's decree which provides a specific amount of alimony to be paid for a specific time with termination only on the occurrence of the specific event set out in the agreement or decree and otherwise not subject to modification or revision. *Watters v. Foreman*, 204 Neb. 670, 284 N.W.2d 850 (1979).

Under the no fault divorce statute neither the granting, denial, or reduction of alimony nor the division of property are to be considered as punitive. *Ragains v. Ragains*, 204 Neb. 50, 281 N.W.2d 516 (1979).

The criteria to be used in determining the amount to be awarded in a property settlement is what appears to be fair and equitable between the parties under the circumstances present in the case. *Steele v. Steele*, 201 Neb. 549, 270 N.W.2d 903 (1978).

A married person's interest in the marital status is not a property right, the state has plenary powers with regard to it,

and Nebraska divorce laws are not unconstitutional. *Buchholz v. Buchholz*, 197 Neb. 180, 248 N.W.2d 21 (1976).

Rule for allowance of alimony and division of property under 1974 statute quoted and prior decision distinguished. *Browsers v. Browsers*, 195 Neb. 743, 240 N.W.2d 585 (1976).

Reasonable security for payment of alimony may be required but such remedy should be invoked in the original decree only under compelling circumstances. *Wheeler v. Wheeler*, 193 Neb. 615, 228 N.W.2d 594 (1975).

The Supreme Court is not necessarily bound by decision under the former law in determining alimony under the no fault divorce law. *Barnes v. Barnes*, 192 Neb. 295, 220 N.W.2d 22 (1974).

Under the no fault divorce statute, the father and mother of minor children have an equal and joint right to their custody and control, and while the father has the primary responsibility to support his children, the court has the responsibility of adjusting the equities between the parties. *Kockrow v. Kockrow*, 191 Neb. 657, 217 N.W.2d 89 (1974).

A forced sale of all the parties' property was held unreasonable where the trial court made no findings to explain its order forcing the sale rather than distributing the property in kind. *Kellner v. Kellner*, 8 Neb. App. 316, 593 N.W.2d 1 (1999).

Installments of alimony become vested as they accrue, and courts are generally without authority to retroactively cancel or reduce such amounts. *Mathis v. Mathis*, 4 Neb. App. 307, 542 N.W.2d 711 (1996).

42-366 Property settlements; effect; enforcement; modification.

(1) To promote the amicable settlement of disputes between the parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written property settlement agreement containing provisions for the maintenance of either of them, the disposition of any property owned by either of them, and the support and custody of minor children.

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the agreement, except terms providing for the support and custody of minor children, shall be binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the agreement is unconscionable.

(3) If the court finds the agreement unconscionable, the court may request the parties to submit a revised agreement or the court may make orders for the disposition of property, support, and maintenance.

(4) If the court finds that the agreement is not unconscionable as to support, maintenance, and property: (a) Unless the agreement provides to the contrary, its terms may be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them; or (b) if the agreement provides that its terms shall not be set forth in the decree, the decree shall identify the agreement and shall state that the court has found the terms not unconscionable, and the parties shall be ordered to perform them.

(5) Terms of the agreement set forth in the decree may be enforced by all remedies available for the enforcement of a judgment, including contempt.

(6) Alimony may be ordered in addition to a property settlement award.

(7) Except for terms concerning the custody or support of minor children, the decree may expressly preclude or limit modification of terms set forth in the decree.

(8) If the parties fail to agree upon a property settlement which the court finds to be conscionable, the court shall order an equitable division of the marital estate. The court shall include as part of the marital estate, for purposes of the division of property at the time of dissolution, any pension plans, retirement plans, annuities, and other deferred compensation benefits owned by either party, whether vested or not vested.

Source: Laws 1972, LB 820, § 20; Laws 1980, LB 622, § 2.

1. Property settlement agreements
2. Constitutionality
3. Conscionability
4. Pension and similar benefits
5. Miscellaneous

1. Property settlement agreements

A decree of dissolution of marriage which approves and incorporates an agreement and stipulation of the parties is not a consent judgment. *Chamberlin v. Chamberlin*, 206 Neb. 808, 295 N.W.2d 391 (1980).

When a written agreement of the parties specifies that a specific amount of alimony is to be paid and that payments are terminable only by the death or remarriage of the recipient, the district court may not terminate alimony payments unless those conditions are met. *Benedict v. Benedict*, 206 Neb. 284, 292 N.W.2d 565 (1980).

A party to a property settlement agreement entered into pursuant to this section may not as a matter of right withdraw therefrom prior to approval or disapproval of the agreement by the trial court. *Sebesta v. Sebesta*, 202 Neb. 624, 277 N.W.2d 49 (1979).

Property settlement agreements are governed by this section and they are favored in the law and will not be set aside unless unconscionable. *Paxton v. Paxton*, 201 Neb. 545, 270 N.W.2d 900 (1978).

2. Constitutionality

A married person's interest in the marital status is not a property right, the state has plenary powers with regard to it, and Nebraska divorce laws are not unconstitutional. *Buchholz v. Buchholz*, 197 Neb. 180, 248 N.W.2d 21 (1976).

3. Conscionability

An agreement between husband and wife, if executed to control the disposition of the marital assets of the parties during a later dissolution action, is a written property settlement within this section, and is binding on the court unless the agreement is found to be unconscionable. Written property settlement found to be unconscionable. *Dobesh v. Dobesh*, 216 Neb. 196, 342 N.W.2d 669 (1984).

The trial judge may request evidence on the issue of the conscionability of a proposed settlement but is not required to do so. *Buker v. Buker*, 205 Neb. 571, 288 N.W.2d 732 (1980).

The term "unconscionable" as used in this statute has been interpreted as meaning "manifestly unfair or inequitable." *Paxton v. Paxton*, 201 Neb. 545, 270 N.W.2d 900 (1978).

Terms of settlement agreement were unconscionable or "manifestly unfair or inequitable" where from total assets of \$450,000 wife would receive only life estate in residence, auto, and alimony of \$12,100. *Weber v. Weber*, 200 Neb. 659, 265 N.W.2d 436 (1978).

Voluntary property settlement agreement held binding on both the court and parties in the absence of unconscionable terms. *Prochazka v. Prochazka*, 198 Neb. 525, 253 N.W.2d 407 (1977).

4. Pension and similar benefits

Although this section requires that any pension plans, retirement plans, annuities, and other deferred compensation benefits owned by either party be included as part of the marital estate, the plain language of this section does not require that such

assets be valued at the time of dissolution. The expression "at the time of dissolution" in subsection (8) of this section qualifies the date at which the marital estate is divided but does not provide that pension-type property must be valued on such date. *Hosack v. Hosack*, 267 Neb. 934, 678 N.W.2d 746 (2004).

Subsection (8) of this section requires the inclusion of retirement benefits in the marital estate, and such benefits include a future nondisability military pension. *Longo v. Longo*, 266 Neb. 171, 663 N.W.2d 604 (2003).

Although subsection (8) of this section requires that any pension plans, retirement plans, annuities, and other deferred compensation benefits owned by either party be included as part of the marital estate, the plain language of this section does not require that such included assets be valued at the time of dissolution. The expression "at the time of dissolution" in subsection (8) of this section qualifies the date at which the marital estate is divided but does not provide that pension-type property must be valued on such date. The pension-type property may be valued as of another date that is rationally related to the property. *Tyma v. Tyma*, 263 Neb. 873, 644 N.W.2d 139 (2002).

A trial court, in the exercise of its broad jurisdiction with regard to approval and enforcement of property settlement agreements under this section, has the power to approve and incorporate into a consent decree a conscionable term in the parties' agreement to divide pension benefits earned by a spouse after the termination of the marriage, even though the trial court has no statutory power to order such a division in a contested case. *Hoshor v. Hoshor*, 254 Neb. 743, 580 N.W.2d 516 (1998).

Per subsection (8) of this section, in a marriage dissolution, the marital estate includes only that portion of pensions earned during the marriage. *Priest v. Priest*, 251 Neb. 76, 554 N.W.2d 792 (1996).

Any pension benefits may be considered as marital property, and thus divisible in a dissolution of marriage action, whether or not the pension is vested. *Ray v. Ray*, 222 Neb. 324, 383 N.W.2d 752 (1986).

In dissolution proceedings the trial court has broad discretion in valuing and dividing pension rights between the parties. *Sonntag v. Sonntag*, 219 Neb. 583, 365 N.W.2d 411 (1985).

This section requires the court to include any pension and retirement plans in the marital estate. It does not require a pension to be divided between the parties, nor does it require any specific method of valuation. The trial court retains broad discretion in valuing pension rights and dividing such rights between the parties. *Rockwood v. Rockwood*, 219 Neb. 21, 360 N.W.2d 497 (1985).

As a result of the Uniformed Services Former Spouses Protection Act, nondisability military pensions need no longer be treated differently than nonmilitary pensions. *Taylor v. Taylor*, 217 Neb. 409, 348 N.W.2d 887 (1984).

Based on the facts of this case, the wife was awarded one-half of the value of property in pension and profit-sharing trusts maintained by her husband's employer. The trial court retains broad discretion in valuing pension rights and in dividing such

rights between the parties. *Kullbom v. Kullbom*, 209 Neb. 145, 306 N.W.2d 844 (1981).

A disability pension is a marital asset. *John v. John*, 1 Neb. App. 947, 511 N.W.2d 544 (1993).

Pension plans shall be included as a part of the marital estate for purposes of the division of property at the time of dissolution; the value of the plan should be determined at the time of the decree. *Polly v. Polly*, 1 Neb. App. 121, 487 N.W.2d 558 (1992).

5. Miscellaneous

In deciding the allocation of a single asset, the division of which is reserved to the court by the parties, a court should not order a distribution of the asset that is inconsistent with a voluntary stipulation entered into by the parties and approved by the court dividing the remainder of the parties' assets. *Shearer v. Shearer*, 270 Neb. 178, 700 N.W.2d 580 (2005).

The marital estate includes property accumulated and acquired during the marriage through the joint efforts of the parties; with some exceptions, the marital estate does not include property acquired by one of the parties through gift or inheritance. The marital estate includes that portion of a pension which is earned during the marriage. *Reichert v. Reichert*, 246 Neb. 31, 516 N.W.2d 600 (1994).

Although section 42-364 does not permit a district court in a dissolution action to order child support beyond the age of majority, the district court has the authority to enforce the terms of an approved settlement, which may include an agreement to support a child beyond the age of majority. *Zetterman v. Zetterman*, 245 Neb. 255, 512 N.W.2d 622 (1994).

In view of evidence concerning the health of the parties, the trial court abused its discretion by precluding modification of

alimony awarded in decree of dissolution under subsection (7) of this section. *Dinovo v. Dinovo*, 238 Neb. 285, 470 N.W.2d 174 (1991).

Alimony provisions may be modified, even if based upon property settlement agreements, unless the parties or the court provide otherwise in writing. *Euler v. Euler*, 207 Neb. 4, 295 N.W.2d 397 (1980).

Where the decree expressly precludes modification, the award is such a definite and final adjustment of mutual rights and obligations as to be capable of a present vesting and to constitute an absolute judgment. *Van Pelt v. Van Pelt*, 206 Neb. 350, 292 N.W.2d 917 (1980).

In absence of agreement, court must divide property fairly under circumstances of marriage. *Cozette v. Cozette*, 196 Neb. 780, 246 N.W.2d 473 (1976).

In an action for dissolution of marriage, agreements between husband and wife, not made in connection with separation or dissolution of marriage, are not binding on the court. *Snyder v. Snyder*, 196 Neb. 383, 243 N.W.2d 159 (1976).

Except for terms concerning the custody or support of minor children, the decree may expressly preclude or limit modification of terms set forth in the decree. *Haug v. Haug*, 195 Neb. 377, 238 N.W.2d 455 (1976).

Alimony may be ordered in addition to a property settlement. *Magruder v. Magruder*, 190 Neb. 573, 209 N.W.2d 585 (1973).

A civil contempt order enforcing a settlement agreement is not a final, appealable order where the order does not contain both a finding of contempt and a noncontingent order of sanction. *Hammond v. Hammond*, 3 Neb. App. 536, 529 N.W.2d 542 (1995).

42-367 Temporary allowance; costs; payment.

In every action for dissolution of marriage or legal separation, the court may require the husband to pay any sum necessary to enable the wife to maintain the action during its pendency. When dissolution of marriage or a legal separation is decreed, the court may decree costs against either party and award execution for the same, or it may direct such costs to be paid out of any property sequestered, or in the power of the court, or in the hands of a receiver.

Source: Laws 1972, LB 820, § 21.

Fees for appraising the family residence and for an expert witness at trial are costs assessable under this section. *Lockwood v. Lockwood*, 205 Neb. 818, 290 N.W.2d 636 (1980).

Adultery of party will not as a matter of law prevent an award of attorney's fees nor affect the payment of costs. *Lockard v. Lockard*, 193 Neb. 400, 227 N.W.2d 581 (1975).

Awards of attorney's fees and costs hereunder are discretionary. *Sullivan v. Sullivan*, 192 Neb. 841, 224 N.W.2d 542 (1975).

42-368 Decree of separation; support order; modification; revocation.

When a legal separation is decreed, the court may order payment of such support by one party to the other as may be reasonable, having regard for the circumstances of the parties and the ability of the supported party to engage in gainful employment without interfering with the interests of any minor children in the custody of such party. Orders for support may be modified or revoked for good cause shown upon notice and hearing, except as to amounts accrued prior to date of service of motion to modify, to which date modification may be retroactive. Orders for child support in cases in which a party has applied for services under Title IV-D of the Social Security Act, as amended, shall be reviewed as provided in sections 43-512.12 to 43-512.18.

Source: Laws 1972, LB 820, § 22; Laws 1991, LB 715, § 2; Laws 1993, LB 523, § 2.

The statutory prohibition against modifying a decree at a later time to provide for alimony when not allowed in the original decree applies to a dissolution of marriage, not to a decree of legal separation. *Pendleton v. Pendleton*, 242 Neb. 675, 496 N.W.2d 499 (1993).

42-369 Support or alimony; presumption; items includable; payments; disbursement; enforcement; health insurance.

(1) All orders, decrees, or judgments for temporary or permanent support payments, including child, spousal, or medical support, and all orders, decrees, or judgments for alimony or modification of support payments or alimony shall direct the payment of such sums to be made commencing on the first day of each month for the use of the persons for whom the support payments or alimony have been awarded. Such payments shall be made to the clerk of the district court (a) when the order, decree, or judgment is for spousal support, alimony, or maintenance support and the order, decree, or judgment does not also provide for child support, and (b) when the payment constitutes child care or day care expenses, unless payments under subdivision (1)(a) or (1)(b) of this section are ordered to be made directly to the obligee. All other support order payments shall be made to the State Disbursement Unit. In all cases in which income withholding has been implemented pursuant to the Income Withholding for Child Support Act or sections 42-364.01 to 42-364.14, support order payments shall be made to the State Disbursement Unit. The court may order such payment to be in cash or guaranteed funds.

(2) If the person against whom an order, decree, or judgment for child support is entered or the custodial parent or guardian has health insurance available to him or her through an employer or organization which may extend to cover any children affected by the order, decree, or judgment the court shall require the option to be exercised or comparable coverage be obtained by either party for additional coverage which favors the best interests of the child or children affected unless the parties have otherwise stipulated in writing or to the court.

(3) Such an order, decree, or judgment for support may include the providing of necessary shelter, food, clothing, care, medical support as defined in section 43-512, medical attention, expenses of confinement, education expenses, funeral expenses, and any other expense the court may deem reasonable and necessary.

(4) Orders, decrees, and judgments for temporary or permanent support or alimony shall be filed with the clerk of the district court and have the force and effect of judgments when entered. The clerk and the State Disbursement Unit shall disburse all payments received as directed by the court and as provided in sections 42-358.02 and 43-512.07. Records shall be kept of all funds received and disbursed by the clerk and the unit and shall be open to inspection by the parties and their attorneys.

(5) Unless otherwise specified by the court, an equal and proportionate share of any child support awarded shall be presumed to be payable on behalf of each child subject to the order, decree, or judgment for purposes of an assignment under section 43-512.07.

Source: Laws 1972, LB 820, § 23; Laws 1983, LB 371, § 11; Laws 1991, LB 457, § 4; Laws 1993, LB 435, § 1; Laws 2000, LB 972, § 15; Laws 2007, LB554, § 35.

Cross References

Income Withholding for Child Support Act, see section 43-1701.

Under subsection (4) of this section, alimony judgments are liens, and if the judgments precede a mortgage and are recorded, they will have priority over that mortgage. *McCook Nat. Bank v. Myers*, 243 Neb. 853, 503 N.W.2d 200 (1993).

Pursuant to subsection (2) of this section, in a divorce case, a judge may not order both parties to provide health insurance for the child or children, but must direct which party shall provide

such insurance. *Ward v. Ward*, 7 Neb. App. 821, 585 N.W.2d 551 (1998).

Expenses incurred in obtaining medical care for a child, including allowances for mileage and meals, may be included in a support order if the court finds such expenses are reasonable and necessary. The expenses cannot be applied retroactively to the application for modification of the order for support. *Hoover v. Hoover*, 2 Neb. App. 239, 508 N.W.2d 316 (1993).

42-370 Contempt proceedings; attorney’s fees; costs.

Nothing in sections 42-347 to 42-381 shall prohibit a party from initiating contempt proceedings. Costs, including a reasonable attorney’s fee, may be taxed against a party found to be in contempt.

Source: Laws 1972, LB 820, § 24; Laws 1997, LB 229, § 18.

In a civil contempt proceeding relating to an item in a divorce decree, costs, including a reasonable attorney fee, may be as-

essed against a contemnor. *Locke v. Volkmer*, 8 Neb. App. 797, 601 N.W.2d 807 (1999).

42-371 Judgments and orders; liens; release; subordination; procedure; time limitation on lien; security; attachment; priority.

Under the Uniform Interstate Family Support Act and sections 42-347 to 42-381, 43-290, 43-512 to 43-512.10, and 43-1401 to 43-1418:

(1) All judgments and orders for payment of money shall be liens, as in other actions, upon real property and any personal property registered with any county office and may be enforced or collected by execution and the means authorized for collection of money judgments;

(2)(a) The judgment creditor may execute a partial or total release of the judgment or a document subordinating the lien of the judgment to any other lien, generally or on specific real or personal property.

(b) Release of a judgment for child support or spousal support or subordination of a lien of a judgment for child support or spousal support may, if all such payments are current, be released or subordinated by a release or subordination document executed by the judgment creditor, and such document shall be sufficient to remove or subordinate the lien. A properly executed, notarized release or subordination document explicitly reciting that all child support payments or spousal support payments are current is prima facie evidence that such payments are in fact current.

(c) Release of a judgment for child support or spousal support or subordination of a lien of a judgment for child support or spousal support shall be approved by the court which rendered the judgment if all such payments are not current. The judgment debtor may file a motion in the court which rendered the original judgment for an order releasing or subordinating the lien as to specific real or personal property. The court shall grant such order upon a showing by the judgment debtor that sufficient real or personal property or property interests will remain subject to the lien or will maintain priority over other liens sufficient to cover all support due and which may become due;

(3) Whenever a judgment creditor refuses to execute a release of the judgment or subordination of a lien as provided in this section, the person desiring such release or subordination may file an application for the relief desired. A copy of the application and a notice of hearing shall be served on the judgment creditor either personally or by registered or certified mail no later than ten

days before the date of hearing. If the court finds that the release or subordination is not requested for the purpose of avoiding payment and that the release or subordination will not unduly reduce the security, the court may issue an order releasing real or personal property from the judgment lien or issue an order subordinating the judgment lien. As a condition for such release or subordination, the court may require the posting of a bond with the clerk in an amount fixed by the court, guaranteeing payment of the judgment. For purposes of this section, a current certified copy of support order payment history from the Title IV-D Division of the Department of Health and Human Services setting forth evidence that all support payments are current is prima facie evidence that such payments are in fact current and is valid for thirty days after the date of certification;

(4) Full faith and credit shall be accorded to a lien arising by operation of law against real and personal property for amounts overdue relating to a support order owed by an obligor who resides or owns property in this state when another state agency, party, or other entity seeking to enforce such lien complies with the procedural rules relating to the filing of the lien in this state. The state agency, party, or other entity seeking to enforce such lien shall send a certified copy of the support order with all modifications, the notice of lien prescribed by 42 U.S.C. 652(a)(11) and 42 U.S.C. 654(9)(E), and the appropriate fee to the clerk of the district court in the jurisdiction within this state in which the lien is sought. Upon receiving the appropriate documents and fee, the clerk of the district court shall accept the documents filed and such acceptance shall constitute entry of the foreign support order for purposes of this section only. Entry of a lien arising in another state pursuant to this section shall result in such lien being afforded the same treatment as liens arising in this state. The filing process required by this section shall not be construed as requiring an application, complaint, answer, and hearing as might be required for the filing or registration of foreign judgments under the Nebraska Uniform Enforcement of Foreign Judgments Act or the Uniform Interstate Family Support Act;

(5) Support order judgments shall cease to be liens on real or registered personal property ten years from the date (a) the youngest child becomes of age or dies or (b) the most recent execution was issued to collect the judgment, whichever is later, and such lien shall not be reinstated;

(6) Alimony and property settlement award judgments, if not covered by subdivision (5) of this section, shall cease to be a lien on real or registered personal property ten years from the date (a) the judgment was entered, (b) the most recent payment was made, or (c) the most recent execution was issued to collect the judgment, whichever is latest, and such lien shall not be reinstated;

(7) The court may in any case, upon application or its own motion, after notice and hearing, order a person required to make payments to post sufficient security, bond, or other guarantee with the clerk to insure payment of both current and any delinquent amounts. Upon failure to comply with the order, the court may also appoint a receiver to take charge of the debtor's property to insure payment. Any bond, security, or other guarantee paid in cash may, when the court deems it appropriate, be applied either to current payments or to reduce any accumulated arrearage;

(8)(a) The lien of a mortgage or deed of trust which secures a loan, the proceeds of which are used to purchase real property, and (b) any lien given

priority pursuant to a subordination document under this section shall attach prior to any lien authorized by this section. Any mortgage or deed of trust which secures the refinancing, renewal, or extension of a real property purchase money mortgage or deed of trust shall have the same lien priority with respect to any lien authorized by this section as the original real property purchase money mortgage or deed of trust to the extent that the amount of the loan refinanced, renewed, or extended does not exceed the amount used to pay the principal and interest on the existing real property purchase money mortgage or deed of trust, plus the costs of the refinancing, renewal, or extension; and

(9) Any lien authorized by this section against personal property registered with any county consisting of a motor vehicle or mobile home shall attach upon notation of the lien against the motor vehicle or mobile home certificate of title and shall have its priority established pursuant to the terms of section 60-164 or a subordination document executed under this section.

Source: Laws 1972, LB 820, § 25; Laws 1975, LB 212, § 2; Laws 1980, LB 622, § 3; Laws 1985, Second Spec. Sess., LB 7, § 19; Laws 1986, LB 600, § 9; Laws 1991, LB 715, § 3; Laws 1993, LB 500, § 52; Laws 1993, LB 523, § 3; Laws 1994, LB 1224, § 47; Laws 1997, LB 229, § 19; Laws 1999, LB 594, § 7; Laws 2004, LB 1207, § 29; Laws 2005, LB 276, § 100; Laws 2007, LB554, § 36; Laws 2008, LB1014, § 35.

Operative date April 17, 2008.

Cross References

Nebraska Uniform Enforcement of Foreign Judgments Act, see section 25-1587.01.
Uniform Interstate Family Support Act, see section 42-701.

- 1. Applicability of section
- 2. Authority of court
- 3. Lien
- 4. Miscellaneous

1. Applicability of section

This section is applicable to monetary property settlement judgments. *Lacey v. Lacey*, 215 Neb. 162, 337 N.W.2d 740 (1983).

This section refers to judgment creditors for support in cases of legal separation, judgment creditors for temporary or permanent support payments or alimony, judgment creditors for child support, and judgment creditors for alimony. *Grosvenor v. Grosvenor*, 206 Neb. 395, 293 N.W.2d 96 (1980).

In the absence of any evidence that a person ordered to pay child support was materially prejudiced by delay in assertion of claim for child support, remarriage of the parties did not operate to prohibit the party for whose benefit child support was ordered following the first divorce from instituting action following the second divorce to collect arrearages for child support due between date of the first divorce and subsequent remarriage. *Scheibel v. Scheibel*, 204 Neb. 653, 284 N.W.2d 572 (1979).

2. Authority of court

An order entered pursuant to subsection (5) of this section, requiring a person to post sufficient security, is a somewhat extraordinary and drastic remedy, and such order should be invoked only when compelling circumstances require it. *Klingensmith v. Wichmann*, 252 Neb. 889, 567 N.W.2d 172 (1997).

Child support payments are a vested property right of the payee as each accrues, and a court, therefore, may not forgive or modify past-due child support, but may modify the amount of future payments. *Berg v. Berg*, 238 Neb. 527, 471 N.W.2d 435 (1991).

This section gives to a court which has entered a judgment for property division payable in installments, authority to release or subordinate the judgment under the conditions prescribed in the statute. *Grosvenor v. Grosvenor*, 206 Neb. 395, 293 N.W.2d 96 (1980).

An order requiring security to be given and appointing a receiver are somewhat extraordinary and drastic measures and such an order should be made only when it appears to the court that such an order is necessary to assure the payment of alimony and child support as decreed. *Casselman v. Casselman*, 204 Neb. 565, 284 N.W.2d 7 (1979).

It is not the court's prerogative to determine what method or means should be used in placing security for child support payment. *Casselman v. Casselman*, 204 Neb. 565, 284 N.W.2d 7 (1979).

3. Lien

Alimony judgments are liens, and if the judgments precede a mortgage and are recorded, they will have priority over that mortgage. *McCook Nat. Bank v. Myers*, 243 Neb. 853, 503 N.W.2d 200 (1993).

A judgment is not a lien upon the judgment debtor's equitable interest in real estate until the commencement of the creditor's bill to subject it to payment of the judgment or until execution is levied upon the interest of a judgment debtor who is in possession of the real estate in which he has the equitable interest. *Action Realty Co., Inc. v. Miller*, 191 Neb. 381, 215 N.W.2d 629 (1974).

Pursuant to subsection (2) of this section, the cessation of a lien under this section does not render a child support judgment

dormant. *Freis v. Harvey*, 5 Neb. App. 679, 563 N.W.2d 363 (1997).

judgment awarding fees. *Barber v. Barber*, 207 Neb. 101, 296 N.W.2d 463 (1980).

4. Miscellaneous

Fees awarded under this section are the property of the client, not the attorney, and the client may execute a release of the

42-371.01 Duty to pay child support; termination, when; procedure; State Court Administrator; duties.

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

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

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

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

Source: Laws 1997, LB 58, § 1; Laws 2000, LB 972, § 16; Laws 2006, LB 1115, § 30.

The enactment of this section in 1997 delineating the circumstances for terminating child support obligations is not tantamount to a material change in circumstances justifying modification of a child support award. *Reinsch v. Reinsch*, 259 Neb. 564, 611 N.W.2d 86 (2000).

It is the public policy and statutory law of this state that child support obligations should be paid until the child reaches the age of 19. *Reinsch v. Reinsch*, 8 Neb. App. 852, 602 N.W.2d 261 (1999).

42-372 Decree; appeals.

(1) A decree dissolving a marriage becomes final and operative, except for the purpose of review by appeal, at the time specified in section 42-372.01.

(2) For the purpose of review by appeal, the decree shall be treated as a final order as soon as it is entered. If an appeal is instituted that does not challenge the finding that the marriage is irretrievably broken, then the decree shall become final and operative, as to that portion of the decree that dissolves the marriage, at the time specified in section 42-372.01 as if no such appeal had been instituted. If an appeal is instituted within thirty days after the date the decree is entered that challenges the finding that the marriage is irretrievably broken, such decree does not become final until such proceedings are finally

determined or the date of death of one of the parties to the dissolution, whichever occurs first.

Source: Laws 1972, LB 820, § 26; Laws 1986, LB 600, § 10; Laws 1987, LB 33, § 8; Laws 1995, LB 544, § 1; Laws 1997, LB 77, § 1; Laws 2000, LB 921, § 33.

1. Modification or vacation of decree
2. Miscellaneous

1. Modification or vacation of decree

Modification of a dissolution decree during the 6-month interlocutory period pursuant to this section can be made only upon good cause shown after notice to all interested parties and hearing. *McAllister v. McAllister*, 228 Neb. 314, 422 N.W.2d 345 (1988); *Neujahr v. Neujahr*, 218 Neb. 585, 357 N.W.2d 219 (1984); *Norris v. Norris*, 2 Neb. App. 570, 512 N.W.2d 407 (1994).

Upon a motion containing an allegation of fact which, if true, constitutes good cause to set aside or modify a decree dissolving a marriage, a court must grant an evidentiary hearing on the motion to set aside or modify the dissolution decree. *Younkin v. Younkin*, 221 Neb. 134, 375 N.W.2d 894 (1985).

During the six-month period following a dissolution of marriage decree, the action is still pending, and the court can at any time, for good reason, vacate or modify it. During the entire pendency of a dissolution of marriage decree, the marital relation continues. *Choat v. Choat*, 218 Neb. 875, 359 N.W.2d 810 (1984).

Property settlement agreement entered into by parties to a dissolution of marriage may be vacated or modified if one of the spouses withheld information from the court, thus preventing the court from carrying out its function of approving or disapproving the agreement. *Colson v. Colson*, 215 Neb. 452, 339 N.W.2d 280 (1983).

Section 42-372, R.R.S.1943, Reissue 1978, allows a modification within the six months before the decree is final to provide for alimony where none was awarded in the final decree. Section 42-365, R.R.S.1943, Reissue 1978, is limited in its application to those situations in which, except for this statute, the court could not otherwise modify or vacate the decree. *Howard v. Howard*, 207 Neb. 468, 299 N.W.2d 442 (1980).

Where a party to a divorce action, represented by counsel, voluntarily executes a property settlement agreement which is approved by the court and incorporated in a divorce decree from which no appeal is taken ordinarily the decree will not be vacated or modified as to property provisions in absence of fraud or gross inequity. *Klabunde v. Klabunde*, 194 Neb. 681, 234 N.W.2d 837 (1975).

The power of the district court to modify or vacate a decree of marriage dissolution hereunder within six months of the entry of the decree does not exist after appellant has suffered an involuntary dismissal of appeal. *Dewey v. Dewey*, 193 Neb. 236, 226 N.W.2d 751 (1975), 192 Neb. 676, 223 N.W.2d 826 (1974).

Proceedings to modify a divorce decree during the 6-month period following a dissolution of marriage decree may continue and be finally decided after the 6-month period, so long as the original request was filed within the 6-month period. *Novak v. Novak*, 2 Neb. App. 21, 508 N.W.2d 283 (1993).

2. Miscellaneous

Under former law, in Nebraska, a divorce becomes final six months after it is entered; during this six-month waiting period, the matrimonial tie between the parties is not dissolved. *Watts v. Watts*, 250 Neb. 38, 547 N.W.2d 466 (1996).

In an alienation of affections case, evidence regarding the defendant's income during the six-month period following the plaintiff's divorce decree was relevant and admissible under the circumstances of this case. *Vacek v. Ames*, 221 Neb. 333, 377 N.W.2d 86 (1985).

A motion authorized by this section, when appealed to this court, is not subject to review de novo on the record but, rather, is limited to an appeal of the action for dissolution itself. The granting or denying of a motion to set aside a decree of dissolution is within the sound discretion of the trial court, and any actions taken with respect thereto by that court will not be disturbed on appeal absent an abuse of discretion. *Puetz v. Puetz*, 211 Neb. 674, 319 N.W.2d 761 (1982).

The control of a divorce decree during the six-month period pending finality is within the sound judicial discretion of the trial court. *Miller v. Miller*, 190 Neb. 816, 212 N.W.2d 646 (1973).

Statute postpones dissolution until the decree becomes final; during six-month waiting period parties remain legally married. Under former law, wife was lawful spouse at time of death of insured and as his widow was entitled to the proceeds of insurance policy. *Prudential Ins. Co. of America v. Dulek*, 504 F.Supp. 1015 (D. Neb. 1980).

42-372.01 Decree; when final.

(1) Except for purposes of appeal as prescribed in section 42-372, for purposes of remarriage as prescribed in subsection (2) of this section, and for purposes of continuation of health insurance coverage as prescribed in subsection (3) of this section, a decree dissolving a marriage becomes final and operative thirty days after the decree is entered or on the date of death of one of the parties to the dissolution, whichever occurs first. If the decree becomes final and operative upon the date of death of one of the parties to the dissolution, the decree shall be treated as if it became final and operative the date it was entered.

(2) For purposes of remarriage other than remarriage between the parties, a decree dissolving a marriage becomes final and operative six months after the decree is entered or on the date of death of one of the parties to the dissolution, whichever occurs first. If the decree becomes final and operative upon the date

of death of one of the parties to the dissolution, the decree shall be treated as if it became final and operative the date it was entered.

(3) For purposes of continuation of health insurance coverage, a decree dissolving a marriage becomes final and operative six months after the decree is entered.

(4) A decree dissolving a marriage rendered prior to September 9, 1995, which is not final and operative becomes operative pursuant to the provisions of section 42-372 as such section existed immediately preceding September 9, 1995.

Source: Laws 1995, LB 544, § 2; Laws 1997, LB 434, § 1; Laws 2000, LB 921, § 34.

42-372.02 Decree; assignment of real estate; affidavit and certificate; filing.

(1) When a decree of dissolution of marriage assigns real estate to either party, the party to whom the real estate is assigned may (a) prepare and file with the clerk of the district court an affidavit identifying the real estate by legal description and affirmatively identifying the person entitled to the real estate and (b) prepare for signature and seal by the clerk one or more certificates in a form substantially similar to the following:

CERTIFICATE OF DISSOLUTION OF MARRIAGE

....., Clerk of the District Court of County, Nebraska, certifies that in Case No., Docket, Page, in such Court, entitled vs., the Court entered its decree of dissolution of marriage in which the interest of in the following described real estate in County, Nebraska:

.....
.....
.....
.....

has been assigned to

Dated:

(SEAL)

Clerk of the District Court
..... County, Nebraska.

(2) A certificate may include more than one parcel of real estate, but there shall be separate certificates for each party to whom real estate is assigned and separate certificates for each county in which real estate is located. The certificate or certificates shall be delivered by the clerk to the person applying for the same, and such person shall be responsible for recording the certificate or certificates with the register of deeds in the appropriate county or counties as provided in section 76-248.01.

Source: Laws 2005, LB 361, § 23.

42-372.03 Legal separation decree; application to set aside decree.

A legal separation decree shall provide that in case of a reconciliation at any time thereafter, the parties may apply to set aside the decree. Upon such

application, the court shall set aside the decree and make such orders as are just and reasonable under the circumstances.

Source: Laws 2007, LB132, § 1.

42-373 Annulments; procedure.

Actions for annulment of a marriage shall be brought in the same manner as actions for dissolution of marriage and shall be subject to all applicable provisions of sections 42-347 to 42-381 pertaining to dissolution of marriage, except that the only residence requirement shall be that the plaintiff is an actual resident of the county in which the complaint is filed.

Source: Laws 1972, LB 820, § 27; Laws 1997, LB 229, § 20; Laws 2004, LB 1207, § 30.

42-374 Annulment; conditions.

A marriage may be annulled for any of the following causes:

- (1) The marriage between the parties is prohibited by law;
- (2) Either party is impotent at the time of marriage;
- (3) Either party had a spouse living at the time of marriage;
- (4) Either party was mentally ill or a person with mental retardation at the time of marriage; or
- (5) Force or fraud.

Source: Laws 1972, LB 820, § 28; Laws 1989, LB 23, § 2.

Cross References

Marriages:

When void, see section 42-103.

When voidable, see section 42-118.

An annulment will be granted only when one or more of the grounds enumerated herein is present. *Guggenmos v. Guggenmos*, 218 Neb. 746, 359 N.W.2d 87 (1984).

42-375 Annulments; persons under disability; who may bring action; denial, when.

Annulment actions on behalf of persons under disability may be brought by a parent or adult next friend. An annulment may not be decreed if the marriage is found to be voidable and the parties freely cohabited after the ground for annulment has terminated or become known to the innocent party.

Source: Laws 1972, LB 820, § 29.

42-376 Doubtful marriage; procedure.

When the validity of a marriage is doubted, either party may file a complaint and the court shall decree it annulled or affirmed according to the proof. Notice shall be given the other party as in the case of a complaint for dissolution of marriage.

Source: Laws 1972, LB 820, § 30; Laws 2004, LB 1207, § 31.

42-377 Legitimacy of children.

Children born to the parties, or to the wife, in a marriage relationship which may be dissolved or annulled pursuant to sections 42-347 to 42-381 shall be

legitimate unless otherwise decreed by the court, and in every case the legitimacy of all children conceived before the commencement of the suit shall be presumed until the contrary is shown.

Source: Laws 1972, LB 820, § 31; Laws 1997, LB 229, § 21.

The presumption favoring legitimacy of children may only be rebutted by clear and convincing evidence beyond the testimony of husband or wife denying child's legitimacy. *Perkins v. Perkins*, 198 Neb. 401, 253 N.W.2d 42 (1977).

Presumed legitimacy of children born in wedlock may not be rebutted by the testimony or declaration of a parent. *Ford v. Ford*, 191 Neb. 548, 216 N.W.2d 176 (1974).

This section does not create an irrebuttable presumption of legitimacy in the case of children conceived before the commencement of the dissolution action. *Cavanaugh v. deBaudiniere*, 1 Neb. App. 204, 493 N.W.2d 197 (1992).

42-378 Nullity of marriage; procedure; costs.

When the court finds that a party entered into the contract of marriage in good faith supposing the other to be capable of contracting, and the marriage is declared a nullity, such fact shall be entered in the decree and the court may order such innocent party compensated as in the case of dissolution of marriage, including an award for costs and attorney fees.

Source: Laws 1972, LB 820, § 32.

This section is not applicable and does not provide a legal basis for property division and award of alimony when the parties' marriage is valid during its duration and never void or voidable. *Manker v. Manker*, 263 Neb. 944, 644 N.W.2d 522 (2002).

This section applies when one or both of the parties are innocent. A party claiming good faith under this section cannot close his or her eyes to suspicious circumstances; however, attending a divorce hearing does not trigger a duty to inquire as to the date on which the divorce will become final. Under this section, good faith means an honest and reasonable belief that

the marriage was valid at the time of the ceremony. Whether a party acted in good faith depends on the facts and circumstances of the case. Good faith is presumed; the burden of proof rests squarely on the party charging bad faith. Good faith may result either from an error of fact or from an error of law. *Hicklin v. Hicklin*, 244 Neb. 895, 509 N.W.2d 627 (1994).

This section protects a party who has entered into the contract of marriage in good faith supposing the other party to be capable of marrying and the marriage is declared a nullity. *Randall v. Randall*, 216 Neb. 541, 345 N.W.2d 319 (1984).

42-379 Repealed. Laws 1997, LB 229, § 46.

42-380 Restoration of former name; procedure.

(1) When a pleading is filed pursuant to section 42-353 or pursuant to an action for annulment as authorized by section 42-373, either the plaintiff or the defendant may include a request to restore his or her former name. The court shall grant such request except for good cause shown. The mere fact that a parent and child may have different surnames following a dissolution of marriage or annulment shall not be sufficient to constitute good cause. The decree of dissolution or declaration of annulment shall specifically provide for the name change, giving both the old name and the name as it will be after the decree or declaration. A change of name granted pursuant to this section shall become effective on the same date that the decree of dissolution or declaration of annulment, as the case may be, is entered. The requirements of sections 25-21,270 to 25-21,273 shall not apply to this section.

(2) A decree of dissolution or declaration of annulment entered before August 25, 1989, in an action in which a request for name restoration was not included or granted shall not hinder or prevent the petitioner or respondent from effecting a common-law name change.

Source: Laws 1989, LB 401, § 1; Laws 2004, LB 1207, § 32.

42-381 Minor child; rights of parents.

In any final decree or decree of modification in an action for dissolution of marriage, declaration concerning the validity of a marriage, legal separation, or

declaration of paternity, regardless of the determination of the court relating to the custody of a minor child, (1) each parent shall continue to have full and equal access to the education and medical records of his or her child unless the court orders to the contrary and (2) either parent may make emergency decisions affecting the health or safety of his or her child while the child is in the physical custody of such parent.

Source: Laws 1993, LB 500, § 58.

(e) CHILD SUPPORT TASK FORCE

42-382 Repealed. Laws 1999, LB 1, § 1.

(f) CHILD SUPPORT COMMISSION

42-383 Repealed. Laws 2002, LB 1062, § 72.

42-384 Repealed. Laws 2002, LB 1062, § 72.

42-385 Repealed. Laws 2002, LB 1062, § 72.

42-386 Repealed. Laws 2002, LB 1062, § 72.

ARTICLE 4

MARRIAGE AND DIVORCE OF INDIANS

Section

42-401. Repealed. Laws 1999, LB 8, § 4.

42-402. Children; when deemed legitimate.

42-403. Marriages and divorces; void, when unlawful.

42-404. Marriages; how contracted.

42-405. Divorces; how obtained.

42-406. Bigamy; when; penalty.

42-407. Marriages; record of county judge; legal and competent evidence.

42-408. Sections, how construed.

42-401 Repealed. Laws 1999, LB 8, § 4.

42-402 Children; when deemed legitimate.

Whenever any man and woman, either of whom is whole or in part of Indian blood, shall have cohabited together as husband and wife according to the customs and manners of Indian life, the issue of such cohabitation shall be taken and deemed to be the legitimate issue of such persons so living together, notwithstanding the fact that the father and mother may have been divorced or separated according to Indian customs, or otherwise, and married to other persons, according to Indian custom, or otherwise.

Source: Laws 1913, c. 68, § 2, p. 201; R.S.1913, § 1608; C.S.1922, § 1557; C.S.1929, § 42-402.

42-403 Marriages and divorces; void, when unlawful.

Marriages and divorces consummated on or after April 8, 1913, among such Indians, or among their descendants, according to Indian custom, are hereby declared to be unlawful and shall be punished as hereinafter provided.

Source: Laws 1913, c. 68, § 3, p. 202; R.S.1913, § 1609; C.S.1922, § 1558; C.S.1929, § 42-403.

42-404 Marriages; how contracted.

Such Indians and their descendants shall procure marriage licenses and have their marriages solemnized and returns thereof made in the manner as provided by the laws of this state for the making of marriage contracts.

Source: Laws 1913, c. 68, § 4, p. 202; R.S.1913, § 1610; C.S.1922, § 1559; C.S.1929, § 42-404; R.S.1943, § 42-404; Laws 1989, LB 80, § 1.

42-405 Divorces; how obtained.

Such Indians and their descendants may obtain divorces in the manner and for the causes provided in the statutes of this state, and not otherwise.

Source: Laws 1913, c. 68, § 5, p. 202; R.S.1913, § 1611; C.S.1922, § 1560; C.S.1929, § 42-405.

42-406 Bigamy; when; penalty.

If any Indian who is married according to the provisions of sections 42-402 to 42-404 shall, while his or her husband or wife is living, be married to another person, either in legal form or according to Indian custom, he or she shall be guilty of bigamy and shall be punished therefor as provided by law.

Source: Laws 1913, c. 68, § 6, p. 202; R.S.1913, § 1612; C.S.1922, § 1561; C.S.1929, § 42-406; R.S.1943, § 42-406; Laws 1999, LB 8, § 1.

Cross References

Bigamy, penalty, see section 28-701.

42-407 Marriages; record of county judge; legal and competent evidence.

The record of Indian marriages made by the county judge pursuant to Laws 1913, Chapter 68, section 7, and certified copies thereof, shall be legal and competent evidence in all proceedings of the facts therein authorized to be stated.

Source: Laws 1913, c. 68, § 7, p. 202; R.S.1913, § 1613; C.S.1922, § 1562; C.S.1929, § 42-407.

42-408 Sections, how construed.

Nothing in sections 42-402 to 42-407 shall be construed to constitute a legal separation of a prior legal marriage according to the laws of this state wherein a license was secured and a ceremony performed by some person empowered by law to perform such marriage ceremony of any Indian of whole or mixed blood residing in the state.

Source: Laws 1913, c. 68, § 8, p. 203; R.S.1913, § 1614; C.S.1922, § 1563; C.S.1929, § 42-408; R.S.1943, § 42-408; Laws 1999, LB 8, § 2.

ARTICLE 5**MORTGAGE OR SALE OF REAL PROPERTY OF
MENTALLY INCOMPETENT SPOUSE**

Section
42-501. Mortgage; procedure for authorization; limitation.

Section

42-502. Complaint; verification; service; guardian ad litem; costs.

42-503. Decree.

42-504. Repealed. Laws 1961, c. 284, § 1.

42-501 Mortgage; procedure for authorization; limitation.

When either husband or wife is mentally incompetent and incapable of executing a mortgage relinquishing or encumbering his or her right to the homestead or any other real property of the other, the other may file a complaint in the district court of the county of his or her residence or of the county where the real estate to be encumbered is situated setting forth the facts and praying for an order authorizing the applicant or some other person to execute a mortgage and relinquish or encumber by such mortgage the interest of the mentally incompetent person in such homestead or other real estate. The court shall not authorize the execution of any mortgage on the homestead of the parties for an amount greater than is necessary to pay or redeem the lien of an existing mortgage on such homestead.

Source: Laws 1927, c. 66, § 1, p. 229; C.S.1929, § 42-501; Laws 1935, c. 93, § 1, p. 315; C.S.Supp.,1941, § 42-501; R.S.1943, § 42-501; Laws 1986, LB 1177, § 15; Laws 2004, LB 1207, § 33.

42-502 Complaint; verification; service; guardian ad litem; costs.

The complaint shall be verified by the plaintiff and filed in the office of the clerk of the district court of the proper county. A copy thereof, with the notice of the time at which such application will be heard by the court, shall be served personally upon the mentally incompetent person in the same manner in which a summons is served at least ten days prior to the time fixed for such hearing. Upon completed service, the court shall appoint some responsible attorney thereof guardian ad litem for the person alleged to be mentally incompetent, who shall ascertain the propriety, good faith, and necessity of the prayer of the plaintiff and may resist the application by making any legal or equitable defense thereto. The guardian ad litem shall be allowed by the court a reasonable compensation to be paid as are the other costs.

Source: Laws 1927, c. 66, § 2, p. 229; C.S.1929, § 42-502; R.S.1943, § 42-502; Laws 1986, LB 1177, § 16; Laws 2004, LB 1207, § 34.

42-503 Decree.

Upon the hearing of the complaint, if the court is satisfied that it is made in good faith by the plaintiff, that he or she or some other person selected by the court is a proper person to exercise the power and make the mortgage, and that it is necessary and proper, the court shall enter a decree authorizing the execution of a mortgage for and in the name of such mentally incompetent husband or wife by the plaintiff or such other person as the court may appoint.

Source: Laws 1927, c. 66, § 3, p. 229; C.S.1929, § 42-503; R.S.1943, § 42-503; Laws 1986, LB 1177, § 17; Laws 2004, LB 1207, § 35.

42-504 Repealed. Laws 1961, c. 284, § 1.

**ARTICLE 6
COMMUNITY PROPERTY**

Section

- 42-601. Repealed. Laws 1949, c. 129, § 6.
- 42-602. Repealed. Laws 1949, c. 129, § 6.
- 42-603. Property acquired; presumption.
- 42-604. Repealed. Laws 1949, c. 129, § 6.
- 42-605. Repealed. Laws 1949, c. 129, § 6.
- 42-606. Repealed. Laws 1949, c. 129, § 6.
- 42-607. Repealed. Laws 1949, c. 129, § 6.
- 42-608. Repealed. Laws 1949, c. 129, § 6.
- 42-609. Repealed. Laws 1949, c. 129, § 6.
- 42-610. Repealed. Laws 1949, c. 129, § 6.
- 42-611. Repealed. Laws 1949, c. 129, § 6.
- 42-612. Repealed. Laws 1949, c. 129, § 6.
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- 42-614. Repealed. Laws 1949, c. 129, § 6.
- 42-615. Repealed. Laws 1949, c. 129, § 6.
- 42-616. Repealed. Laws 1949, c. 129, § 6.
- 42-617. Property acquired, definition.
- 42-618. Receipt, management, control, and disposition of property.
- 42-619. Claims; limitation; affidavit asserting ownership; filing and recording.
- 42-620. Severability.

42-601 Repealed. Laws 1949, c. 129, § 6.

42-602 Repealed. Laws 1949, c. 129, § 6.

42-603 Property acquired; presumption.

Property acquired, as defined in section 42-617, shall not be regarded as community property unless the contrary be satisfactorily proved.

Source: Laws 1947, c. 156, § 3, p. 427; Laws 1949, c. 129, § 2, p. 337.

Declaratory judgment seeking to declare Community Property parties and justiciable issues. *Miller v. Stolinski*, 149 Neb. 679, 32 N.W.2d 199 (1948).
Act unconstitutional was dismissed because of lack of proper

42-604 Repealed. Laws 1949, c. 129, § 6.

42-605 Repealed. Laws 1949, c. 129, § 6.

42-606 Repealed. Laws 1949, c. 129, § 6.

42-607 Repealed. Laws 1949, c. 129, § 6.

42-608 Repealed. Laws 1949, c. 129, § 6.

42-609 Repealed. Laws 1949, c. 129, § 6.

42-610 Repealed. Laws 1949, c. 129, § 6.

42-611 Repealed. Laws 1949, c. 129, § 6.

42-612 Repealed. Laws 1949, c. 129, § 6.

42-613 Repealed. Laws 1949, c. 129, § 6.

42-614 Repealed. Laws 1949, c. 129, § 6.

42-615 Repealed. Laws 1949, c. 129, § 6.

42-616 Repealed. Laws 1949, c. 129, § 6.

42-617 Property acquired, definition.

As used in sections 42-603 and 42-617 to 42-620, the words property acquired shall mean (1) all property acquired by either husband or wife, or both, during marriage, and on and after September 7, 1947, and prior to April 20, 1949, and (2) all property acquired after April 20, 1949, (a) by exchange for, (b) by the increase of, (c) with the proceeds of, or (d) with the income from, any property defined in subdivision (1) of this section.

Source: Laws 1949, c. 129, § 1, p. 337.

42-618 Receipt, management, control, and disposition of property.

Notwithstanding that any property may in fact be community property, a husband or wife shall have power to receive, manage, control, and dispose of or otherwise deal with property standing in his or her name or under his or her management or control, in such manner as he or she would be so entitled to deal therewith by law, had Chapter 156, Session Laws of Nebraska, 1947, never been enacted.

Source: Laws 1949, c. 129, § 3, p. 337.

42-619 Claims; limitation; affidavit asserting ownership; filing and recording.

The Legislature recognizes that many husbands and wives have failed to keep proper records; that community income and separate funds have been commingled; that property has been acquired by husband or wife on or after September 7, 1947, in many cases with separate funds; that to protect property rights against loss of evidence, it is necessary that claims that property acquired, as defined in section 42-617, was, or is, community property should be filed or recorded. Any claim or defense by either husband or wife or other person, in any action, proceeding, or controversy, that any property acquired, as defined in section 42-617, was or is community property, shall be barred one year from April 20, 1949, unless, within one year from April 20, 1949, an affidavit by either the husband or wife, or other interested person, asserting that the property therein described was or is community property has been filed or recorded as herein provided. In case of real estate, such affidavit shall be recorded in the office of the register of deeds of the county in which the real estate is situated; in case of stocks, the affidavit shall be filed with the corporation issuing the same; in case of bonds, notes, secured or unsecured, securities, or other evidences of indebtedness or other debts, the affidavit shall be delivered to the debtor; in case of life insurance, the affidavit shall be filed with the home office of the insurer; and in case of all other personal property the affidavit shall be filed with the county clerk of the county in which the husband resides or last resided in Nebraska. The filing or recording of an affidavit as provided in sections 42-603 and 42-617 to 42-620, shall not constitute notice to purchasers, mortgagees, pledgees, or assignees for value, that such property is claimed to be community property. This section shall not

apply to claims of any person in exclusive possession of property under claim of right, on April 20, 1949.

Source: Laws 1949, c. 129, § 4, p. 338.

42-620 Severability.

If, for any reason, any of the foregoing sections 42-603 and 42-617 to 42-619 or any part thereof are held to be invalid, the Legislature declares that it would have passed section 6 irrespective of the fact that such sections or any part thereof may be declared invalid.

Source: Laws 1949, c. 129, § 5, p. 339.

Note: Section 6, referred to in this section was a specific repeal of all sections of Chapter 156, Laws 1947, which was the act adopting a Community Property Law in Nebraska.

ARTICLE 7

UNIFORM INTERSTATE FAMILY SUPPORT ACT

(a) UNIFORM INTERSTATE FAMILY SUPPORT ACT

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42-755. Repealed. Laws 1971, LB 464, § 43.
42-756. Repealed. Laws 1971, LB 464, § 43.
42-757. Repealed. Laws 1971, LB 464, § 43.
42-758. Repealed. Laws 1971, LB 464, § 43.
42-759. Repealed. Laws 1971, LB 464, § 43.
42-760. Repealed. Laws 1971, LB 464, § 43.
42-761. Repealed. Laws 1971, LB 464, § 43.

HUSBAND AND WIFE

Section

(c) REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

**PART I
GENERAL PROVISIONS**

- 42-762. Repealed. Laws 1993, LB 500, § 61.
- 42-763. Repealed. Laws 1993, LB 500, § 61.
- 42-764. Repealed. Laws 1993, LB 500, § 61.
- 42-765. Repealed. Laws 1993, LB 500, § 61.

**PART II
CRIMINAL ENFORCEMENT**

- 42-766. Repealed. Laws 1993, LB 500, § 61.
- 42-767. Repealed. Laws 1993, LB 500, § 61.

**PART III
CIVIL ENFORCEMENT**

- 42-768. Repealed. Laws 1993, LB 500, § 61.
- 42-769. Repealed. Laws 1993, LB 500, § 61.
- 42-770. Repealed. Laws 1993, LB 500, § 61.
- 42-771. Repealed. Laws 1993, LB 500, § 61.
- 42-772. Repealed. Laws 1993, LB 500, § 61.
- 42-773. Repealed. Laws 1993, LB 500, § 61.
- 42-774. Repealed. Laws 1993, LB 500, § 61.
- 42-775. Repealed. Laws 1993, LB 500, § 61.
- 42-776. Repealed. Laws 1993, LB 500, § 61.
- 42-777. Repealed. Laws 1993, LB 500, § 61.
- 42-778. Repealed. Laws 1993, LB 500, § 61.
- 42-779. Repealed. Laws 1993, LB 500, § 61.
- 42-780. Repealed. Laws 1993, LB 500, § 61.
- 42-781. Repealed. Laws 1993, LB 500, § 61.
- 42-782. Repealed. Laws 1993, LB 500, § 61.
- 42-783. Repealed. Laws 1993, LB 500, § 61.
- 42-784. Repealed. Laws 1993, LB 500, § 61.
- 42-785. Repealed. Laws 1993, LB 500, § 61.
- 42-786. Repealed. Laws 1993, LB 500, § 61.
- 42-787. Repealed. Laws 1993, LB 500, § 61.
- 42-788. Repealed. Laws 1993, LB 500, § 61.
- 42-789. Repealed. Laws 1993, LB 500, § 61.
- 42-790. Repealed. Laws 1993, LB 500, § 61.
- 42-791. Repealed. Laws 1993, LB 500, § 61.
- 42-792. Repealed. Laws 1993, LB 500, § 61.
- 42-793. Repealed. Laws 1993, LB 500, § 61.
- 42-794. Repealed. Laws 1993, LB 500, § 61.
- 42-795. Repealed. Laws 1993, LB 500, § 61.

**PART IV
REGISTRATION OF FOREIGN SUPPORT ORDERS**

- 42-796. Repealed. Laws 1993, LB 500, § 61.
- 42-797. Repealed. Laws 1993, LB 500, § 61.
- 42-798. Repealed. Laws 1993, LB 500, § 61.
- 42-799. Repealed. Laws 1993, LB 500, § 61.
- 42-7,100. Repealed. Laws 1993, LB 500, § 61.
- 42-7,101. Repealed. Laws 1993, LB 500, § 61.
- 42-7,102. Repealed. Laws 1993, LB 500, § 61.
- 42-7,103. Repealed. Laws 1993, LB 500, § 61.
- 42-7,104. Repealed. Laws 1993, LB 500, § 61.
- 42-7,105. Pending action or proceeding under Revised Uniform Reciprocal Enforcement of Support Act; law applicable.

(a) UNIFORM INTERSTATE FAMILY SUPPORT ACT

PART I
GENERAL PROVISIONS**42-701 Act, how cited.**

Sections 42-701 to 42-751 shall be known and may be cited as the Uniform Interstate Family Support Act.

Source: Laws 1993, LB 500, § 1; Laws 1997, LB 727, § 1; Laws 2003, LB 148, § 43.

42-702 Definitions.

In the Uniform Interstate Family Support Act:

(1) Child means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) Child support order means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) Duty of support means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(4) Home state means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(5) Income includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

(6) Income withholding order means an order or other legal process directed to an obligor's employer or other payor, as defined by the Income Withholding for Child Support Act or sections 42-347 to 42-381, to withhold support from the income of the obligor.

(7) Initiating state means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under the Uniform Interstate Family Support Act or a law or procedure substantially similar to the act.

(8) Initiating tribunal means the authorized tribunal in an initiating state.

(9) Issuing state means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(10) Issuing tribunal means the tribunal that issues a support order or renders a judgment determining parentage.

(11) Law includes decisional and statutory law and rules and regulations having the force of law.

(12) Oblige means:

(i) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(ii) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or

(iii) An individual seeking a judgment determining parentage of the individual's child.

(13) Obligor means an individual, or the estate of a decedent:

(i) Who owes or is alleged to owe a duty of support;

(ii) Who is alleged but has not been adjudicated to be a parent of a child; or

(iii) Who is liable under a support order.

(14) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, instrumentality, public corporation, or any other legal or commercial entity.

(15) 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.

(16) Register means to record or file a support order or judgment determining parentage in the appropriate location for the recording or filing of foreign judgments generally or foreign support orders specifically.

(17) Registering tribunal means a tribunal in which a support order is registered.

(18) Responding state means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under the Uniform Interstate Family Support Act or a law or procedure substantially similar to the act.

(19) Responding tribunal means the authorized tribunal in a responding state.

(20) Spousal support order means a support order for a spouse or former spouse of the obligor.

(21) 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:

(i) An Indian tribe; and

(ii) A foreign country or political subdivision that:

(A) Has been declared to be a foreign reciprocating country or political subdivision under federal law;

(B) Has established a reciprocal arrangement for child support with this state as provided in section 42-721; or

(C) Has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under the Uniform Interstate Family Support Act.

(22) Support enforcement agency means a public official or agency authorized to seek:

- (i) Enforcement of support orders or laws relating to the duty of support;
- (ii) Establishment or modification of child support;
- (iii) Determination of parentage;
- (iv) Location of obligors or their assets; or
- (v) Determination of the controlling child support order.

(23) Support order means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a tribunal for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief.

(24) Tribunal means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

Source: Laws 1993, LB 500, § 2; Laws 1997, LB 727, § 2; Laws 2003, LB 148, § 44.

Cross References

Income Withholding for Child Support Act, see section 43-1701.

42-703 Tribunal of this state.

The district court is the tribunal of this state.

Source: Laws 1993, LB 500, § 3.

42-704 Remedies cumulative; applicability of act.

(a) Remedies provided by the Uniform Interstate Family Support Act are cumulative and do not affect the availability of remedies under other law, including the recognition of a support order of a foreign country or political subdivision on the basis of comity.

(b) The Uniform Interstate Family Support Act does not:

- (1) Provide the exclusive method of establishing or enforcing a support order under the law of this state; or
- (2) Grant a tribunal of this state jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under the act.

Source: Laws 1993, LB 500, § 4; Laws 2003, LB 148, § 45.

Under this section, a defendant has both common-law and statutory remedies available to contest the validity of an income withholding order issued by another state. *Harvey v. Harvey*, 6 Neb. App. 524, 575 N.W.2d 167 (1998).

PART II JURISDICTION

42-705 Basis for jurisdiction over nonresident.

(a) In a proceeding to establish or enforce a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

- (1) The individual is personally served with notice within this state;
- (2) The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

- (3) The individual resided with the child in this state;
- (4) The individual resided in this state and provided prenatal expenses or support for the child;
- (5) The child resides in this state as a result of the acts or directives of the individual;
- (6) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
- (7) The individual asserted parentage in this state pursuant to section 43-104.02, 71-628, 71-640.01, or 71-640.02 with the Department of Health and Human Services; or
- (8) There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(b) The basis of personal jurisdiction set forth in subsection (a) of this section or in any other law of this state shall not be used to acquire personal jurisdiction for a tribunal of this state to modify a child support order of another state unless the requirements of section 42-746 or 42-747.03 are met.

Source: Laws 1993, LB 500, § 5; Laws 1996, LB 1044, § 101; Laws 2003, LB 148, § 46; Laws 2007, LB296, § 60.

42-706 Continuing personal jurisdiction.

Personal jurisdiction acquired by a tribunal of this state in a proceeding under the Uniform Interstate Family Support Act or other law of this state relating to a support order continues as long as a tribunal of this state has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by sections 42-709, 42-710, and 42-713.02.

Source: Laws 1993, LB 500, § 6; Laws 2003, LB 148, § 47.

42-707 Initiating and responding tribunal of this state.

Under the Uniform Interstate Family Support Act, a tribunal of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

Source: Laws 1993, LB 500, § 7.

42-708 Simultaneous proceedings in another state.

(a) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state only if:

- (1) the petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;
- (2) the contesting party timely challenges the exercise of jurisdiction in the other state; and
- (3) if relevant, this state is the home state of the child.

(b) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if:

- (1) the petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;
- (2) the contesting party timely challenges the exercise of jurisdiction in this state; and
- (3) if relevant, the other state is the home state of the child.

Source: Laws 1993, LB 500, § 8.

42-709 Continuing, exclusive jurisdiction.

(a) A tribunal of this state that has issued a child support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child support order if the order is the controlling order and:

- (1) at the time of the filing of a request for modification this state is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or
- (2) even if this state is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.

(b) A tribunal of this state that has issued a child support order consistent with the law of this state shall not exercise continuing, exclusive jurisdiction to modify the order if:

- (1) all of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or
- (2) its order is not the controlling order.

(c) If a tribunal of another state has issued a child support order pursuant to the Uniform Interstate Family Support Act or a law substantially similar to the act which modifies a child support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

(d) A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

Source: Laws 1993, LB 500, § 9; Laws 1997, LB 727, § 3; Laws 2003, LB 148, § 48.

Under this section as it existed prior to enactment of Laws 2003, LB 148, an issuing state loses continuing, exclusive jurisdiction to modify child support provisions of a divorce decree

once both parents and all of their children move away from the issuing state. *Groseth v. Groseth*, 257 Neb. 525, 600 N.W.2d 159 (1999).

42-710 Enforcement of support order by tribunal having continuing jurisdiction.

(a) A tribunal of this state that has issued a child support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:

(1) the order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act; or

(2) a money judgment for arrears of support and interest on the order accrued before a determination that an order of another state is the controlling order.

(b) A tribunal of this state having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.

Source: Laws 1993, LB 500, § 10; Laws 2003, LB 148, § 49.

42-711 Recognition of controlling child support order.

(a) If a proceeding is brought under the Uniform Interstate Family Support Act and only one tribunal has issued a child support order, the order of that tribunal controls.

(b) If a proceeding is brought under the Uniform Interstate Family Support Act and two or more child support orders have been issued by tribunals of this state or another state with regard to the same obligor and the same child, a tribunal of this state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls:

(1) If only one of the tribunals would have continuing, exclusive jurisdiction under the act, the order of that tribunal controls and must be so recognized.

(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under the act, an order issued by a tribunal in the current home state of the child controls; but if an order has not been issued in the current home state of the child, the order most recently issued controls.

(3) If none of the tribunals would have continuing, exclusive jurisdiction under the act, the tribunal of this state shall issue a child support order, which controls.

(c) If two or more child support orders have been issued for the same obligor and the same child, upon request of a party who is an individual or a support enforcement agency, a tribunal of this state having personal jurisdiction over both the obligor and the individual obligee shall determine which order controls under subsection (b) of this section. The request may be filed with a registration for enforcement or registration for modification pursuant to sections 42-736 to 42-747.03 or may be filed as a separate proceeding.

(d) A request to determine which is the controlling order shall be accompanied by a certified copy of every child support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(e) The tribunal that issued the controlling order under subsection (a), (b), or (c) of this section has continuing jurisdiction to the extent provided under section 42-709 or 42-710.

(f) A tribunal of this state that determines by order which is the controlling order under subdivision (b)(1) or (b)(2) or subsection (c) of this section or that issues a new controlling order under subdivision (b)(3) of this section shall state in that order:

(1) the basis upon which the tribunal made its determination;

(2) the amount of prospective support, if any; and

(3) the total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by section 42-713.

(g) Within thirty days after issuance of an order determining which is the controlling order, the party obtaining the order shall file a certified copy of it in each tribunal that issued or registered an earlier order of child support. A party or support enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

(h) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section shall be recognized in proceedings under the Uniform Interstate Family Support Act.

Source: Laws 1993, LB 500, § 11; Laws 1997, LB 727, § 4; Laws 2003, LB 148, § 50.

42-712 Child support orders for two or more obligees.

In responding to registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state, a tribunal of this state shall enforce those orders in the same manner as if the orders had been issued by a tribunal of this state.

Source: Laws 1993, LB 500, § 12; Laws 2003, LB 148, § 51.

42-713 Credits for payments.

A tribunal of this state shall credit amounts collected for a particular period pursuant to any child support order against the amounts owed for the same period under any other child support order for support of the same child issued by a tribunal of this or another state.

Source: Laws 1993, LB 500, § 13; Laws 2003, LB 148, § 52.

42-713.01 Tribunal of this state; contacts with tribunal of another state; limitations.

A tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding under the Uniform Interstate Family Support Act or under other law of this state relating to a support order or recognizing a support order of a foreign country or political subdivision on the basis of comity may receive evidence from another state pursuant to section 42-729, communicate with a tribunal of another state pursuant to section 42-730, and obtain discovery through a tribunal of another state pursuant to section 42-731. In all other respects, sections 42-714 to 42-748 do not apply and the tribunal shall apply the procedural and substantive law of this state.

Source: Laws 2003, LB 148, § 53.

42-713.02 Tribunal of this state; spousal support order; powers.

(a) A tribunal of this state issuing a spousal support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal support order throughout the existence of the support obligation.

(b) A tribunal of this state shall not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

(c) A tribunal of this state that has continuing, exclusive jurisdiction over a spousal support order may serve as:

(1) an initiating tribunal to request a tribunal of another state to enforce the spousal support order issued in this state; or

(2) a responding tribunal to enforce or modify its own spousal support order.

Source: Laws 2003, LB 148, § 54.

PART III

CIVIL PROVISIONS OF GENERAL APPLICATION

42-714 Proceedings under the Uniform Interstate Family Support Act.

(a) Except as otherwise provided in the Uniform Interstate Family Support Act, sections 42-714 to 42-732 apply to all proceedings under the act.

(b) An individual petitioner or a support enforcement agency may initiate a proceeding authorized under the act by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the respondent.

Source: Laws 1993, LB 500, § 14; Laws 1997, LB 727, § 5; Laws 2003, LB 148, § 55.

42-715 Action by minor parent.

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

Source: Laws 1993, LB 500, § 15.

42-716 Application of law of this state.

Except as otherwise provided in the Uniform Interstate Family Support Act, a responding tribunal of this state:

(1) shall apply the procedural and substantive law generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and

(2) shall determine the duty of support and the amount payable in accordance with the support guidelines established under section 42-364.16.

Source: Laws 1993, LB 500, § 16; Laws 2003, LB 148, § 56.

42-717 Duties of initiating tribunal.

(a) Upon the filing of a petition authorized by the Uniform Interstate Family Support Act, an initiating tribunal of this state shall forward the petition and its accompanying documents:

(1) to the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) if the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If requested by the responding tribunal, a tribunal of this state shall issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign country or political subdivision, upon request the tribunal shall specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rate as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding state.

Source: Laws 1993, LB 500, § 17; Laws 1997, LB 727, § 6; Laws 2003, LB 148, § 57.

42-718 Duties and powers of responding tribunal.

(a) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to subsection (b) of section 42-714, it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(b) A responding tribunal of this state, to the extent not prohibited by other law, may do one or more of the following:

(1) issue or enforce a support order, modify a child support order, determine the controlling child support order, or determine parentage;

(2) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) order income withholding;

(4) determine the amount of any arrearages, and specify a method of payment;

(5) enforce orders by civil or criminal contempt, or both;

(6) set aside property for satisfaction of the support order;

(7) place liens and order execution on the obligor's property;

(8) order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;

(9) issue a *capias* for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the *capias* in any local and state computer systems for criminal warrants;

(10) order the obligor to seek appropriate employment by specified methods;

(11) award reasonable attorney's fees and other fees and costs;

(12) issue an order releasing or subordinating a lien pursuant to section 42-371; and

(13) grant any other available remedy.

(c) A responding tribunal of this state shall include in a support order issued under the Uniform Interstate Family Support Act, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this state shall not condition the payment of a support order issued under the act upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this state issues an order under the act, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

(f) If requested to enforce a support order, arrearages, or judgment or modify a support order stated in a foreign currency, a responding tribunal of this state shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

Source: Laws 1993, LB 500, § 18; Laws 1997, LB 727, § 7; Laws 2003, LB 148, § 58.

42-719 Inappropriate tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of this state, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner where and when the pleading was sent.

Source: Laws 1993, LB 500, § 19; Laws 1997, LB 727, § 8; Laws 2003, LB 148, § 59.

42-720 Duties of support enforcement agency.

(a) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under the Uniform Interstate Family Support Act.

(b) A support enforcement agency of this state that is providing services to the petitioner shall:

(1) take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;

(2) request an appropriate tribunal to set a date, time, and place for a hearing;

(3) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(4) within five days, exclusive of nonjudicial days, after receipt of a written notice in a record from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;

(5) within five days, exclusive of nonjudicial days, after receipt of a written communication in a record from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

(6) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) A support enforcement agency of this state that requests registration of a child support order in this state for enforcement or for modification shall make reasonable efforts:

(1) to ensure that the order to be registered is the controlling order; or

(2) if two or more child support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

(d) A support enforcement agency of this state that requests registration and enforcement of a support order, arrearages, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

(e) A support enforcement agency of this state shall request a tribunal of this state to issue a child support order and an income withholding order that redirect payment of current support, arrearages, and interest if requested to do so by a support enforcement agency of another state pursuant to section 42-732.

(f) The act does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

Source: Laws 1993, LB 500, § 20; Laws 1997, LB 727, § 9; Laws 2003, LB 148, § 60; Laws 2003, LB 760, § 15.

42-721 Attorney General; powers.

(a) If the Attorney General determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the Attorney General may order the agency to perform its duties under the Uniform Interstate Family Support Act or may provide those services directly to the individual.

(b) The Attorney General may determine that a foreign country or political subdivision has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination.

Source: Laws 1993, LB 500, § 21; Laws 2003, LB 148, § 61.

42-722 Private counsel.

An individual may employ private counsel to represent the individual in proceedings authorized by the Uniform Interstate Family Support Act.

Source: Laws 1993, LB 500, § 22.

42-723 Duties of state information agency.

(a) The Department of Health and Human Services is the state information agency under the Uniform Interstate Family Support Act.

(b) The state information agency shall:

(1) compile and maintain a current list, including addresses, of the tribunals in this state which have jurisdiction under the act and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(2) maintain a register of names and addresses of tribunals and support enforcement agencies received from other states;

(3) forward to the appropriate tribunal in the county in this state in which the individual obligee or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under the act

received from an initiating tribunal or the state information agency of the initiating state; and

(4) obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

Source: Laws 1993, LB 500, § 23; Laws 1996, LB 1044, § 102; Laws 1997, LB 307, § 18; Laws 2003, LB 148, § 62.

42-724 Pleadings and accompanying documents.

(a) In a proceeding under the Uniform Interstate Family Support Act, a petitioner seeking to establish a support order, to determine parentage, or to register and modify a support order of another state shall file a petition. Unless otherwise ordered under section 42-725, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee or the parent and alleged parent, and the name, sex, residential address, social security number, and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the petition shall be accompanied by a copy of any support order known to have been issued by another tribunal. The accompanying documents may include any other information that may assist in locating or identifying the respondent.

(b) The petition shall specify the relief sought. The petition and accompanying documents shall conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

Source: Laws 1993, LB 500, § 24; Laws 2003, LB 148, § 63.

42-725 Nondisclosure of information in exceptional circumstances.

If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information shall be sealed and shall not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.

Source: Laws 1993, LB 500, § 25; Laws 2003, LB 148, § 64.

42-726 Costs and fees.

(a) The petitioner shall not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal shall not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney's fees may be taxed as costs, and may

be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under sections 42-736 to 42-747.03, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

Source: Laws 1993, LB 500, § 26; Laws 2003, LB 148, § 65.

42-727 Limited immunity of petitioner.

(a) Participation by a petitioner in a proceeding under the Uniform Interstate Family Support Act before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(b) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under the Uniform Interstate Family Support Act.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under the act committed by a party while present in this state to participate in the proceeding.

Source: Laws 1993, LB 500, § 27; Laws 2003, LB 148, § 66.

42-728 Nonparentage as defense.

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under the Uniform Interstate Family Support Act.

Source: Laws 1993, LB 500, § 28.

42-729 Special rules of evidence and procedure.

(a) The physical presence of a nonresident party who is an individual in a tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.

(b) An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing in another state.

(c) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.

(d) Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(e) Documentary evidence transmitted from another state to a tribunal of this state by telephone, telecopier, or other means that do not provide an original record shall not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under the Uniform Interstate Family Support Act, a tribunal of this state shall permit a party or witness residing in another state to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under the act.

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under the act.

(j) A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

Source: Laws 1993, LB 500, § 29; Laws 2003, LB 148, § 67.

42-730 Communications between tribunals.

A tribunal of this state may communicate with a tribunal of another state, a foreign country, or a political subdivision by a record or by telephone or other means to obtain information concerning the laws, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state, foreign country, or political subdivision. A tribunal of this state may furnish similar information by similar means to a tribunal of another state, a foreign country, or a political subdivision.

Source: Laws 1993, LB 500, § 30; Laws 2003, LB 148, § 68.

42-731 Assistance with discovery.

A tribunal of this state may:

- (1) request a tribunal of another state to assist in obtaining discovery; and
- (2) upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

Source: Laws 1993, LB 500, § 31.

42-732 Receipt and disbursement of payments.

(a) A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

(b) If neither the obligor, nor the individual obligee, nor the child resides in this state, upon request from the support enforcement agency of this state or another state, the support enforcement agency of this state or a tribunal of this state shall:

(1) direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and

(2) issue and send to the obligor's employer a conforming income withholding order or an administrative notice of change of payee, reflecting the redirected payments.

(c) The support enforcement agency of this state receiving redirected payments from another state pursuant to a law similar to subsection (b) of this section shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

Source: Laws 1993, LB 500, § 32; Laws 2003, LB 148, § 69.

PART IV ESTABLISHMENT OF SUPPORT ORDER

42-733 Petition to establish support order.

(a) If a support order entitled to recognition under the Uniform Interstate Family Support Act has not been issued, a responding tribunal of this state may issue a support order if:

- (1) the individual seeking the order resides in another state; or
- (2) the support enforcement agency seeking the order is located in another state.

(b) The tribunal may issue a temporary child support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

- (1) a presumed father of the child;
- (2) petitioning to have his paternity adjudicated;
- (3) identified as the father of the child through genetic testing;
- (4) an alleged father who has declined to submit to genetic testing;
- (5) shown by clear and convincing evidence to be the father of the child;
- (6) the father of a child whose paternity is established either by judicial proceeding or acknowledgment under sections 43-1401 to 43-1418;
- (7) the mother of the child; or
- (8) an individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

(c) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to section 42-718.

Source: Laws 1993, LB 500, § 33; Laws 2003, LB 148, § 70.

This section applies to situations where an existing support order which has been entered by one state court (the initiating tribunal) is sought to be enforced (recognition) in another state court (the responding tribunal). Willers ex rel. Powell v. Willers, 255 Neb. 769, 587 N.W.2d 390 (1998).

PART V ENFORCEMENT OF ORDER OF ANOTHER STATE WITHOUT REGISTRATION

42-734 Employer's receipt of income withholding order of another state.

An income withholding order issued in another state may be sent by or on behalf of the obligee or by the support enforcement agency to the person defined as the obligor's employer under the Income Withholding for Child Support Act or sections 42-347 to 42-381 without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

Source: Laws 1993, LB 500, § 34; Laws 1997, LB 727, § 10; Laws 2003, LB 148, § 71.

Cross References

Income Withholding for Child Support Act, see section 43-1701.

This section allowed the plaintiff to send a Wisconsin child support order to the defendant's Nebraska employer without first filing a petition or registering the order with a tribunal of Nebraska, and the employer was required to provide the defen-

dant with a copy of the order and to distribute funds as directed by the Wisconsin order. *Harvey v. Harvey*, 6 Neb. App. 524, 575 N.W.2d 167 (1998).

42-734.01 Employer's compliance with income withholding order of another state.

(a) Upon receipt of an income withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state.

(c) Except as otherwise provided in subsection (d) of this section and section 42-734.02, the employer shall withhold and distribute the funds as directed in the withholding order by complying with the terms of the order which specify:

(1) the duration and amount of periodic payments of current child support, stated as a sum certain;

(2) the person designated to receive payments and the address to which the payments are to be forwarded;

(3) medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(4) the amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(5) the amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(d) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(1) the employer's fee for processing an income withholding order;

(2) the maximum amount permitted to be withheld from the obligor's income; and

(3) the times within which the employer shall implement the withholding order and forward the child support payment.

Source: Laws 1997, LB 727, § 11; Laws 2003, LB 148, § 72.

42-734.02 Compliance with two or more income withholding orders.

If an obligor's employer receives two or more income withholding orders with respect to the earnings of the same obligor, the employer satisfies the

terms of the orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for two or more child support obligees.

Source: Laws 1997, LB 727, § 12; Laws 2003, LB 148, § 73.

42-734.03 Immunity from civil liability.

An employer who complies with an income withholding order issued in another state in accordance with sections 42-734 to 42-735 is not subject to civil liability to any individual or agency with regard to the employer's withholding of child support from the obligor's income.

Source: Laws 1997, LB 727, § 13.

42-734.04 Penalties for noncompliance.

An employer who willfully fails to comply with an income withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

Source: Laws 1997, LB 727, § 14.

42-734.05 Contest by obligor.

(a) An obligor may contest the validity or enforcement of an income withholding order issued in another state and received directly by an employer in this state by registering the order in a tribunal of this state and filing a contest to that order as provided in sections 42-736 to 42-747.03 or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this state.

(b) The obligor shall give notice of the contest to:

- (1) a support enforcement agency providing services to the obligee;
- (2) each employer that has directly received an income withholding order relating to the obligor; and
- (3) the person designated to receive payments in the income withholding order or if no person is designated, to the obligee.

Source: Laws 1997, LB 727, § 15; Laws 2003, LB 148, § 74.

42-735 Administrative enforcement of orders.

(a) A party or support enforcement agency seeking to enforce a support order or an income withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this state.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to the Uniform Interstate Family Support Act.

Source: Laws 1993, LB 500, § 35; Laws 2003, LB 148, § 75.

PART VI
ENFORCEMENT AND MODIFICATION OF SUPPORT
ORDER AFTER REGISTRATION

42-736 Registration of order for enforcement.

A support order or an income withholding order issued by a tribunal of another state may be registered in this state for enforcement.

Source: Laws 1993, LB 500, § 36.

42-737 Procedure to register order for enforcement.

(a) A support order or an income withholding order of another state may be registered in this state by sending the following documents and information to the appropriate tribunal in this state:

(1) a letter of transmittal to the tribunal requesting registration and enforcement;

(2) two copies, including one certified copy, of the order to be registered, including any modification of the order;

(3) a sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(4) the name of the obligor and, if known:

(i) the obligor's address and social security number;

(ii) the name and address of the obligor's employer or other payor and any other source of income of the obligor; and

(iii) a description and the location of property of the obligor in this state not exempt from execution; and

(5) except as otherwise provided in section 42-725, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.

(c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading shall specify the grounds for the remedy sought.

(d) If two or more orders are in effect, the person requesting registration shall:

(1) furnish to the tribunal a certified copy of every support order asserted to be in effect in addition to the documents specified in this section;

(2) specify the order alleged to be the controlling order, if any; and

(3) specify the amount of consolidated arrears, if any.

(e) A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

Source: Laws 1993, LB 500, § 37; Laws 2003, LB 148, § 76.

42-738 Effect of registration for enforcement.

(a) A support order or income withholding order issued in another state is registered when the order is filed in the registering tribunal of this state.

(b) A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(c) Except as otherwise provided in sections 42-736 to 42-747.03, a tribunal of this state shall recognize and enforce, but shall not modify, a registered order if the issuing tribunal had jurisdiction.

Source: Laws 1993, LB 500, § 38; Laws 2003, LB 148, § 77.

42-739 Choice of law.

(a) Except as otherwise provided in subsection (d) of this section, the law of the issuing state governs:

(1) the nature, extent, amount, and duration of current payments under a registered support order;

(2) the computation and payment of arrearages and accrual of interest on the arrearages under the support order; and

(3) the existence and satisfaction of other obligations under the support order.

(b) In a proceeding for arrearages under a registered support order, the statute of limitation of this state or of the issuing state, whichever is longer, applies.

(c) A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrearages and interest due on a support order of another state registered in this state.

(d) After a tribunal of this or another state determines which is the controlling order and issues an order consolidating arrearages, if any, a tribunal of this state shall prospectively apply the law of the state issuing the controlling order, including its law on interest on arrearages, on current and future support, and on consolidated arrearages.

Source: Laws 1993, LB 500, § 39; Laws 2003, LB 148, § 78.

Under this section and section 42-746, a responding state becomes an issuing state when it assumes continuing, exclusive jurisdiction to modify a foreign child support order and must apply its own substantive law to the modification. Under this section, the substantive law of an issuing state applies to petitions filed in a responding state to enforce the existing child

support orders of the issuing state; at the same time, the substantive law of the issuing state does not apply to petitions filed in a responding state to modify the existing child support orders of the issuing state. *Groseth v. Groseth*, 257 Neb. 525, 600 N.W.2d 159 (1999).

42-740 Notice of registration of order.

(a) When a support order or income withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. The notice shall be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) A notice shall inform the nonregistering party:

(1) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(2) that a hearing to contest the validity or enforcement of the registered order shall be requested within twenty days after notice;

(3) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and

(4) of the amount of any alleged arrearages.

(c) If the registering party asserts that two or more orders are in effect, a notice shall also:

(1) identify the two or more orders and the order alleged by the registering person to be the controlling order and the consolidated arrearages, if any;

(2) notify the nonregistering party of the right to a determination of which is the controlling order;

(3) state that the procedures provided in subsection (b) of this section apply to the determination of which is the controlling order; and

(4) state that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

(d) Upon registration of an income withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to the Income Withholding for Child Support Act or sections 42-347 to 42-381.

Source: Laws 1993, LB 500, § 40; Laws 1997, LB 727, § 16; Laws 2003, LB 148, § 79.

Cross References

Income Withholding for Child Support Act, see section 43-1701.

42-741 Procedure to contest validity or enforcement of registered order.

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within twenty days after notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 42-742.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

Source: Laws 1993, LB 500, § 41; Laws 1997, LB 727, § 17.

42-742 Contest of registration or enforcement.

(a) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(1) the issuing tribunal lacked personal jurisdiction over the contesting party;

(2) the order was obtained by fraud;

(3) the order has been vacated, suspended, or modified by a later order;

- (4) the issuing tribunal has stayed the order pending appeal;
- (5) there is a defense under the law of this state to the remedy sought;
- (6) full or partial payment has been made;
- (7) the statute of limitation under section 42-739 precludes enforcement of some or all of the alleged arrearages; or
- (8) the alleged controlling order is not the controlling order.

(b) If a party presents evidence establishing a full or partial defense under subsection (a) of this section, a tribunal shall stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.

(c) If the contesting party does not establish a defense under such subsection to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

Source: Laws 1993, LB 500, § 42; Laws 2003, LB 148, § 80.

42-743 Confirmed order.

Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

Source: Laws 1993, LB 500, § 43.

42-744 Procedure to register child support order of another state for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in sections 42-736 to 42-739 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

Source: Laws 1993, LB 500, § 44.

42-745 Effect of registration for modification.

A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered order shall be modified only if the requirements of section 42-746, 42-747.01, or 42-747.03 have been met.

Source: Laws 1993, LB 500, § 45; Laws 2003, LB 148, § 81.

42-746 Modification of child support order of another state.

(a) If section 42-747.01 does not apply, except as otherwise provided in section 42-747.03, upon petition a tribunal of this state may modify a child support order issued in another state which is registered in this state, if after notice and hearing the tribunal finds that:

- (1) the following requirements are met:

(i) neither the child, nor the individual obligee, nor the obligor resides in the issuing state;

(ii) a petitioner who is a nonresident of this state seeks modification; and

(iii) the respondent is subject to the personal jurisdiction of the tribunal of this state; or

(2) this state is the state of residence of the child, or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state, and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(c) Except as otherwise provided in section 42-747.03, a tribunal of this state shall not modify any aspect of a child support order that cannot be modified under the law of the issuing state, including the duration of the obligation of support. If two or more tribunals have issued child support orders for the same obligor and the same child, the order that controls under section 42-711 establishes the aspects of the support order which are nonmodifiable.

(d) In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.

(e) On issuance of an order by a tribunal of this state modifying a child support order issued in another state, the tribunal of this state becomes the tribunal having continuing, exclusive jurisdiction.

Source: Laws 1993, LB 500, § 46; Laws 1997, LB 727, § 18; Laws 2003, LB 148, § 82.

Under this section and section 42-739, a responding state becomes an issuing state when it assumes continuing, exclusive jurisdiction to modify a foreign child support order and must apply its own substantive law to the modification. Under this section, a responding state acquires jurisdiction to modify the child support provisions of a foreign divorce decree once the

following three conditions are met: (1) Both the parents and the children have moved away from the issuing state; (2) one of the parents, who is a nonresident of the responding state, seeks modification in the responding state, and (3) the other parent becomes subject to the personal jurisdiction of the responding state. *Groseth v. Groseth*, 257 Neb. 525, 600 N.W.2d 159 (1999).

42-747 Recognition of order modified in another state; enforcement.

If a child support order issued by a tribunal of this state is modified by a tribunal of another state which assumed jurisdiction pursuant to the Uniform Interstate Family Support Act, a tribunal of this state, upon request, except as otherwise provided in the act:

(1) may enforce its order that was modified only as to arrearages and interest accruing before the modification;

(2) may provide appropriate relief for violations of its order which occurred before the effective date of the modification; and

(3) shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

Source: Laws 1993, LB 500, § 47; Laws 1997, LB 727, § 19; Laws 2003, LB 148, § 83.

42-747.01 Jurisdiction to modify child support order of another state when individual parties reside in this state.

(a) If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of this state exercising jurisdiction under this section shall apply the provisions of sections 42-701 to 42-713.02 and 42-736 to 42-747.03 and the procedural and substantive law of this state to the enforcement or modification proceeding. Sections 42-714 to 42-735 and 42-748 to 42-750 do not apply.

Source: Laws 1997, LB 727, § 20; Laws 2003, LB 148, § 84.

42-747.02 Notice to issuing tribunal of modification.

Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

Source: Laws 1997, LB 727, § 21.

42-747.03 Jurisdiction to modify foreign child support order.

(a) If a foreign country or political subdivision that is a state will not or cannot modify its order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal whether or not the consent to modification of a child support order otherwise required of the individual pursuant to section 42-746 has been given or whether the individual seeking modification is a resident of this state or of the foreign country or political subdivision.

(b) An order issued pursuant to this section is the controlling order.

Source: Laws 2003, LB 148, § 85.

PART VII
DETERMINATION OF PARENTAGE

42-748 Proceeding to determine parentage.

A court of this state authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage brought under the Uniform Interstate Family Support Act or a law or procedure substantially similar to the act.

Source: Laws 1993, LB 500, § 48; Laws 1994, LB 1224, § 48; Laws 1997, LB 727, § 22; Laws 2003, LB 148, § 86.

PART VIII
INTERSTATE RENDITION

42-749 Grounds for rendition.

(a) For purposes of sections 42-749 and 42-750, Governor includes an individual performing the functions of Governor or the executive authority of a state covered by the Uniform Interstate Family Support Act.

(b) The Governor of this state may:

(1) demand that the Governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or

(2) on the demand of the Governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with the act applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

Source: Laws 1993, LB 500, § 49; Laws 2003, LB 148, § 87.

42-750 Conditions of rendition.

(a) Before making a demand that the Governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the Governor of this state may require a prosecutor of this state to demonstrate that at least sixty days previously the obligee had initiated proceedings for support pursuant to the Uniform Interstate Family Support Act or that the proceeding would be of no avail.

(b) If, under the Uniform Interstate Family Support Act or a law substantially similar to the act, the Governor of another state makes a demand that the Governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the Governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the Governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the Governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the Governor may decline to honor the demand if the individual is complying with the support order.

Source: Laws 1993, LB 500, § 50; Laws 2003, LB 148, § 88.

PART IX MISCELLANEOUS PROVISIONS

42-751 Uniformity of application and construction.

In applying and construing the Uniform Interstate Family Support Act, consideration shall be given to the need to provide uniformity of the law with respect to the subject matter of the act among states that enact it.

Source: Laws 1993, LB 500, § 51; Laws 2003, LB 148, § 89.

The general purpose of the Uniform Interstate Family Support Act, according to an express provision in this section, is to make uniform the law with respect to the model act among states

enacting it. *Groseth v. Groseth*, 257 Neb. 525, 600 N.W.2d 159 (1999).

(b) MISCELLANEOUS

- 42-752 Repealed. Laws 1971, LB 464, § 43.
- 42-753 Repealed. Laws 1971, LB 464, § 43.
- 42-754 Repealed. Laws 1971, LB 464, § 43.
- 42-755 Repealed. Laws 1971, LB 464, § 43.
- 42-756 Repealed. Laws 1971, LB 464, § 43.
- 42-757 Repealed. Laws 1971, LB 464, § 43.
- 42-758 Repealed. Laws 1971, LB 464, § 43.
- 42-759 Repealed. Laws 1971, LB 464, § 43.
- 42-760 Repealed. Laws 1971, LB 464, § 43.
- 42-761 Repealed. Laws 1971, LB 464, § 43.

(c) REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

PART I
GENERAL PROVISIONS

- 42-762 Repealed. Laws 1993, LB 500, § 61.
- 42-763 Repealed. Laws 1993, LB 500, § 61.
- 42-764 Repealed. Laws 1993, LB 500, § 61.
- 42-765 Repealed. Laws 1993, LB 500, § 61.

PART II
CRIMINAL ENFORCEMENT

- 42-766 Repealed. Laws 1993, LB 500, § 61.
- 42-767 Repealed. Laws 1993, LB 500, § 61.

PART III
CIVIL ENFORCEMENT

- 42-768 Repealed. Laws 1993, LB 500, § 61.
- 42-769 Repealed. Laws 1993, LB 500, § 61.
- 42-770 Repealed. Laws 1993, LB 500, § 61.
- 42-771 Repealed. Laws 1993, LB 500, § 61.
- 42-772 Repealed. Laws 1993, LB 500, § 61.
- 42-773 Repealed. Laws 1993, LB 500, § 61.

42-774 Repealed. Laws 1993, LB 500, § 61.

42-775 Repealed. Laws 1993, LB 500, § 61.

42-776 Repealed. Laws 1993, LB 500, § 61.

42-777 Repealed. Laws 1993, LB 500, § 61.

42-778 Repealed. Laws 1993, LB 500, § 61.

42-779 Repealed. Laws 1993, LB 500, § 61.

42-780 Repealed. Laws 1993, LB 500, § 61.

42-781 Repealed. Laws 1993, LB 500, § 61.

42-782 Repealed. Laws 1993, LB 500, § 61.

42-783 Repealed. Laws 1993, LB 500, § 61.

42-784 Repealed. Laws 1993, LB 500, § 61.

42-785 Repealed. Laws 1993, LB 500, § 61.

42-786 Repealed. Laws 1993, LB 500, § 61.

42-787 Repealed. Laws 1993, LB 500, § 61.

42-788 Repealed. Laws 1993, LB 500, § 61.

42-789 Repealed. Laws 1993, LB 500, § 61.

42-790 Repealed. Laws 1993, LB 500, § 61.

42-791 Repealed. Laws 1993, LB 500, § 61.

42-792 Repealed. Laws 1993, LB 500, § 61.

42-793 Repealed. Laws 1993, LB 500, § 61.

42-794 Repealed. Laws 1993, LB 500, § 61.

42-795 Repealed. Laws 1993, LB 500, § 61.

PART IV

REGISTRATION OF FOREIGN SUPPORT ORDERS

42-796 Repealed. Laws 1993, LB 500, § 61.

42-797 Repealed. Laws 1993, LB 500, § 61.

42-798 Repealed. Laws 1993, LB 500, § 61.

42-799 Repealed. Laws 1993, LB 500, § 61.

42-7,100 Repealed. Laws 1993, LB 500, § 61.

42-7,101 Repealed. Laws 1993, LB 500, § 61.

42-7,102 Repealed. Laws 1993, LB 500, § 61.

42-7,103 Repealed. Laws 1993, LB 500, § 61.

42-7,104 Repealed. Laws 1993, LB 500, § 61.

42-7,105 Pending action or proceeding under Revised Uniform Reciprocal Enforcement of Support Act; law applicable.

Any action or proceeding under the Revised Uniform Reciprocal Enforcement of Support Act pending on January 1, 1994, shall continue under the provisions of such act until the court rules on any pending action or proceeding.

Source: Laws 1993, LB 500, § 57.

ARTICLE 8

CONCILIATION COURT

Section

- 42-801. Purposes of sections.
- 42-802. Act, how cited.
- 42-803. Applicability of law.
- 42-804. County court and district court; jurisdiction.
- 42-805. Designation of judge.
- 42-806. Transfer of case.
- 42-807. Acting judge; appointment.
- 42-808. Counselor of conciliation; counties with 250,000 inhabitants or more; personnel; appointment; powers; compensation.
- 42-809. Counselor of conciliation; counties with less than 250,000 inhabitants; personnel; appointment; compensation.
- 42-810. Hearings; conferences; files; confidentiality.
- 42-811. Controversy between spouses; jurisdiction of court.
- 42-812. Petition; filing; effect.
- 42-813. Petition; caption.
- 42-814. Petition; contents.
- 42-815. Forms; furnished by county; petitions; complaints; refer to court.
- 42-816. Fees prohibited.
- 42-817. Petition; hearing; notice; citation; compel attendance of witnesses.
- 42-818. Hearing; time; place; objection; effect.
- 42-819. Hearing; procedure.
- 42-820. Hearing; orders; effect; reconciliation agreement.
- 42-821. Petition for conciliation; limitation on certain actions; order for temporary custody, child support, and alimony; authorized.
- 42-822. Divorce, annulment, or separate maintenance; petition; minor child; transfer to conciliation court.
- 42-823. Application for proceedings; minor child not involved; jurisdiction.

42-801 Purposes of sections.

The purposes of sections 42-801 to 42-823 are to protect the rights of children and to promote the public welfare by preserving, promoting, and protecting family life and the institution of matrimony, and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies.

Source: Laws 1965, c. 228, § 1, p. 654.

42-802 Act, how cited.

Sections 42-801 to 42-823 may be cited as the Conciliation Court Law.

Source: Laws 1965, c. 228, § 2, p. 654.

42-803 Applicability of law.

The provisions of the Conciliation Court Law shall be applicable only in counties in which the county court and the district court determines that the social conditions in the county and the number of domestic relations cases in the courts render the procedures provided in such law necessary to the full and proper consideration of such cases and the effectuation of the purposes of such law. Such determination shall be made annually in the month of December.

Source: Laws 1965, c. 228, § 3, p. 654; Laws 1997, LB 229, § 22.

The Conciliation Court Law is not applicable in counties in which the district court has failed to find the procedures therein provided for to be necessary. *Condrey v. Condrey*, 190 Neb. 513, 209 N.W.2d 357 (1973).

42-804 County court and district court; jurisdiction.

Each county court and district court shall exercise the jurisdiction conferred by the Conciliation Court Law and while sitting in the exercise of such jurisdiction shall be known and referred to as the conciliation court. All petitions and filings shall be made with the clerk of the district court and may be heard by the county court or the district court as provided in section 25-2740.

Source: Laws 1965, c. 228, § 4, p. 655; Laws 1997, LB 229, § 23.

42-805 Designation of judge.

In counties having more than one judge of the district court, the judges at their annual meeting shall designate at least one judge of the county court or district court to hear cases under the Conciliation Court Law. Such assignment may be exclusive or in conjunction with any other assignment. The judge or judges so designated shall hold as many sessions of the conciliation court as are necessary for the prompt disposition of the business before the court.

Source: Laws 1965, c. 228, § 5, p. 655; Laws 1997, LB 229, § 24.

42-806 Transfer of case.

The judge of the conciliation court may transfer any case before the conciliation court pursuant to the Conciliation Court Law to the presiding judge of the county court or to the presiding judge of the district court, as appropriate, for assignment for trial or other proceedings by another judge of the court, whenever in the opinion of the judge of the conciliation court such transfer is necessary to expedite the business of the conciliation court or to insure the prompt consideration of the case. When any case is so transferred, the judge to whom it is transferred shall act as the judge of the conciliation court in the matter.

Source: Laws 1965, c. 228, § 6, p. 655; Laws 1997, LB 229, § 25.

42-807 Acting judge; appointment.

The presiding judge of the court may appoint a judge of the court other than the judge of the conciliation court to act as judge of the conciliation court during any period when the judge of the conciliation court is on vacation, absent, or for any reason unable to perform his or her duties. Any judge so appointed shall have all of the powers and authority of a judge of the conciliation court in cases under the Conciliation Court Law.

Source: Laws 1965, c. 228, § 7, p. 655; Laws 1997, LB 229, § 26.

42-808 Counselor of conciliation; counties with 250,000 inhabitants or more; personnel; appointment; powers; compensation.

(1) In each county with a population of two hundred fifty thousand inhabitants or more, the county court and district court may appoint one counselor of conciliation and one secretary to assist the conciliation court in disposing of its business and carrying out its functions.

(2) The counselor of conciliation so appointed shall have the power to:

(a) Hold conciliation conferences with parties to and hearings in proceedings under the Conciliation Court Law and make recommendations concerning such proceedings to the judge of the conciliation court;

(b) Provide such supervision in connection with the exercise of his or her jurisdiction as the judge of the conciliation court may direct;

(c) Cause such reports to be made, such statistics to be compiled, and such records to be kept as the judge of the conciliation court may direct;

(d) Hold such hearings in all conciliation court cases as may be required by the judge of the conciliation court and make such investigations as may be required by the court to carry out the intent of the Conciliation Court Law;

(e) Make investigations provided for by sections 42-351 and 42-358 as may be directed by the judge of the conciliation court; and

(f) Hold informal hearings under section 42-367 and make recommendations to the court for entry of orders thereunder as may be directed by the judge of the conciliation court.

(3) The judge of the conciliation court may also appoint, with the consent of the board of county commissioners, such associate counselors of conciliation and other office assistants as may be necessary to assist the conciliation court in disposing of its business. Such associate counselors shall carry out their duties under the supervision of the judge of the conciliation court and shall have all the powers of the counselor of conciliation. Office assistants shall work under the supervision and direction of the counselor of conciliation.

(4) Salaries of persons appointed under this section shall be fixed by the board of county commissioners. All persons appointed under this section may be dismissed for any reason by a majority vote of the judges of the county court and the district court of the county.

(5) The board of county commissioners shall furnish adequate office space, equipment, and supplies for the use of the personnel of the conciliation court.

Source: Laws 1965, c. 228, § 8, p. 655; Laws 1989, LB 23, § 3; Laws 1997, LB 229, § 27.

42-809 Counselor of conciliation; counties with less than 250,000 inhabitants; personnel; appointment; compensation.

(1) In each county having a population of less than two hundred fifty thousand inhabitants, the county court and district court may appoint, with the consent and approval of the board of county commissioners, the following persons to assist the conciliation court in disposing of its business and carrying out its functions:

(a) One counselor of conciliation who shall have the powers provided in subsection (2) of section 42-808; and

(b) Such associate counselors and office assistants as may be required to properly handle the work of the court.

(2) The salaries of persons appointed under the provisions of this section shall be fixed by the board of county commissioners of the county. All persons appointed under the provisions of this section may be dismissed for any reason by a majority vote of the judges of the district court of the county.

(3) The board of county commissioners shall furnish adequate office space, equipment, and supplies for the use of the personnel of the conciliation court.

(4) The county court and district court or the board of county commissioners may, at any time, abolish any or all positions created pursuant to the provisions of this section.

Source: Laws 1965, c. 228, § 9, p. 657; Laws 1997, LB 229, § 28.

42-810 Hearings; conferences; files; confidentiality.

(1) All court hearings or conferences in proceedings under the provisions of the Conciliation Court Law shall be held in private and the court shall exclude all persons except the officers of the court, the parties, their counsel, and witnesses. Conferences may be held with each party and his or her counsel separately and in the discretion of the judge or counselor conducting the conference or hearing, counsel for one party may be excluded when the adverse party is present. All communications, verbal or written, from parties to the judge or counselor in a proceeding under the provisions of such law shall be deemed made to such officer in official confidence.

(2) The files of the conciliation court shall be closed. The petition, supporting affidavit, reconciliation agreement, and any court order made in the matter may be opened to inspection by any party or his or her counsel upon the written authority of the judge of the conciliation court.

Source: Laws 1965, c. 228, § 10, p. 657; Laws 1997, LB 229, § 29.

42-811 Controversy between spouses; jurisdiction of court.

Whenever any controversy exists between spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household, and there is any minor child of the spouses or of either of them whose welfare might be affected thereby, the conciliation court shall have jurisdiction over the controversy, and over the parties thereto and all persons having any relation to the controversy as further provided in sections 42-801 to 42-823.

Source: Laws 1965, c. 228, § 11, p. 658.

42-812 Petition; filing; effect.

Prior to the filing of any action for divorce, annulment, or separate maintenance, either spouse or both spouses may file a petition with the clerk of the district court of the county of the residence of either spouse wherein a conciliation court has been established, invoking the jurisdiction of the conciliation court for the purpose of preserving the marriage by effecting a reconciliation between the parties, or for amicable settlement of the controversy between the spouses, so as to avoid further litigation over the issue involved.

Source: Laws 1965, c. 228, § 12, p. 658; Laws 1996, LB 1296, § 16; Laws 1997, LB 229, § 30.

42-813 Petition; caption.

The petition shall be captioned substantially as follows:

In the (County or District) Court of County, Nebraska

Upon the petition of)	
)	
.....)	Petition for Conciliation
(Petitioner))	(Under the Conciliation Court Law)
)	
And concerning)	
)	
..... and)	
)	
....., Respondents)	

To the Conciliation Court:

Source: Laws 1965, c. 228, § 13, p. 658; Laws 1997, LB 229, § 31.

42-814 Petition; contents.

The petition shall:

- (1) Allege that a controversy exists between the spouses and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy;
- (2) State the name and age of each minor child whose welfare may be affected by the controversy;
- (3) State the name and address of the petitioner, or the names and addresses of the petitioners;
- (4) If the petition is presented by one spouse only, name the other spouse as a respondent, and state the address of that spouse;
- (5) Name as a respondent any other person who has any relation to the controversy, and state the address of the person, if known to the petitioner; and
- (6) State such other information as the conciliation court may by rule require.

Source: Laws 1965, c. 228, § 14, p. 659.

42-815 Forms; furnished by county; petitions; complaints; refer to court.

The clerk of the district court shall provide, at the expense of the county, blank forms for petitions for filing pursuant to the provisions of sections 42-801 to 42-823. All public welfare employees and employees of the conciliation court shall refer to the conciliation court all petitions and complaints made to them in respect to controversies within the jurisdiction of the conciliation court.

Source: Laws 1965, c. 228, § 15, p. 659.

42-816 Fees prohibited.

No fee shall be charged by any officer for filing the petition, nor shall any fee be charged by any officer for the performance of any duty pursuant to the provisions of sections 42-801 to 42-823.

Source: Laws 1965, c. 228, § 16, p. 660.

42-817 Petition; hearing; notice; citation; compel attendance of witnesses.

The court shall fix a reasonable time and place for hearing on the petition and shall cause such notice of the filing of the petition and of the time and place of the hearing as it deems necessary to be given to the respondents. The court may, when it deems it necessary, issue a citation to any respondent requiring him to appear at the time and place stated in the citation, and may require the attendance of witnesses as in other civil cases.

Source: Laws 1965, c. 228, § 17, p. 660.

42-818 Hearing; time; place; objection; effect.

For the purpose of conducting hearings pursuant to the provisions of sections 42-801 to 42-823, the conciliation court may be convened at any time and place within the county, and the hearing may be had in chambers or otherwise, except that the time and place for hearing shall not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

Source: Laws 1965, c. 228, § 18, p. 660.

42-819 Hearing; procedure.

The hearing shall be conducted informally as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues of the controversy. To facilitate and promote the purposes of sections 42-801 to 42-823, the court may, with the consent of both of the parties to the proceeding, recommend or invoke the aid of physicians, psychiatrists, endocrinologists, or other specialists or scientific experts, or of the pastor or director of any religious denomination to which the parties may belong. Such aid shall not be at the expense of the court or of the county unless the board of county commissioners specifically provides and authorizes such aid.

Source: Laws 1965, c. 228, § 19, p. 660.

42-820 Hearing; orders; effect; reconciliation agreement.

(1) At or after the hearing, the court may make such orders in respect to the conduct of the spouses and the subject matter of the controversy as the court deems necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event shall such orders be effective for more than thirty days from the hearing of the petition, unless the parties mutually consent to a continuation of such time.

(2) Any reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply therewith.

Source: Laws 1965, c. 228, § 20, p. 660.

42-821 Petition for conciliation; limitation on certain actions; order for temporary custody, child support, and alimony; authorized.

(1) During a period beginning upon the filing of the petition for conciliation and continuing until the earlier of (a) thirty days after the hearing of the petition for conciliation or (b) the dismissal of the petition, neither spouse shall file any action for dissolution of marriage, annulment of marriage, or separate

maintenance, except that, for the purpose of protecting the minor children of the parties and the parties, the county court and district court shall have authority after proper notice to enter orders for temporary custody of minor children, temporary child support, and temporary alimony, notwithstanding any such reconciliation proceedings. An order for temporary child support or an order for temporary alimony which is a part of an order providing for temporary child support when the spouse and child reside in the same household shall be governed by the provisions of sections 42-347 to 42-381 relating to child and spousal support. Certified copies of such orders shall be filed by the clerk of the court and treated in the same manner as other such orders.

(2) If, after the expiration of the period specified in subsection (1) of this section, the controversy between the spouses has not been terminated, either spouse may institute proceedings for dissolution of marriage, annulment of marriage, or separate maintenance. The pendency of a dissolution of marriage, annulment, or separate maintenance action shall not operate as a bar to the instituting of proceedings for conciliation under the Conciliation Court Law, but if such action is pending before a petition for conciliation is filed, the court may permit proceeding with such action at any time for good cause shown.

Source: Laws 1965, c. 228, § 21, p. 661; Laws 1976, LB 926, § 3; Laws 1982, LB 720, § 3; Laws 1985, Second Spec. Sess., LB 7, § 20; Laws 1996, LB 1296, § 17; Laws 1997, LB 229, § 32.

42-822 Divorce, annulment, or separate maintenance; petition; minor child; transfer to conciliation court.

Whenever any action for divorce, annulment of marriage, or separate maintenance is filed and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution or annulment of the marriage or the disruption of the household and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the Conciliation Court Law.

Source: Laws 1965, c. 228, § 22, p. 661; Laws 1996, LB 1296, § 18; Laws 1997, LB 229, § 33.

42-823 Application for proceedings; minor child not involved; jurisdiction.

Whenever application is made to the conciliation court for conciliation proceedings in respect to a controversy between spouses, or a contested action for divorce, annulment of marriage, or separate maintenance, but there is no minor child whose welfare may be affected by the results of the controversy, and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved, and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case in the same manner as similar cases involving the welfare of children are disposed of, such acceptance may be made. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto, or having any relation thereto, that it has

under the provisions of sections 42-801 to 42-823 in similar cases involving the welfare of children.

Source: Laws 1965, c. 228, § 23, p. 662.

**ARTICLE 9
DOMESTIC VIOLENCE**

(a) PROTECTION FROM DOMESTIC ABUSE ACT

- Section
- 42-901. Act, how cited.
- 42-902. Legislative intent.
- 42-903. Terms, defined.
- 42-904. Department; programs and services; duties.
- 42-905. Comprehensive support services; enumerated.
- 42-906. Support services; to whom provided.
- 42-907. Emergency services; enumerated.
- 42-908. Department; victim; diagnostic assessment; referral; followup.
- 42-909. Department; victim; provide support services; plan of action.
- 42-910. Department; services for children; enumerated.
- 42-911. Department; victims; provide resource information.
- 42-912. Department; develop client feedback; collect statistical data.
- 42-913. Department; person who commits domestic abuse; programs and services.
- 42-914. Department; domestic violence; develop educational curriculum.
- 42-915. Department; families; develop community support systems.
- 42-916. Department; family program; prevent generational continuation of abuse.
- 42-917. Delivery of services; cooperation; coordination of programs.
- 42-918. Contact with victims of spouse abuse and families; confidentiality; violation; penalty.
- 42-919. Programs; administered independent of welfare assistance programs.
- 42-920. Department; contract for services.
- 42-921. Department; power to accept gifts, grants, devises, and bequests; use.
- 42-922. Department; adopt rules and regulations.
- 42-923. Department; determine ability to pay for services; uniform fee schedule; reduced or waived; when.
- 42-924. Protection order; when authorized; term; violation; penalty; construction of sections.
- 42-924.01. Protection order; filed, issued, and served without payment of costs; when.
- 42-924.02. Protection order; forms provided; State Court Administrator; duties.
- 42-924.03. Protection order granted to respondent; when.
- 42-925. Ex parte protection order; duration; notice requirements; hearing; notice; referral to referee; notice regarding firearm or ammunition.
- 42-926. Protection order; copies; distribution; sheriff; duties; dismissal or modification; clerk of court; duties.
- 42-927. Law enforcement agencies; education and training programs.
- 42-928. Protection order; restraining order; violation; arrest, when.
- 42-929. Arrest; peace officer; duties; conditions of release.
- 42-930. Law enforcement agency; Nebraska Commission on Law Enforcement and Criminal Justice; duties.
- 42-931. Foreign protection order; enforcement.

(b) UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT

- 42-932. Act, how cited.
- 42-933. Terms, defined.
- 42-934. Judicial enforcement of order.
- 42-935. Nonjudicial enforcement of order.
- 42-936. Registration of order.
- 42-937. Immunity.
- 42-938. Other remedies.
- 42-939. Uniformity of application and construction.

Section
42-940. Applicability of act.

(a) PROTECTION FROM DOMESTIC ABUSE ACT

42-901 Act, how cited.

Sections 42-901 to 42-931 shall be known and may be cited as the Protection from Domestic Abuse Act.

Source: Laws 1978, LB 623, § 1; Laws 1989, LB 330, § 4; Laws 1997, LB 829, § 1; Laws 1998, LB 218, § 17.

42-902 Legislative intent.

The Legislature hereby finds and declares that there is a present and growing need to develop services which will lessen and reduce the trauma of domestic abuse. It is the intent of the Protection from Domestic Abuse Act to provide abused family and household members necessary services including shelter, counseling, social services, and limited medical care and legal assistance.

Source: Laws 1978, LB 623, § 2; Laws 1997, LB 829, § 2.

42-903 Terms, defined.

For purposes of the Protection from Domestic Abuse Act, unless the context otherwise requires:

(1) Abuse means the occurrence of one or more of the following acts between household members:

(a) Attempting to cause or intentionally and knowingly causing bodily injury with or without a dangerous instrument;

(b) Placing, by physical menace, another person in fear of imminent bodily injury; or

(c) Engaging in sexual contact or sexual penetration without consent as defined in section 28-318;

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

(3) Family or household members includes spouses or former spouses, children, persons who are presently residing together or who have resided together in the past, persons who have a child in common whether or not they have been married or have lived together at any time, other persons related by consanguinity or affinity, and persons who are presently involved in a dating relationship with each other or who have been involved in a dating relationship with each other. For purposes of this subdivision, dating relationship means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement, but does not include a casual relationship or an ordinary association between persons in a business or social context; and

(4) Law enforcement agency means the police department or town marshal in incorporated municipalities, the office of the sheriff in unincorporated areas, and the Nebraska State Patrol.

Source: Laws 1978, LB 623, § 3; Laws 1986, LB 448, § 1; Laws 1989, LB 330, § 5; Laws 1992, LB 1098, § 6; Laws 1993, LB 299, § 4; Laws 1996, LB 1044, § 103; Laws 1998, LB 218, § 18; Laws 2004, LB 613, § 12.

42-904 Department; programs and services; duties.

The department shall establish and maintain comprehensive support services to aid victims of domestic abuse and to provide prevention and treatment programs to aid victims of domestic abuse, their families, and abusers.

Source: Laws 1978, LB 623, § 4.

42-905 Comprehensive support services; enumerated.

The comprehensive support services shall include, but not be limited to:

- (1) Emergency services for victims of abuse and their families;
- (2) Support programs that meet specific needs of victims of abuse and their families;
- (3) Education, counseling, and supportive programs for the abuser;
- (4) Programs to aid in the prevention and elimination of domestic violence which shall include education and public awareness; and
- (5) Assistance in completing the standard petition and affidavit forms for persons who file a petition and affidavit for a protection order.

Source: Laws 1978, LB 623, § 5; Laws 1989, LB 330, § 6; Laws 1998, LB 218, § 19.

42-906 Support services; to whom provided.

The department shall provide the support services as provided in section 42-905 to any person who seeks such services.

Source: Laws 1978, LB 623, § 6.

42-907 Emergency services; enumerated.

The department shall provide emergency services which shall consist of up to seventy-two hours of crisis intervention services including:

- (1) Constant access and intake to services;
- (2) Immediate transportation from a victim's home or other location to a hospital or a place of safety;
- (3) Immediate medical services or first aid;
- (4) Emergency legal counseling and referral;
- (5) Crisis counseling to provide support and assurance of safety;
- (6) Emergency financial aid; and
- (7) Safe living environments that will provide a supportive, nonthreatening shelter to victims, their families, and household members.

Source: Laws 1978, LB 623, § 7.

42-908 Department; victim; diagnostic assessment; referral; followup.

The department shall, as soon as possible after initial contact with the victim, determine through diagnostic assessment which programs are needed and desired by the victim and family members. The department shall make appropriate referral and conduct appropriate followup. The department shall, to the extent possible, use private sources to provide the support services.

Source: Laws 1978, LB 623, § 8.

42-909 Department; victim; provide support services; plan of action.

The department shall, in addition to the emergency services, provide support services as needed to a victim of domestic abuse for up to thirty days. The support services shall be problem oriented and formulate a plan of action for the victim. Such services may include relocation, financial security, employment, advocacy, assertiveness training, substance abuse counseling, and alternatives to returning to the abuser. Also, the department shall provide services for children including day care, education, and counseling.

Source: Laws 1978, LB 623, § 9.

42-910 Department; services for children; enumerated.

The department shall provide services for children which may include:

- (1) Emergency services which provide housing, food, clothing, and transportation to school;
- (2) Counseling for trauma which occurs when children witness or experience family violence;
- (3) Programs which provide for the appropriate educational needs of the individual child; and
- (4) Services for child care in the necessary absence of the victim parent.

Source: Laws 1978, LB 623, § 10.

42-911 Department; victims; provide resource information.

The department shall provide complete resource information for victims and their families on legal, medical, financial, vocational, welfare, child care, housing, and other support services.

Source: Laws 1978, LB 623, § 11.

42-912 Department; develop client feedback; collect statistical data.

The department shall develop a means of client feedback and collect statistical data to assist it in evaluating program effectiveness.

Source: Laws 1978, LB 623, § 12.

42-913 Department; person who commits domestic abuse; programs and services.

The department shall provide such programs and services as it deems appropriate for the person who commits domestic abuse.

Source: Laws 1978, LB 623, § 13.

42-914 Department; domestic violence; develop educational curriculum.

The department shall develop, in cooperation with the State Department of Education, a kindergarten through postsecondary educational curriculum relating to domestic violence.

Source: Laws 1978, LB 623, § 14.

42-915 Department; families; develop community support systems.

The department shall assist in developing community support systems for families to aid in the deterrence of all family crisis situations.

Source: Laws 1978, LB 623, § 15.

42-916 Department; family program; prevent generational continuation of abuse.

The department shall provide a family program, especially for children, to prevent the generational continuation of abuse within the family.

Source: Laws 1978, LB 623, § 16.

42-917 Delivery of services; cooperation; coordination of programs.

The delivery of all services provided for under the Protection from Domestic Abuse Act shall be done in cooperation with existing public, private, state, and local programs whenever possible to avoid duplication of services. Special effort shall be taken to coordinate programs with the Department of Labor, the Nebraska Commission on the Status of Women, the State Department of Education, the Department of Health and Human Services, other appropriate agencies, community service agencies, and private sources.

Source: Laws 1978, LB 623, § 17; Laws 1980, LB 684, § 17; Laws 1995, LB 275, § 2; Laws 1996, LB 1044, § 104; Laws 2004, LB 1083, § 90; Laws 2007, LB296, § 61.

42-918 Contact with victims of spouse abuse and families; confidentiality; violation; penalty.

Under the Protection from Domestic Abuse Act, strict confidence shall be observed in all contact with victims of spouse abuse and their families. Any record, report, or files maintained by the department pursuant to the act shall be confidential, except that the department may release statistical information, while not revealing names. Violation of this section shall be a Class V misdemeanor.

Source: Laws 1978, LB 623, § 18; Laws 1997, LB 829, § 3.

42-919 Programs; administered independent of welfare assistance programs.

All programs under the Protection from Domestic Abuse Act shall be separate and administered independent of any welfare assistance program.

Source: Laws 1978, LB 623, § 19; Laws 1997, LB 829, § 4.

42-920 Department; contract for services.

The department may construct, lease, purchase, purchase on contract, utilize vendor payment, and contract for services connected with the operation of the Protection from Domestic Abuse Act as needs and interest demand.

Source: Laws 1978, LB 623, § 20; Laws 1997, LB 829, § 5.

42-921 Department; power to accept gifts, grants, devises, and bequests; use.

The department may accept gifts, grants, devises, and bequests of real and personal property from public or private sources to carry out the purposes of the Protection from Domestic Abuse Act. The department may sell, lease,

exchange, invest, or expend such gifts, grants, devises, and bequests or the proceeds, rents, profits, and income therefrom according to the terms and conditions thereof.

Source: Laws 1978, LB 623, § 21; Laws 1997, LB 829, § 6.

42-922 Department; adopt rules and regulations.

The department shall adopt and promulgate such rules and regulations and perform all other acts as may be necessary or appropriate to carry out the Protection from Domestic Abuse Act. Such rules and regulations shall include, but not be limited to, rules and regulations relating to fees charged, training of personnel, and administration of the program.

Source: Laws 1978, LB 623, § 22; Laws 1997, LB 829, § 7.

42-923 Department; determine ability to pay for services; uniform fee schedule; reduced or waived; when.

The department shall determine the ability of the spouses or individuals to pay for services but shall not charge more than the actual cost. The department shall prepare and adopt a uniform fee schedule to be used. The scheduled fees may be reduced or waived by authorization of the department according to the rules of the department and as may be considered necessary to further the objective of the Protection from Domestic Abuse Act. The use of facilities and services established by the act shall not be denied residents of Nebraska because of inability to pay scheduled fees. Any fees received under this section shall be deposited in the General Fund.

Source: Laws 1978, LB 623, § 23; Laws 1997, LB 829, § 8.

42-924 Protection order; when authorized; term; violation; penalty; construction of sections.

(1) Any victim of domestic abuse may file a petition and affidavit for a protection order as provided in subsection (2) of this section. Upon the filing of such a petition and affidavit in support thereof, the judge or court may issue a protection order without bond granting the following relief:

(a) Enjoining the respondent from imposing any restraint upon the petitioner or upon the liberty of the petitioner;

(b) Enjoining the respondent from threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner;

(c) Enjoining the respondent from telephoning, contacting, or otherwise communicating with the petitioner;

(d) Removing and excluding the respondent from the residence of the petitioner, regardless of the ownership of the residence;

(e) Ordering the respondent to stay away from any place specified by the court;

(f) Awarding the petitioner temporary custody of any minor children not to exceed ninety days; or

(g) Ordering such other relief deemed necessary to provide for the safety and welfare of the petitioner and any designated family or household member.

(2) Petitions for protection orders shall be filed with the clerk of the district court, and the proceeding may be heard by the county court or the district court as provided in section 25-2740.

(3) A petition filed pursuant to subsection (1) of this section may not be withdrawn except upon order of the court. An order issued pursuant to subsection (1) of this section shall specify that it is effective for a period of one year and, if the order grants temporary custody, the number of days of custody granted to the petitioner unless otherwise modified by the court. Any person who knowingly violates an order issued pursuant to subsection (1) of this section or section 42-931 after service shall be guilty of a Class II misdemeanor, except that (a) any person convicted of violating such order who has a prior conviction for violating a protection order shall be guilty of a Class I misdemeanor and (b) any person convicted of violating such order who has a prior conviction for violating the same protection order or a protection order granted to the same petitioner shall be guilty of a Class IV felony.

(4) If there is any conflict between sections 42-924 to 42-926 and any other provision of law, sections 42-924 to 42-926 shall govern.

Source: Laws 1978, LB 623, § 24; Laws 1984, LB 276, § 3; Laws 1989, LB 330, § 7; Laws 1992, LB 1098, § 7; Laws 1993, LB 299, § 5; Laws 1997, LB 229, § 34; Laws 1998, LB 218, § 20; Laws 2002, LB 82, § 17.

Appeals involving the granting of a protection order will almost always be moot before the case is heard because of the time-limited nature of a protection order. However, under certain circumstances, an appellate court may entertain the issues presented by a moot case. *Hauser v. Hauser*, 259 Neb. 653, 611 N.W.2d 840 (2000).

Effective July 15, 1998, this section no longer covers harassment protection orders, but applies to domestic abuse protection orders only. *Hron v. Donlan*, 259 Neb. 259, 609 N.W.2d 379 (2000).

A protection order pursuant to this section is analogous to an injunction. *Elstun v. Elstun*, 257 Neb. 820, 600 N.W.2d 835 (1999); *Devor v. Devor*, 7 Neb. App. 549, 584 N.W.2d 670 (1998).

Speech that is not threatening, intimidating, or terrifying is protected by the First Amendment, and any application of a protection order under this section that would prohibit such speech is applied in an unconstitutional manner. *State v. McKee*, 253 Neb. 100, 568 N.W.2d 559 (1997).

Subsection (3)(b) of this section sets forth an enhancement provision, not a separate criminal offense, which simply authorizes a court to increase the sentence for recidivists. *State v. Rubek*, 11 Neb. App. 489, 653 N.W.2d 861 (2002).

Allegations contained in application and attached affidavit requesting issuance of a protection order were too general to support such an order. *Buda v. Humble*, 2 Neb. App. 872, 517 N.W.2d 622 (1994).

42-924.01 Protection order; filed, issued, and served without payment of costs; when.

Fees to cover costs associated with the filing of a petition for a protection order or the issuance or service of a protection order seeking only the relief provided by the Protection from Domestic Abuse Act shall not be charged, except that a court may assess such fees and costs if the court finds, by clear and convincing evidence, that the statements contained in the petition were false and that the protection order was sought in bad faith.

At the final hearing, a court may assess costs associated with the filing of a petition for a protection order or the issuance or service of a protection order seeking only the relief provided by the Protection from Domestic Abuse Act against the respondent.

Source: Laws 1989, LB 330, § 12; Laws 1997, LB 393, § 1; Laws 1998, LB 218, § 21.

42-924.02 Protection order; forms provided; State Court Administrator; duties.

The clerk of the district court shall make available standard petition and affidavit forms for all types of protection orders provided by law with instructions for completion to be used by a petitioner. The clerk and his or her employees shall not provide assistance in completing the forms. The State Court Administrator shall adopt and promulgate the standard petition and affidavit forms provided for in this section as well as the standard temporary and final protection order forms and provide a copy of such forms to all clerks of the district courts in this state. These standard temporary and final protection order forms shall be the only such forms used in this state.

Source: Laws 1989, LB 330, § 13; Laws 1997, LB 393, § 2; Laws 1998, LB 218, § 22.

42-924.03 Protection order granted to respondent; when.

A court shall only grant a respondent a protection order if (1) the respondent files a cross or counter petition seeking a protection order and (2) the issuing court makes specific findings of domestic or family abuse against the respondent and determines that the respondent is entitled to a protection order.

Source: Laws 1998, LB 218, § 27.

42-925 Ex parte protection order; duration; notice requirements; hearing; notice; referral to referee; notice regarding firearm or ammunition.

(1) An order issued under subsection (1) of section 42-924 may be issued ex parte to the respondent if it reasonably appears from the specific facts included in the affidavit that the petitioner will be in immediate danger of abuse before the matter can be heard on notice. If an order is issued ex parte, the court shall immediately schedule an evidentiary hearing to be held within thirty days after service of such order, and the court shall cause notice of the hearing to be given to the petitioner and the respondent. If the respondent appears at the hearing and shows cause why such order should not remain in effect, the court shall rescind the order. If the respondent does not so appear and show cause, the order shall be affirmed.

(2) If an order under subsection (1) of section 42-924 is not issued ex parte, the court shall immediately schedule an evidentiary hearing to be held within fourteen days after the filing of the petition, and the court shall cause notice of the hearing to be given to the petitioner and the respondent. If the respondent does not appear at the hearing and show cause why such order should not be issued, the court shall issue such order.

(3) The court may by rule or order refer or assign all matters regarding orders issued under subsection (1) of section 42-924 to a referee for findings and recommendations.

(4) An order issued under subsection (1) of section 42-924 shall remain in effect for a period of one year from the date of issuance, unless vacated by the court prior to such date. If the order grants temporary custody, such custody shall not exceed the number of days specified by the court unless the respondent shows cause why the order should not remain in effect.

(5) The court shall also cause the notice created under section 29-2291 to be served upon the respondent notifying the respondent that it may be unlawful

under federal law for a person who is subject to a protection order to possess or receive any firearm or ammunition.

Source: Laws 1978, LB 623, § 25; Laws 1989, LB 330, § 8; Laws 1998, LB 218, § 23; Laws 2008, LB1014, § 36.

Operative date July 18, 2008.

This section does not procedurally limit a litigant's right to call witnesses at a show cause hearing. *Zuco v. Tucker*, 9 Neb. App. 155, 609 N.W.2d 59 (2000).

42-926 Protection order; copies; distribution; sheriff; duties; dismissal or modification; clerk of court; duties.

Upon the issuance of any protection order under section 42-925, the clerk of the court shall forthwith provide the petitioner, without charge, with two certified copies of such order. The clerk of the court shall also forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of such order and one copy each of the sheriff's return thereon. The clerk of the court shall also forthwith provide a copy of the protection order to the sheriff's office in the county where the respondent may be personally served together with instructions for service. Upon receipt of the order and instructions for service, such sheriff's office shall forthwith serve the protection order upon the respondent and file its return thereon with the clerk of the court which issued the protection order within fourteen days of the issuance of the protection order. If any protection order is dismissed or modified by the court, the clerk of the court shall forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of the order of dismissal or modification.

Source: Laws 1978, LB 623, § 26; Laws 1989, LB 330, § 9; Laws 1998, LB 218, § 24.

42-927 Law enforcement agencies; education and training programs.

All law enforcement agencies in the state shall provide officers employed by them with an education and training program designed to inform the officers of the problems of domestic abuse, procedures to deal with such problems, the Protection from Domestic Abuse Act, and the services and facilities available to abused family and household members.

Source: Laws 1978, LB 623, § 27; Laws 1997, LB 829, § 9.

42-928 Protection order; restraining order; violation; arrest, when.

A peace officer shall with or without a warrant arrest a person if (1) the officer has probable cause to believe that the person has committed a violation of an order issued pursuant to section 42-924, a violation of section 42-925, a violation of an order excluding a person from certain premises issued pursuant to section 42-357, or a violation of a valid foreign protection order recognized pursuant to section 42-931 and (2) a petitioner under section 42-924 or 42-925, an applicant for an order excluding a person from certain premises issued pursuant to section 42-357, or a person protected under a valid foreign protection order recognized pursuant to section 42-931 provides the peace officer with a copy of a protection order or an order excluding a person from certain premises issued under such sections or the peace officer determines

that such an order exists after communicating with the local law enforcement agency.

Source: Laws 1989, LB 330, § 10; Laws 1998, LB 218, § 25.

42-929 Arrest; peace officer; duties; conditions of release.

A peace officer making an arrest pursuant to section 42-928 shall take such person into custody and take such person before a judge of the county court or the court which issued the protection order. At such time the court shall establish the conditions of such person's release from custody, including the determination of bond or recognizance, as the case may be. The court shall issue an order directing that such person shall have no contact with the alleged victim of the abuse or violation.

Source: Laws 1989, LB 330, § 11.

42-930 Law enforcement agency; Nebraska Commission on Law Enforcement and Criminal Justice; duties.

(1) By January 1, 1998, each law enforcement agency shall develop a system for recording incidents of domestic abuse within its jurisdiction. All incidents of domestic abuse, whether or not an arrest was made, shall be documented with a written incident report form that includes a domestic abuse identifier.

(2) By January 1, 1998, the Nebraska Commission on Law Enforcement and Criminal Justice shall develop or shall approve a monthly reporting process. Each law enforcement agency shall compile and submit a monthly report to the commission on the number of domestic abuse incidents recorded within its jurisdiction.

(3) The commission shall report annually to the Governor, the Legislature, and the public the total number of incidents of domestic abuse reported by each reporting agency.

Source: Laws 1997, LB 829, § 10.

42-931 Foreign protection order; enforcement.

A valid foreign protection order related to domestic or family abuse issued by a tribunal of another state, tribe, or territory shall be accorded full faith and credit by the courts of this state and enforced pursuant to the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

Source: Laws 1998, LB 218, § 26; Laws 2003, LB 148, § 99.

Cross References

Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, see section 42-932.

(b) UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC
VIOLENCE PROTECTION ORDERS ACT

42-932 Act, how cited.

Sections 42-932 to 42-940 shall be known and may be cited as the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

Source: Laws 2003, LB 148, § 90.

42-933 Terms, defined.

For purposes of the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act:

- (1) Foreign protection order means a protection order issued by a tribunal of another state;
- (2) Issuing state means the state whose tribunal issues a protection order;
- (3) Mutual foreign protection order means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent;
- (4) Protected individual means an individual protected by a protection order;
- (5) Protection order means an injunction or other temporary or final order, issued by a tribunal under the domestic violence, family violence, or antistalking laws, broadly construed, of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to, another individual;
- (6) Respondent means the individual against whom enforcement of a protection order is sought;
- (7) 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 that has jurisdiction to issue protection orders; and
- (8) Tribunal means a court, agency, or other entity authorized by law to issue or modify a protection order.

Source: Laws 2003, LB 148, § 91.

42-934 Judicial enforcement of order.

(a) A person authorized by the law of this state to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a tribunal of this state. The tribunal shall enforce the terms of the order, including terms that provide relief that a tribunal of this state would lack power to provide but for this section. The tribunal shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of this state for the enforcement of protection orders.

(b) A tribunal of this state may not enforce a foreign protection order issued by a tribunal of a state that does not recognize the standing of a protected individual to seek enforcement of the order.

(c) A tribunal of this state shall enforce the provisions of a valid foreign protection order which govern child custody, parenting time, visitation, or other access, if the order was issued in accordance with the applicable federal and state jurisdictional requirements governing the issuance of orders relating to child custody, parenting time, visitation, or other access in the issuing state.

(d) A foreign protection order is valid if it:

- (1) identifies the protected individual and the respondent;
- (2) is currently in effect;

(3) was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state; and

(4) was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the rights of the respondent to due process.

(e) A foreign protection order valid on its face is prima facie evidence of its validity.

(f) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

(g) A tribunal of this state may enforce provisions of a mutual foreign protection order which favor a respondent only if:

(1) the respondent filed a written pleading seeking a protection order from the tribunal of the issuing state; and

(2) the tribunal of the issuing state made specific findings in favor of the respondent.

Source: Laws 2003, LB 148, § 92; Laws 2007, LB554, § 37.

42-935 Nonjudicial enforcement of order.

(a) A law enforcement officer of this state, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a tribunal of this state. Presentation of a protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.

(b) If a foreign protection order is not presented, a law enforcement officer of this state may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

(c) If a law enforcement officer of this state determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent, and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

(d) Registration or filing of an order in this state is not required for the enforcement of a valid foreign protection order pursuant to the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

Source: Laws 2003, LB 148, § 93.

42-936 Registration of order.

(a) Any individual may register a foreign protection order in this state. To register a foreign protection order, an individual shall:

(1) present a certified copy of the order to the Nebraska State Patrol for the registration of such orders; or

(2) present a certified copy of the order to another agency designated by the state and request that the order be registered with the Nebraska State Patrol.

(b) Upon receipt of a foreign protection order, the agency responsible for the registration of such orders shall register the order in accordance with this section. After the order is registered, the responsible agency shall furnish to the individual registering the order a certified copy of the registered order.

(c) The agency responsible for the registration of foreign protection orders shall register an order upon presentation of a copy of a protection order which has been certified by the issuing state. A registered foreign protection order that is inaccurate or is not currently in effect shall be corrected or removed from the registry in accordance with the law of this state.

(d) An individual registering a foreign protection order shall file an affidavit by the protected individual stating that, to the best of the protected individual's knowledge, the order is currently in effect.

(e) A foreign protection order registered under the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act may be entered in any existing state or federal registry of protection orders, in accordance with applicable law.

(f) A fee shall not be charged for the registration of a foreign protection order.

Source: Laws 2003, LB 148, § 94.

42-937 Immunity.

This state or a local governmental agency, or a law enforcement officer, prosecuting attorney, clerk of the court, or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for conduct arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the conduct was done in good faith in an effort to comply with the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

Source: Laws 2003, LB 148, § 95.

42-938 Other remedies.

A protected individual who pursues remedies under the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act is not precluded from pursuing other legal or equitable remedies against the respondent.

Source: Laws 2003, LB 148, § 96.

42-939 Uniformity of application and construction.

In applying and construing the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2003, LB 148, § 97.

42-940 Applicability of act.

The Uniform Interstate Enforcement of Domestic Violence Protection Orders Act applies to protection orders issued before January 1, 2004, and to continuing actions for enforcement of foreign protection orders commenced before January 1, 2004. A request for enforcement of a foreign protection order made on or after January 1, 2004, for violations of a foreign protection order occurring before January 1, 2004, is governed by the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

Source: Laws 2003, LB 148, § 98.

ARTICLE 10**PREMARITAL AGREEMENTS**

Section

- 42-1001. Act, how cited.
- 42-1002. Definitions.
- 42-1003. Formalities.
- 42-1004. Content.
- 42-1005. Effect of marriage.
- 42-1006. Enforcement.
- 42-1007. Enforcement; void marriage.
- 42-1008. Limitation of actions.
- 42-1009. Application and construction.
- 42-1010. Severability.
- 42-1011. Time of taking effect.

42-1001 Act, how cited.

Sections 42-1001 to 42-1011 shall be known and may be cited as the Uniform Premarital Agreement Act.

Source: Laws 1994, LB 202, § 1.

42-1002 Definitions.

As used in the Uniform Premarital Agreement Act:

- (1) Premarital agreement means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.
- (2) Property means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

Source: Laws 1994, LB 202, § 2.

42-1003 Formalities.

A premarital agreement must be in writing and signed by both parties.

Source: Laws 1994, LB 202, § 3.

42-1004 Content.

- (1) Parties to a premarital agreement may contract with respect to:
 - (a) The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;
 - (b) The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;

- (c) The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;
 - (d) The modification or elimination of spousal support;
 - (e) The making of a will, trust, or other arrangement, to carry out the provisions of the agreement;
 - (f) The ownership rights in and disposition of the death benefit from a life insurance policy;
 - (g) The choice of law governing the construction of the agreement; and
 - (h) Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.
- (2) The right of a child to support may not be adversely affected by a premarital agreement.

Source: Laws 1994, LB 202, § 4.

42-1005 Effect of marriage.

A premarital agreement becomes effective upon marriage.

Source: Laws 1994, LB 202, § 5.

42-1006 Enforcement.

- (1) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:
- (a) That party did not execute the agreement voluntarily; or
 - (b) The agreement was unconscionable when it was executed and, before execution of the agreement, that party:
 - (i) Was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;
 - (ii) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and
 - (iii) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.
- (2) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.
- (3) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

Source: Laws 1994, LB 202, § 6.

42-1007 Enforcement; void marriage.

If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

Source: Laws 1994, LB 202, § 7.

42-1008 Limitation of actions.

Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

Source: Laws 1994, LB 202, § 8.

42-1009 Application and construction.

The Uniform Premarital Agreement Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the act among states enacting it.

Source: Laws 1994, LB 202, § 9.

42-1010 Severability.

If any provision of the Uniform Premarital Agreement Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

Source: Laws 1994, LB 202, § 10.

42-1011 Time of taking effect.

The Uniform Premarital Agreement Act takes effect on July 16, 1994, and applies to any premarital agreement executed on or after that date.

Source: Laws 1994, LB 202, § 11.

ARTICLE 11**SPOUSAL PENSION RIGHTS ACT**

Section

- 42-1101. Act, how cited.
- 42-1102. Terms, defined.
- 42-1103. Qualified domestic relations order; requirements.
- 42-1104. Order; payment of benefits; alternate payee.
- 42-1105. Order; form of benefit payment.
- 42-1106. Death of alternate payee; effect.
- 42-1107. Order; surviving spouse; payment option.
- 42-1108. Order; alternate payee; file with board; notice.
- 42-1109. Rules and regulations.
- 42-1110. Qualified domestic relations order; how determined; procedure.
- 42-1111. Director; separate accounting required; when; investment authority.
- 42-1112. Order filed prior to July 19, 1996; applicability.
- 42-1113. Liability.

42-1101 Act, how cited.

Sections 42-1101 to 42-1113 shall be known and may be cited as the Spousal Pension Rights Act.

Source: Laws 1996, LB 1273, § 1.

42-1102 Terms, defined.

For purposes of the Spousal Pension Rights Act:

(1) Alternate payee means a spouse, former spouse, child, or other dependent of a member who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by a statewide public retirement system with respect to such member;

(2) Benefit means an annuity, a pension, a retirement allowance, a withdrawal of accumulated contributions, or an optional benefit accrued or accruing to a member under a statewide public retirement system;

(3) Domestic relations order means a judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, alimony payments, maintenance support, or marital property rights to a spouse, former spouse, child, or other dependent of a member and is made pursuant to a state domestic relations law of this state or another state;

(4) Earliest retirement date means the earlier of (a) the date on which the member is entitled to a distribution under the system or (b) the later of (i) the date that the member attains fifty years of age or (ii) the earliest date that the member could receive benefits under the system if the member separated from service;

(5) Qualified domestic relations order means a domestic relations order which creates or recognizes the existence of an alternate payee's right, or assigns to an alternate payee the right, to receive all or a portion of the benefits payable with respect to a member under a statewide public retirement system, which directs the system to disburse benefits to the alternate payee, and which meets the requirements of section 42-1103;

(6) Segregated amounts means the amounts which would have been payable to the alternative payee during the period of time that the qualified status of an order is being determined. Such amounts shall equal the amounts payable for such period if the order had been determined to be a qualified domestic relations order; and

(7) Statewide public retirement system means the Retirement System for Nebraska Counties, the Nebraska Judges Retirement System, the School Retirement System of the State of Nebraska, the Nebraska State Patrol Retirement System, and the State Employees Retirement System of the State of Nebraska.

Source: Laws 1996, LB 1273, § 2; Laws 2004, LB 1097, § 21.

Cross References

Nebraska State Patrol Retirement System, see section 81-2015.

Retirement System for Nebraska Counties, see section 23-2302.

School Retirement System, see section 79-903.

State Employees Retirement System, see section 84-1302.

42-1103 Qualified domestic relations order; requirements.

A domestic relations order is a qualified domestic relations order only if such order or accompanying document:

(1) Clearly specifies the following:

(a) The name, social security number, and last-known mailing address, if any, of the member;

(b) The name, social security number, and last-known mailing address, if any, of the alternate payee covered by the order;

(c) The statewide public retirement system or systems to which the order applies;

- (d) The number of payments or period to which such order applies; and
 - (e) The amount or percentage of the member's benefits to be paid by each statewide public retirement system to each alternate payee or the manner in which such amount or percentage is determined;
- (2) Does not require a statewide public retirement system to provide any type or form of benefit, or any option, not otherwise provided under the plan;
 - (3) Does not require a statewide public retirement system to provide increased benefits determined on the basis of actuarial value;
 - (4) Does not require a statewide public retirement system to pay to an alternate payee benefits which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order; and
 - (5) Does not require the payment of benefits to an alternate payee before the earliest retirement date of a member.

Source: Laws 1996, LB 1273, § 3; Laws 2006, LB 1113, § 37.

42-1104 Order; payment of benefits; alternate payee.

(1) A qualified domestic relations order may provide for the payment of benefits to an alternate payee beginning on or after the member's earliest retirement date but before the member terminates employment. Payment of the benefit to the alternate payee pursuant to a qualified domestic relations order shall commence either on the member's retirement date or on the first day of the month immediately following the month in which the alternate payee notifies the statewide public retirement system of the election to begin payment, but not prior to the member's earliest retirement date.

(2) If payment begins after the member's earliest retirement date but prior to the member's retirement date, the alternate payee is only entitled to the actuarial equivalent of the alternate payee's share of the member's benefit payable on the member's earliest retirement date or the alternate payee's election date, whichever is later.

Source: Laws 1996, LB 1273, § 4.

42-1105 Order; form of benefit payment.

An alternate payee under a qualified domestic relations order shall receive the form of benefit payment specified in the order or, if not specified, selected by the alternate payee, if such form is a form available to the member and is not a joint and survivor annuity with the alternate payee's subsequent spouse.

Source: Laws 1996, LB 1273, § 5.

42-1106 Death of alternate payee; effect.

If the alternate payee dies prior to receiving any payment of his or her interest in the member's benefit under a qualified domestic relations order, such interest reverts to the member. If the alternate payee dies after commencement of payments of his or her interest, then the alternate payee's beneficiary is entitled to the balance of the payee's interest under the payment option provided by the order or selected by the payee, except a joint and survivor annuity option with the alternate payee and alternate payee's spouse.

Source: Laws 1996, LB 1273, § 6.

42-1107 Order; surviving spouse; payment option.

A qualified domestic relations order may provide that a spouse under a judgment for separate maintenance or a former spouse is considered the surviving spouse under the plan. If the order requires the member to select a payment option with survivorship rights, the Public Employees Retirement Board shall require consent by such spouse for the selection of the annuity option by the member or for any change in the selection of the annuity option by the member. The order may specifically require that the annuity option be a joint and survivor annuity.

Source: Laws 1996, LB 1273, § 7.

42-1108 Order; alternate payee; file with board; notice.

The alternate payee shall file a copy of the domestic relations order involving benefits under a statewide public retirement system with the Public Employees Retirement Board within ninety days after the date that the order was entered. Upon good cause shown, the board may accept an order after ninety days following its entry. Within ten days, the board shall notify in writing the member and alternate payee that the board has received the domestic relations order. Such notice shall include a description of the procedure to determine if the domestic relations order is a qualified domestic relations order under the Spousal Pension Rights Act. The Public Employees Retirement Board shall be held harmless by the alternate payee and the member for any amounts paid in violation of an order prior to the date on which the order is filed with the board.

Source: Laws 1996, LB 1273, § 8; Laws 1998, LB 1191, § 41.

42-1109 Rules and regulations.

The Public Employees Retirement Board shall adopt and promulgate rules and regulations to establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such orders. Such procedures shall allow an alternate payee to designate a representative for receipt of copies of notices.

Source: Laws 1996, LB 1273, § 9.

42-1110 Qualified domestic relations order; how determined; procedure.

(1) The Public Employees Retirement Board, or the board's designee, shall determine, within a reasonable period of time after receiving a domestic relations order, if the order is a qualified domestic relations order under the Spousal Pension Rights Act. The board may determine that an order is not qualified for the following reasons:

- (a) The order fails to fulfill all the requirements under section 42-1103;
- (b) The order requires the board to act contrary to the statutory provisions of the statewide public retirement system; or
- (c) The order requires payment to the alternate payee in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse.

(2) Failure to file an order within ninety days after its entry shall not be the basis for determining that an order is not a qualified domestic relations order.

(3) Within seven days after making the determination, the board or its designee shall notify the alternate payee and the member whether the domestic relations order is a qualified domestic relations order under the act. If the order is not a qualified domestic relations order, the notice shall specify the basis for such determination.

(4) A determination by the board or its designee that a domestic relations order is not a qualified domestic relations order does not prohibit a member or an alternate payee from filing an amended order with the board.

Source: Laws 1996, LB 1273, § 10.

42-1111 Director; separate accounting required; when; investment authority.

(1) During the period of time that a determination, by the board, its designee, or a court of competent jurisdiction, is being made as to whether a domestic relations order is a qualified domestic relations order, the director of the statewide public retirement systems shall separately account for the segregated amounts.

(2) If a member of the statewide public retirement systems participates in a defined contribution account, the member shall maintain investment authority over the entire account until the order is determined to be a qualified domestic relations order, but upon such determination, the alternate payee shall receive investment authority over the alternate payee's share of the account.

(3) If within the eighteen-month period the order is determined to be a qualified domestic relations order, the director of the statewide public retirement systems shall pay the segregated amounts plus interest to the alternate payee or payees entitled thereto.

(4) If within the eighteen-month period the order is determined not to be a qualified domestic relations order or the qualified status of the order is not resolved, the director of the statewide public retirement systems shall pay the segregated amounts plus interest to the member or other beneficiaries entitled thereto.

(5) If the determination that the order is a qualified domestic relations order is made after the eighteen-month period, the order will be applied prospectively only.

(6) For purposes of this section, the eighteen-month period begins on the date that the first payment would be required under the domestic relations order.

Source: Laws 1996, LB 1273, § 11; Laws 2003, LB 451, § 17.

42-1112 Order filed prior to July 19, 1996; applicability.

A domestic relations order filed with the Public Employees Retirement Board prior to July 19, 1996, shall be deemed a qualified domestic relations order under the Spousal Pension Rights Act if the statewide public retirement system is making payments under the order on July 19, 1996, and such order conforms to section 414(p)(11) of the Internal Revenue Code.

Source: Laws 1996, LB 1273, § 12.

42-1113 Liability.

The member and alternate payee shall hold the statewide public retirement system and its fiduciaries harmless from any liabilities which arise from (1) treating a domestic relations order as being, or not being, a qualified domestic relations order, or (2) taking action pursuant to section 42-1111. The system's obligation to the member and each alternate payee shall be discharged to the extent of any payment made pursuant to the Spousal Pension Rights Act.

Source: Laws 1996, LB 1273, § 13.

ARTICLE 12

ADDRESS CONFIDENTIALITY ACT

Section	
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42-1205.	Certification; forfeiture or cancellation; when.
42-1206.	Address or substitute address; use; when.
42-1207.	Early voting; authorized.
42-1208.	Secretary of State; use of substitute address; exceptions.
42-1209.	Program participants; application assistance.
42-1210.	Rules and regulations.

42-1201 Act, how cited.

Sections 42-1201 to 42-1210 shall be known and may be cited as the Address Confidentiality Act.

Source: Laws 2003, LB 228, § 1.

42-1202 Findings.

The Legislature finds that persons attempting to escape from actual or threatened abuse, sexual assault, or stalking frequently establish new addresses in order to prevent their assailants or probable assailants from finding them. The purposes of the Address Confidentiality Act are to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of abuse, sexual assault, or stalking, to enable interagency cooperation with the office of the Secretary of State in providing address confidentiality for victims of abuse, sexual assault, or stalking, and to enable state and local agencies to accept a program participant's use of an address designated by the Secretary of State as a substitute mailing address.

Source: Laws 2003, LB 228, § 2.

42-1203 Terms, defined.

For purposes of the Address Confidentiality Act:

(1) Abuse means causing or attempting to cause physical harm, placing another person in fear of physical harm, or causing another person to engage involuntarily in sexual activity by force, threat of force, or duress, when committed by (a) a person against his or her spouse, (b) a person against his or her former spouse, (c) a person residing with the victim if such person and the victim are or were in a dating relationship, (d) a person who formerly resided with the victim if such person and the victim are or were in a dating relationship, (e) a person against a parent of his or her children, whether or not

such person and the victim have been married or resided together at any time, (f) a person against a person with whom he or she is in a dating relationship, (g) a person against a person with whom he or she formerly was in a dating relationship, or (h) a person related to the victim by consanguinity or affinity;

(2) Address means a residential street address, school address, or work address of an individual as specified on the individual's application to be a program participant;

(3) Dating relationship means an intimate or sexual relationship;

(4) Program participant means a person certified as a program participant under section 42-1204;

(5) Sexual assault has the same meaning as in section 28-319, 28-319.01, 28-320, 28-320.01, or 28-386; and

(6) Stalking has the same meaning as in sections 28-311.02 to 28-311.05.

Source: Laws 2003, LB 228, § 3; Laws 2006, LB 1199, § 31.

42-1204 Substitute address; application to Secretary of State; approval; certification; renewal; prohibited acts; violation; penalty.

(1) An adult, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person as defined in section 30-2601 may apply to the Secretary of State to have an address designated by the Secretary of State serve as the substitute address of such adult, minor, or incapacitated person. The Secretary of State shall approve an application if it is filed in the manner and on the form prescribed by the Secretary of State and if it contains:

(a) A sworn statement by the applicant that the applicant has good reason to believe (i) that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of abuse, sexual assault, or stalking and (ii) that the applicant fears for his or her safety, his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made;

(b) A designation of the Secretary of State as agent for purposes of service of process and receipt of mail;

(c) The mailing address and the telephone number or numbers where the applicant can be contacted by the Secretary of State;

(d) The new address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of abuse, sexual assault, or stalking; and

(e) The signature of the applicant and of any individual or representative of any office designated in writing under section 42-1209 who assisted in the preparation of the application and the date on which the applicant signed the application.

(2) Applications shall be filed in the office of the Secretary of State.

(3) Upon filing a properly completed application, the Secretary of State shall certify the applicant as a program participant. Such certification shall be valid for four years following the date of filing unless the certification is withdrawn or invalidated before that date. The Secretary of State may by rule and regulation establish a renewal procedure.

(4) A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant, the applicant's children, or

the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application, is guilty of a Class II misdemeanor.

Source: Laws 2003, LB 228, § 4.

42-1205 Certification; forfeiture or cancellation; when.

(1) If a program participant obtains a name change, he or she shall forfeit his or her certification as a program participant unless the program participant applies to the Secretary of State for recertification and provides documentation of the legal name change.

(2) The Secretary of State may cancel a program participant's certification if there is a change in the mailing address from the one listed on the application under section 42-1204, unless the program participant provides the Secretary of State with notice of the change of address in such manner as is provided by rules and regulations adopted and promulgated by the Secretary of State.

(3) The Secretary of State may cancel certification of a program participant if mail forwarded to the program participant's address is returned as undeliverable.

(4) The Secretary of State shall cancel certification of a program participant who applies using false information.

Source: Laws 2003, LB 228, § 5.

42-1206 Address or substitute address; use; when.

(1) A program participant may request that state and local agencies use the address designated by the Secretary of State as the program participant's substitute address. When creating a new public record, a state or local agency which has a bona fide statutory, tax situs, or administrative requirement for the participant's residence address may request that the participant verbally provide the agency with such residence address if the agency has the capability to use such address for such bona fide purpose without permanently entering it into the agency's records. If the agency does not have such capability, it shall accept the address designated by the Secretary of State as a program participant's substitute address, unless the Secretary of State determines that:

(a) The state or local agency has a bona fide statutory, tax situs, or administrative requirement for the use of the address which would otherwise be confidential under the Address Confidentiality Act; and

(b) The address will be used only for such bona fide statutory, tax situs, or administrative requirement.

(2) The Secretary of State shall forward all first-class mail to each program participant's substitute address.

Source: Laws 2003, LB 228, § 6.

42-1207 Early voting; authorized.

(1) A program participant who is otherwise qualified to vote may apply to vote early under sections 32-938 to 32-951. The county clerk or election commissioner shall transmit the ballot for early voting to the program participant at the address designated by the program participant in his or her application as an early voter. Neither the name nor the address of a program

participant shall be included in any list of registered voters available to the public.

(2) The county clerk or election commissioner shall not make a program participant's address contained in voter registration records available for public inspection or copying except under the following circumstances:

- (a) If requested by a law enforcement agency, to the law enforcement agency; or
- (b) If directed by a court order, to a person identified in the order.

Source: Laws 2003, LB 228, § 7; Laws 2005, LB 98, § 33.

42-1208 Secretary of State; use of substitute address; exceptions.

The Secretary of State shall not make any records in a program participant's file available for inspection or copying, other than the substitute address designated by the Secretary of State, except under the following circumstances:

- (1) If requested of the Secretary of State by the chief commanding officer of a law enforcement agency or the officer's designee in the manner provided for by rules and regulations adopted and promulgated by the Secretary of State;
- (2) To a person identified in a court order upon the receipt by the Secretary of State of that court order which specifically orders the disclosure of a particular program participant's address and the reasons stated therefor; or
- (3) To verify the participation of a specific program participant, in which case the Secretary of State may only confirm or deny information supplied by the requester.

Source: Laws 2003, LB 228, § 8.

42-1209 Program participants; application assistance.

The Secretary of State shall designate state and local agencies and nonprofit entities that provide counseling and shelter services to victims of abuse, sexual assault, or stalking to assist persons applying to be program participants. Any assistance or counseling rendered by the office of the Secretary of State or its designees to such applicants shall not be deemed legal advice or the practice of law.

Source: Laws 2003, LB 228, § 9.

42-1210 Rules and regulations.

The Secretary of State may adopt and promulgate rules and regulations to carry out the Address Confidentiality Act.

Source: Laws 2003, LB 228, § 10.

INFANTS AND JUVENILES

CHAPTER 43
INFANTS AND JUVENILES

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(a) GENERAL PROVISIONS

43-101 Children eligible for adoption.

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

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

Source: Laws 1943, c. 104, § 1, p. 349; R.S.1943, § 43-101; Laws 1984, LB 510, § 1; Laws 1985, LB 255, § 17; Laws 1999, LB 594, § 8.

Cross References

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

For an adoption to be valid under Nebraska's adoption statutes, the record must show the following factors: (1) the existence of an adult person or persons entitled to adopt, (2) the existence of a child eligible for adoption, (3) compliance with statutory procedures providing for adoption, and (4) evidence that the proposed adoption is in the child's best interests. Reading the adoption statutes in their entirety, it is clear that aside from the stepparent adoption scenario, the parents' paren-

tal rights must be terminated or the existing nonterminated parent or parents must relinquish in order for the child to be eligible for adoption by any adult person or persons under this section. In re Adoption of Luke, 263 Neb. 365, 640 N.W.2d 374 (2002).

Husband and wife should join in petition for adoption. *Hiatt v. Menendez*, 157 Neb. 914, 62 N.W.2d 123 (1954).

43-102 Petition requirements; decree; adoptive home study, when required; jurisdiction; filings.

Except as otherwise provided in the Nebraska Indian Child Welfare Act, any person or persons desiring to adopt a minor child or an adult child shall file a petition for adoption signed and sworn to by the person or persons desiring to adopt. The consent or consents required by sections 43-104 and 43-105 or section 43-104.07, the documents required by section 43-104.07 or the documents required by sections 43-104.08 to 43-104.25, and a completed preplacement adoptive home study if required by section 43-107 shall be filed prior to the hearing required in section 43-103.

The county court of the county in which the person or persons desiring to adopt a child reside has jurisdiction of adoption proceedings, except that if a separate juvenile court already has jurisdiction over the child to be adopted under the Nebraska Juvenile Code, such separate juvenile court has concurrent jurisdiction with the county court in such adoption proceeding. If a child to be adopted is a ward of any court or a ward of the state at the time of placement and at the time of filing an adoption petition, the person or persons desiring to adopt shall not be required to be residents of Nebraska. The petition and all other court filings for an adoption proceeding shall be filed with the clerk of the county court. The party shall state in the petition whether such party requests that the proceeding be heard by the county court or, in cases in which a separate juvenile court already has jurisdiction over the child to be adopted under the Nebraska Juvenile Code, such separate juvenile court. Such proceeding is considered a county court proceeding even if heard by a separate juvenile court judge and an order of the separate juvenile court in such adoption proceeding has the force and effect of a county court order. The testimony in an adoption proceeding heard before a separate juvenile court judge shall be preserved as in any other separate juvenile court proceeding. The clerks of the district courts shall transfer all adoption petitions and other adoption filings which were filed with such clerks prior to August 28, 1999, to the clerk of the county court where the separate juvenile court which heard the proceeding is situated. The clerk of such county court shall file and docket such petitions and other filings.

Except as set out in subdivisions (1)(b)(ii), (iii), (iv), and (v) of section 43-107, an adoption decree shall not be issued until at least six months after an adoptive home study has been completed by the Department of Health and Human Services or a licensed child placement agency.

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

Cross References

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

Nebraska Juvenile Code, see section 43-2,129.

Failure to sign and verify petition was not jurisdictional. *Hiatt v. Menendez*, 157 Neb. 914, 62 N.W.2d 123 (1954).

County court in adoption proceeding determines question of permanent custody and control of minor. *Krell v. Jenkins*, 157 Neb. 554, 60 N.W.2d 613 (1953).

Statutory procedure for adoption must be followed. In re *Petition of Ritchie*, 155 Neb. 824, 53 N.W.2d 753 (1952).

43-102.01 Military personnel; deemed residents; when.

For purposes of adoption, persons serving in the armed forces of the United States, who have been continuously stationed at any military base or installation in the State of Nebraska for the period of one year immediately preceding the filing of a petition for adoption shall be deemed residents in good faith of this state and the county where such military base or installation is located.

Source: Laws 1969, c. 337, § 1, p. 1196.

43-103 Petition; hearing; notice.

Except as otherwise provided in the Nebraska Indian Child Welfare Act, upon the filing of such petition the court shall fix a time for hearing the same, not less than four weeks nor more than eight weeks after the filing of such petition. The court may require notice of the hearing to be given to the child, if over fourteen years of age, to the natural parent or parents of the child, and to such other interested persons as the judge may, in the exercise of discretion, deem advisable, in the manner provided for service of a summons in a civil action. If the judge directs notice by publication, such notice shall be published three successive weeks in a legal newspaper of general circulation in such county.

Source: Laws 1943, c. 104, § 3, p. 349; R.S.1943, § 43-103; Laws 1983, LB 447, § 50; Laws 1985, LB 255, § 19.

Cross References

Juveniles in need of assistance under Nebraska Juvenile Code, notice requirements, see section 43-297.
Nebraska Indian Child Welfare Act, see section 43-1501.

43-104 Adoption; consent required; exceptions.

(1) Except as otherwise provided in this section and in the Nebraska Indian Child Welfare Act, no adoption shall be decreed unless written consents thereto are filed in the county court of the county in which the person or persons desiring to adopt reside or in the county court in which the separate juvenile court having jurisdiction over the custody of the child is located and the written consents are executed by (a) the minor child, if over fourteen years of age, or the adult child, (b) any district court, county court, or separate juvenile court in the State of Nebraska having jurisdiction of the custody of a minor child by virtue of proceedings had in any district court, county court, or separate juvenile court in the State of Nebraska or by virtue of the Uniform Child Custody Jurisdiction and Enforcement Act, and (c) both parents of a child born in lawful wedlock if living, the surviving parent of a child born in lawful wedlock, the mother of a child born out of wedlock, or both the mother and father of a child born out of wedlock as determined pursuant to sections 43-104.08 to 43-104.25. On and after April 20, 2002, a written consent or relinquishment for adoption under this section shall not be valid unless signed at least forty-eight hours after the birth of the child.

(2) Consent shall not be required of any parent who (a) has relinquished the child for adoption by a written instrument, (b) has abandoned the child for at least six months next preceding the filing of the adoption petition, (c) has been deprived of his or her parental rights to such child by the order of any court of competent jurisdiction, or (d) is incapable of consenting.

(3) Consent shall not be required of a putative father who has failed to timely file (a) a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.02 and, with respect to the absence of such filing, a certificate has been filed pursuant to section 43-104.04 or (b) a petition pursuant to section 43-104.05 for the adjudication of such notice and a determination of whether his consent to the adoption is required and the mother of the child has timely executed a valid relinquishment and consent to the adoption pursuant to such section.

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

Source: Laws 1943, c. 104, § 4(1), p. 350; R.S.1943, § 43-104; Laws 1951, c. 127, § 1, p. 546; Laws 1967, c. 248, § 1, p. 652; Laws

1971, LB 329, § 1; Laws 1973, LB 436, § 1; Laws 1975, LB 224, § 2; Laws 1983, LB 146, § 3; Laws 1984, LB 510, § 3; Laws 1985, LB 255, § 20; Laws 1988, LB 790, § 22; Laws 1995, LB 712, § 20; Laws 1996, LB 1296, § 19; Laws 1998, LB 1041, § 7; Laws 1999, LB 594, § 10; Laws 2002, LB 952, § 2; Laws 2003, LB 148, § 100; Laws 2007, LB247, § 5.

Cross References

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

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

It is clear that the district court is not to consider the issue of abandonment; the question of whether the parent did in fact abandon the child, for purposes of adoption, is exclusively for the county court. *Smith v. Smith*, 242 Neb. 812, 497 N.W.2d 44 (1993).

The critical period of time during which abandonment must be shown to eliminate the necessity for obtaining consent to adoption from a parent under this section is the 6 months immediately preceding the filing of the petition for adoption. In re *Guardianship of T.C.W.*, 235 Neb. 716, 457 N.W.2d 282 (1990).

The consent granted by the district court pursuant to the provisions of this section does nothing more than permit the county court, as the tribunal having exclusive original jurisdiction over adoption matters, to entertain such proceedings. *Klein v. Klein*, 230 Neb. 385, 431 N.W.2d 646 (1988).

Abandonment for purposes of permitting substitute consent for adoption must be proved by clear and convincing evidence. In re *Guardianship of Sain*, 217 Neb. 96, 348 N.W.2d 435 (1984).

Although the critical period of time during which abandonment must be shown to eliminate the necessity of obtaining consent pursuant to this section is the six months immediately preceding the filing for adoption, evidence of a parent's conduct either before or after this period may be considered as relevant to a determination of whether the purpose and intent of that parent was to abandon the child or children. To prove abandon-

ment in adoption proceedings, the evidence must clearly and convincingly show that the parent has acted toward the child in a manner evidencing a settled purpose to be rid of all parental obligations and to forego all parental rights, together with a complete repudiation of parenthood and an abandonment of parental rights and responsibilities. Where there has been a protracted period of totally unjustified failure to exercise parental functions, an isolated contact does not necessarily negate the inference that a person no longer wishes to act in the role of a parent to a child. In re *Adoption of Simonton*, 211 Neb. 777, 320 N.W.2d 449 (1982).

The signing of a consent to adoption does not, in itself, release the consenting parent from an obligation to support the child and the court's earlier opinion in *Smith v. Smith*, 201 Neb. 21, 265 N.W.2d 855 (1978), should not be read that way. *Williams v. Williams*, 206 Neb. 630, 294 N.W.2d 357 (1980).

Consent for relinquishment executed by seventeen year old mother of child born out of wedlock is valid. *Batt v. Nebraska Children's Home Society*, 185 Neb. 124, 174 N.W.2d 88 (1970).

To warrant an adoption, it must clearly appear that the natural parents, if living, had abandoned the child for a period of at least six months. *McCauley v. Stewart*, 177 Neb. 759, 131 N.W.2d 174 (1964).

Adoption is permitted where parents have been deprived of custody of minor child by order of juvenile court. *Krell v. Jenkins*, 157 Neb. 554, 60 N.W.2d 613 (1953).

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

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

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

filing the notice shall notify the registry of any change of address pursuant to procedures prescribed in rules and regulations of the department.

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

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

(5) The department shall not divulge the names and addresses of persons listed with the biological father registry to any other person except as authorized by law or upon order of a court of competent jurisdiction for good cause shown.

(6) The department may develop information about the registry and may distribute such information, through its existing publications, to the news media and the public. The department may provide information about the registry to the Department of Correctional Services, which may distribute such information through its existing publications.

(7) A person who has been adjudicated by a Nebraska court of competent jurisdiction to be the biological father of a child born out of wedlock who is the subject of a proposed adoption shall not be construed to be a putative father for purposes of sections 43-104.01 to 43-104.05 and shall not be subject to the provisions of such sections as applied to such fathers. Whether such person's consent is required for the proposed adoption shall be determined by the Nebraska court having jurisdiction over the custody of the child pursuant to section 43-104.22, as part of proceedings required under section 43-104 to obtain the court's consent to such adoption.

Source: Laws 1995, LB 712, § 21; Laws 1996, LB 1044, § 105; Laws 1999, LB 594, § 11; Laws 2007, LB247, § 6; Laws 2007, LB296, § 63.

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

A Notice of Objection to Adoption and Intent to Obtain Custody shall be filed with the biological father registry under section 43-104.01 on forms provided by the Department of Health and Human Services (1) within five business days after the birth of the child or (2) if notice is provided after the birth of the child (a) within five business days after receipt of the notice provided under section 43-104.12 or (b) within five business days after the last date of any published notice provided under section 43-104.14, whichever notice is earlier. Such notice shall be considered to have been filed if it is received by the department or postmarked prior to the end of the fifth business day as provided in this section.

Source: Laws 1975, LB 224, § 3; Laws 1995, LB 712, § 22; Laws 1996, LB 1044, § 106; Laws 1997, LB 752, § 97; Laws 2007, LB247, § 7; Laws 2007, LB296, § 64.

Five-day filing requirement for paternity held constitutional as applied, because such requirement did not violate right of equal protection or procedural due process. *Friche v. Schaad*, 249 Neb. 825, 545 N.W.2d 740 (1996).

This section held unconstitutional as applied in this case. In re Application of S.R.S. and M.B.S., 225 Neb. 759, 408 N.W.2d 272 (1987).

Five-day claim provision does not apply to a dispute between the father and mother of a child born out of wedlock. *White v. Mertens*, 225 Neb. 241, 404 N.W.2d 410 (1987).

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

Within three days after the filing of a Request for Notification of Intended Adoption or a Notice of Objection to Adoption and Intent to Obtain Custody with the biological father registry pursuant to sections 43-104.01 and 43-104.02, the Department of Health and Human Services shall cause a certified copy of such request or notice to be mailed by certified mail to (1) the mother or prospective mother of such child at the last-known address shown on the request or notice or an agent specifically designated in writing by the mother or prospective mother to receive such request or notice and (2) any Nebraska court identified by the putative father under section 43-104.01 as having jurisdiction over the custody of the child.

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

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

If a Notice of Objection to Adoption and Intent to Obtain Custody is not timely filed with the biological father registry pursuant to section 43-104.02, the mother of a child born out of wedlock or an agent specifically designated in writing by the mother may request, and the Department of Health and Human Services shall supply, a certificate that no such notice has been filed with the biological father registry. The filing of such certificate pursuant to section 43-102 shall eliminate the need or necessity of a consent or relinquishment for adoption by the putative father of such child.

Source: Laws 1975, LB 224, § 5; Laws 1995, LB 712, § 24; Laws 1996, LB 1044, § 108; Laws 1999, LB 594, § 13; Laws 2007, LB247, § 9; Laws 2007, LB296, § 66.

Five-day filing requirement for paternity held constitutional as applied, because such requirement did not violate right of equal protection or procedural due process. *Friehe v. Schaad*, 249 Neb. 825, 545 N.W.2d 740 (1996).

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

(1) If a Notice of Objection to Adoption and Intent to Obtain Custody is timely filed with the biological father registry pursuant to section 43-104.02, either the putative father, the mother, or her agent specifically designated in writing shall, within thirty days after the filing of such notice, file a petition for adjudication of the notice and a determination of whether the putative father's consent to the proposed adoption is required. The petition shall be filed in the county court in the county where such child was born or, if a separate juvenile court already has jurisdiction over the custody of the child, in the county court of the county in which such separate juvenile court is located.

(2) If such a petition is not filed within thirty days after the filing of such notice and the mother of the child has executed a valid relinquishment and consent to the adoption within sixty days of the filing of such notice, the putative father's consent to adoption of the child shall not be required, he is not entitled to any further notice of the adoption proceedings, and any alleged

parental rights and responsibilities of the putative father shall not be recognized thereafter in any court.

(3) After the timely filing of such petition, the court shall set a trial date upon proper notice to the parties not less than twenty nor more than thirty days after the date of such filing. If the mother contests the putative father's claim of paternity, the court shall order DNA testing to establish whether the putative father is the biological father. The court shall assess the costs of such testing between the parties in an equitable manner. Whether the putative father's consent to the adoption is required shall be determined pursuant to section 43-104.22. The court shall appoint a guardian ad litem to represent the best interests of the child.

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

(b) Except as otherwise provided in this subdivision, the court shall, upon the motion of any party, transfer the case to the district court for further proceedings on the matters of custody, visitation, and child support with respect to such child if (i) such court determines under section 43-104.22 that the consent of the putative father is required for adoption of the minor child and the putative father refuses such consent or (ii) the mother of the child, within thirty days after the conclusion of proceedings under this section, including appeals, has not executed a valid relinquishment and consent to the adoption. The court, upon its own motion, may retain the case for good cause shown.

Source: Laws 1975, LB 224, § 6; Laws 1995, LB 712, § 25; Laws 1998, LB 1041, § 8; Laws 1999, LB 594, § 14; Laws 2007, LB247, § 10.

The 30-day filing requirement of this section does not facially violate substantive due process. In re Adoption of Baby Girl H., 262 Neb. 775, 635 N.W.2d 256 (2001).

subject matter jurisdiction. Armour v. L.H., 259 Neb. 138, 608 N.W.2d 599 (2000).

A petition to adjudicate paternity filed pursuant to this section is a matter of adoption over which the district courts have no

43-104.06 Repealed. Laws 1995, LB 712, § 31.

43-104.07 Child born in a foreign country; requirements.

The petition for adoption of a child born in a foreign country shall be accompanied by: (1) A document or documents from a court, official department, or government agency of the country of origin stating that the parent has consented to the adoption, stating that the parental rights of the parents of the child have been terminated, or stating that the child to be adopted has been abandoned or relinquished by the natural parents and that the child is to immigrate to the United States for the purpose of adoption; and (2) written consent to the adoption of the child from a child placement agency licensed by the Department of Health and Human Services or the agency's duly authorized representative which placed the child with the adopting person or persons. The consent shall be signed and acknowledged before an officer authorized to acknowledge deeds in the state where the consent is signed and shall not require a witness.

Any document in a foreign language shall be translated into English by the Department of State or by a translator who shall certify the accuracy of the translation.

A guardian shall not be required to be appointed to give consent to the adoption of any child born in a foreign country when the consent requirements of this section have been met.

Source: Laws 1983, LB 146, § 2; Laws 1996, LB 1044, § 109; Laws 1997, LB 307, § 19.

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

Whenever a child is claimed to be born out of wedlock and the biological mother contacts an adoption agency or attorney to relinquish her rights to the child, or the biological mother joins in a petition for adoption to be filed by her husband, the agency or attorney contacted shall attempt to establish the identity of the biological father and further attempt to inform the biological father of his right to execute a relinquishment and consent to adoption, or a denial of paternity and waiver of rights, in the form mandated by section 43-106, pursuant to sections 43-104.08 to 43-104.25.

Source: Laws 1995, LB 712, § 1; Laws 2007, LB247, § 11.

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

In all cases of adoption of a minor child born out of wedlock, the biological mother shall complete and sign an affidavit in writing and under oath. The affidavit shall be executed by the biological mother before or at the time of execution of the consent or relinquishment and shall be attached as an exhibit to any petition to finalize the adoption. If the biological mother is under the age of nineteen, the affidavit may be executed by the agency or attorney representing the biological mother based upon information provided by the biological mother. The affidavit shall be in substantially the following form:

AFFIDAVIT OF IDENTIFICATION

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

- (1) My child was born, or is expected to be born, on the day of,, at, in the State of
- (2) I reside at, in the City or Village of, County of, State of
- (3) I am of the age of years, and my date of birth is
- (4) I acknowledge that I have been asked to identify the father of my child.
- (5) (CHOOSE ONE)
- (5A) I know and am identifying the biological father (or possible biological fathers) as follows:

The name of the biological father is

His last-known home address is

His last-known work address is

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

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

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

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

- Conception of my child occurred as a result of sexual assault or incest
..... Providing notice to the biological father of my child would threaten my safety or the safety of my child
..... Other reason:

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

.....
.....
.....

(use additional sheets of paper as needed).

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

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

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

Dated this day of,

(Acknowledgment)

.....
(Signature)

Source: Laws 1995, LB 712, § 2; Laws 2007, LB247, § 12.

43-104.10 Child born out of wedlock; agency or attorney; duty to inform biological mother.

The agency or attorney representing the biological mother shall inform the mother of the legal and medical need to determine, whenever possible, the paternity of the child prior to an adoption and that her failure or refusal to accurately identify the biological father or possible biological fathers could threaten the legal validity of any adoptive placement of the child.

Source: Laws 1995, LB 712, § 3.

43-104.11 Child born out of wedlock; father's relinquishment and consent; when effective.

If the biological mother's affidavit, required by section 43-104.09, identifies only one possible biological father of the child and states that there are no other possible biological fathers of the child, and if the named father executes a valid

relinquishment and consent to adoption of the child in the form mandated by section 43-106 or executes a denial of paternity and waiver of rights in the form mandated by section 43-106, the court may enter a decree of adoption pursuant to section 43-109 without regard to sections 43-104.12 to 43-104.16. A named biological father's relinquishment and consent or a named biological father's waiver of rights is irrevocable upon signing and is not voidable for any period after signing. Such relinquishment and consent or such waiver of rights may only be challenged on the basis of fraud or duress for up to six months after signing.

Source: Laws 1995, LB 712, § 4; Laws 1999, LB 594, § 15.

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

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

- (1) Any person adjudicated by a court in this state or by a court in another state or territory of the United States to be the biological father of the child;
- (2) Any person who has filed a Request for Notification of Intended Adoption or a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to sections 43-104.01 and 43-104.02;
- (3) Any person who is recorded on the child's birth certificate as the child's father;
- (4) Any person who might be the biological father of the child who was openly living with the child's biological mother within the twelve months prior to the birth of the child;
- (5) Any person who has been identified as the biological father or possible biological father of the child by the child's biological mother pursuant to section 43-104.09;
- (6) Any person who was married to the child's biological mother within six months prior to the birth of the child and prior to the execution of the relinquishment; and
- (7) Any other person who the agency or attorney representing the biological mother may have reason to believe may be the biological father of the child.

Source: Laws 1995, LB 712, § 5; Laws 1999, LB 594, § 16; Laws 2007, LB247, § 13.

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

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

- (1) The biological mother's name, the fact that she is pregnant or has given birth to the child, and the expected or actual date of delivery;
- (2) That the child has been relinquished by the biological mother, that she intends to execute a relinquishment, or that the biological mother has joined or plans to join in a petition for adoption to be filed by her husband;

(3) That the person being notified has been identified as a possible biological father of the child;

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

(5) That the possible biological father has the right to (a) deny paternity, (b) waive any parental rights he may have, (c) relinquish and consent to adoption of the child, (d) file a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.02, or (e) object to the adoption in a proceeding before any Nebraska court which has, prior to his receipt of this notice, adjudicated him to be the biological father of the child;

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

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

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

Source: Laws 1995, LB 712, § 6; Laws 2007, LB247, § 14; Laws 2007, LB554, § 38.

This section is facially constitutional. In re Adoption of Baby Girl H., 262 Neb. 775, 635 N.W.2d 256 (2001).

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

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

(2) The publication shall be made once a week for three consecutive weeks in a legal newspaper of general circulation in the Nebraska county or county of another state which is most likely to provide actual notice to the biological father. The publication shall include:

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

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

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

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

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

(f) That he has the right to (i) deny paternity, (ii) waive any parental rights he may have, (iii) relinquish and consent to adoption of the child, (iv) file a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.02, or (v) object to the adoption in a proceeding before any Nebraska court which has adjudicated him to be the biological father of the child prior to his receipt of notice; and

(g) That (i) in order to deny paternity, waive his parental rights, relinquish and consent to the adoption, or receive additional information to determine whether he is the father of the child in question, he must contact the undersigned agency or attorney representing the biological mother and (ii) if he wishes to object to the adoption and seek custody of the child, he must seek legal counsel from his own attorney immediately.

Source: Laws 1995, LB 712, § 7; Laws 2007, LB247, § 15.

43-104.15 Child born out of wedlock; notification to biological father; exceptions.

The notification procedure set forth in sections 43-104.12 to 43-104.14 shall, whenever possible, be completed prior to a child being placed in an adoptive home. If the information provided in the biological mother's affidavit prepared pursuant to section 43-104.09 presents clear evidence that providing notice to a biological father or possible biological father as contemplated in sections 43-104.12 to 43-104.14 would be likely to threaten the safety of the biological mother or the child or that conception was the result of sexual assault or incest, notice is not required to be given. If the biological father or possible biological fathers are not given actual or constructive notice prior to the time of placement, the agency or attorney shall give the adoptive parents a statement of legal risk indicating the legal status of the biological father's parental rights as of the time of placement, and the adoptive parents shall sign a statement of legal risk acknowledging their acceptance of the placement, notwithstanding the legal risk.

Source: Laws 1995, LB 712, § 8.

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

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

Source: Laws 1995, LB 712, § 9.

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

In all cases of adoption of a minor child born out of wedlock, the petition to finalize the adoption shall specifically allege compliance with sections 43-104.08 to 43-104.16, and shall attach as exhibits all documents which are evidence of such compliance. No notice of the filing of the petition to finalize or the hearing on the petition shall be given to a biological father or putative biological father who (1) executed a valid relinquishment and consent or a valid denial of paternity and waiver of rights pursuant to section 43-104.11, (2) was provided notice under sections 43-104.12 to 43-104.14 and failed to timely file a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.02 or petition pursuant to section 43-104.05, or (3) is not required to consent to the adoption pursuant to proceedings conducted under section 43-104.22.

Source: Laws 1995, LB 712, § 10; Laws 2007, LB247, § 16.

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

If a petition to finalize an adoption is filed and fails to establish substantial compliance with sections 43-104.08 to 43-104.16, the court shall receive evidence by affidavit of the facts and circumstances of the biological mother's relationship with the biological father or possible biological fathers at the time of conception of the child and at the time of the biological mother's relinquishment of the child, including any evidence that providing notice to a biological father would be likely to threaten the safety of the biological mother or the child or that the conception was the result of sexual assault or incest. If, under the facts and circumstances presented, the court finds that the agency or attorney representing the biological mother did not exercise due diligence in complying with sections 43-104.08 to 43-104.16, or if the court finds that there is no credible evidence that providing notice to a biological father would be likely to threaten the safety of the biological mother or the child or that the conception was the result of sexual assault or incest, the court shall order the attorney or agency to exercise due diligence in complying with sections 43-104.08 to 43-104.16. If the attorney or agency fails to exercise due diligence in complying with such sections or at any time upon the petition or application of any interested party the court may appoint a guardian ad litem to represent the interests of the biological father. The guardian ad litem shall be chosen from a qualified pool of local attorneys. The guardian ad litem shall receive reasonable compensation for the representation, the amount to be determined at the discretion of the court.

Source: Laws 1995, LB 712, § 11.

43-104.19 Child born out of wedlock; guardian ad litem for biological father; duties.

The guardian ad litem for the biological father shall:

- (1) Identify the biological father whenever possible;
- (2) Notify the biological father or possible biological fathers of the proposed relinquishment of the child and inform the biological father or possible biological fathers of their parental rights and duties with regard to the child;
- (3) Notify the court if all reasonable attempts to both identify and notify the biological father or possible biological fathers are unsuccessful; and

(4) Determine, by deposition, by affidavit, by interview, or through testimony at a hearing, the following: Whether the mother was married at the time of conception of the child or at any time thereafter, whether the mother was cohabitating with a man at the time of conception or birth of the child, whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy, whether conception was the result of sexual assault or incest, and whether any man has formally or informally acknowledged or declared his possible paternity of the child.

Source: Laws 1995, LB 712, § 12.

43-104.20 Child born out of wedlock; guardian ad litem for biological father; investigation; hearing.

The guardian ad litem for the biological father shall complete the investigation of the interests of the biological father within twenty days after appointment unless the court finds reasonable cause to extend the time period. The court shall hold a hearing as soon as practicable to determine whether the child was born out of wedlock, to determine the identity of the biological father, if possible, and to determine the rights of the biological father. The court may exercise its contempt powers with respect to any individual who admits having knowledge of information regarding the paternity of the child but who refuses to disclose that information to the guardian ad litem or to the court.

Source: Laws 1995, LB 712, § 13.

43-104.21 Child born out of wedlock; guardian ad litem for biological father; hearing; notice; when.

(1) Notice of the hearing under section 43-104.20 shall be given to every person identified by the guardian ad litem as the biological father or a possible biological father. Notice shall be given in the manner appropriate under the rules of civil procedure for the service of process in this state and in any additional manner that the court directs. Proof of notice shall be filed with the court before the hearing.

(2) Notice is not required to be given to a person who may be the father of a child conceived as a result of a sexual assault or incest or if notification is likely to result in a threat to the safety of the biological mother or the child.

Source: Laws 1995, LB 712, § 14.

43-104.22 Child born out of wedlock; hearing; paternity of child; father's consent required; when; determination of custody.

At any hearing to determine the parental rights of an adjudicated biological father or putative biological father of a minor child born out of wedlock and whether such father's consent is required for the adoption of such child, the court shall receive evidence with regard to the actual paternity of the child and whether such father is a fit, proper, and suitable custodial parent for the child. The court shall determine that such father's consent is not required for a valid adoption of the child upon a finding of one or more of the following:

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

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

- (3) The father had knowledge of the child's birth and failed to provide reasonable financial support for the mother or child;
- (4) The father abandoned the mother without reasonable cause and with knowledge of the pregnancy;
- (5) The father had knowledge of the pregnancy and failed to provide reasonable support for the mother during the pregnancy;
- (6) The child was conceived as a result of a nonconsensual sex act or an incestual act;
- (7) Notice was provided pursuant to sections 43-104.12 to 43-104.14 and the putative father failed to timely file a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.02;
- (8) The putative father failed to timely file a petition to adjudicate a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.05;
- (9) Notice was provided to an adjudicated biological father through service of process under applicable state law and he failed to object to the adoption or failed to appear at the hearing conducted under section 43-104.25;
- (10) The father executed a valid relinquishment or consent to adoption; or
- (11) The man is not, in fact, the biological father of the child.

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

Source: Laws 1995, LB 712, § 15; Laws 1999, LB 594, § 17; Laws 2007, LB247, § 17.

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

If, after viewing the evidence submitted to support a petition to finalize an adoption or any evidence submitted by a guardian ad litem if one is appointed, the court determines that no biological father can be identified, or that no identified father can be notified without likely threat to the safety of the biological mother or the child, or upon a finding of due diligence and substantial compliance with sections 43-104.08 to 43-104.16 and a finding that no biological father has timely filed under section 43-104.02, the court shall enter an order finalizing the adoption of the child. Subject to the disposition of an appeal, upon the expiration of thirty days after an order is issued under this section, the order shall not be reversed, vacated, or modified in any manner or upon any ground including fraud, misrepresentation, or failure to provide notice under sections 43-104.12 to 43-104.14.

Source: Laws 1995, LB 712, § 16.

43-104.24 Child born out of wedlock; proceedings; court priority.

All proceedings pursuant to sections 43-104.08 to 43-104.23 have the highest priority and shall be advanced on the court docket to provide for their earliest practical disposition. An adjournment or continuance of a proceeding pursuant

to sections 43-104.08 to 43-104.23 shall not be granted without a showing of good cause.

Source: Laws 1995, LB 712, § 17.

43-104.25 Child born out of wedlock; biological father; applicability of sections.

With respect to any person who has been adjudicated by a Nebraska court of competent jurisdiction to be the biological father of a child born out of wedlock who is the subject of a proposed adoption:

(1) Such person shall not be construed to be a putative father for purposes of sections 43-104.01 to 43-104.05 and shall not be subject to the provisions of such sections as applied to such fathers; and

(2)(a) If the adjudicated biological father has been provided notice in substantial compliance with section 43-104.12 or section 43-104.14, whichever notice is earlier, and he has not executed a valid relinquishment or consent to the adoption, the mother or lawful custodian of the child or his or her agent shall file a motion in the court with jurisdiction of the custody of the child for a hearing to determine whether such father's consent to the adoption is required and whether the court shall give its consent to the adoption;

(b) Notice of the motion and hearing shall be served on the adjudicated biological father in the manner provided for service of process under applicable state law; and

(c) Within thirty days after service of notice under subdivision (b) of this subdivision, the court shall conduct an evidentiary hearing to determine whether the adjudicated biological father's consent to the adoption is required and whether the court shall give its consent to the adoption. Whether such father's consent is required for the proposed adoption shall be determined pursuant to section 43-104.22.

Source: Laws 2007, LB247, § 18.

43-105 Substitute consents.

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

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

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

(c) In all other cases when consent cannot be given as provided in subdivision (1)(c) of section 43-104, consent shall be given by the guardian or guardian ad litem of such minor child appointed by a court, which consent shall be authorized by the court having jurisdiction of such guardian or guardian ad litem.

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

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

Cross References

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

A finding of abandonment under this section should not be made without first appointing a guardian. Abandonment, for purposes of permitting substitute consent, must be proven by clear and convincing evidence. In re Guardianship of Sain, 211 Neb. 508, 319 N.W.2d 100 (1982).

Under subsection (3) of this section, the county court is the proper court for authorizing consent of a guardian appointed under former sections 38-101 to 38-120 or section 43-111.01, as the authority to appoint a guardian under those sections lies exclusively in the county court, while the juvenile court would be the proper court for a guardian appointed under sections 43-201 to 43-227 since the juvenile court has exclusive jurisdiction to appoint a guardian under these sections. However, the

jurisdiction of the juvenile court arises only if there has been a determination, prior to the adoption proceedings, that the child is dependent and neglected; otherwise the matter remains exclusively in the jurisdiction of the county court. Section 38-114 remains as the legislative bridge between the reference to former sections 38-101 to 38-120 in this section and the provisions of sections 30-2601 to 30-2616. A guardian appointed for a minor child for whom adoption is being sought by the use of substitute consent pursuant to this section should be an independent party not directly interested in the outcome of the adoption proceedings. In re Guardianship of Sain, 211 Neb. 508, 319 N.W.2d 100 (1982).

43-106 Consents; signature; witnesses; acknowledgment; certified copy of orders.

Consents required to be given under sections 43-104 and 43-105, except under subdivision (1)(b) of section 43-104, must be acknowledged before an officer authorized to acknowledge deeds in this state and signed in the presence of at least one witness, in addition to the officer. Consents under subdivision (1)(b) of section 43-104 shall be shown by a duly certified copy of order of the court required to grant such consent.

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

Acknowledgment held valid, no particular form of acknowledgment being specified. *Batt v. Nebraska Children's Home Society*, 185 Neb. 124, 174 N.W.2d 88 (1970).

Consent to adoption must be witnessed and acknowledged. *McCauley v. Stewart*, 177 Neb. 759, 131 N.W.2d 174 (1964).

43-106.01 Relinquishment; relief from parental duties; no impairment of right to inherit.

When a child shall have been relinquished by written instrument, as provided by sections 43-104 and 43-106, to the Department of Health and Human Services or to a licensed child placement agency and the agency has, in writing, accepted full responsibility for the child, the person so relinquishing shall be relieved of all parental duties toward and all responsibilities for such child and have no rights over such child. Nothing contained in this section shall impair the right of such child to inherit.

Source: Laws 1965, c. 234, § 1, p. 679; Laws 1996, LB 1044, § 111.

In an agency adoption, the rights of the relinquishing parent are terminated when the agency accepts responsibility for the child in writing, and once the agency accepts such responsibility, the agency retains custody until such time as the child is actually adopted; whereas in a private adoption, the child is relinquished directly into the hands of the prospective adoptive parents without interference by the state or a private agency, and the relinquishing parent's rights are not totally extinguished

until the child has been formally adopted by the prospective parents. *Gomez v. Savage*, 254 Neb. 836, 580 N.W.2d 523 (1998).

The statute requires both a written relinquishment and a written acceptance. *D.S. v. United Catholic Soc. Servs.*, 227 Neb. 654, 419 N.W.2d 531 (1988).

Relinquishment of a child may be effectively revoked within a reasonable time after its execution before the child placement

agency has, in writing, accepted full responsibility for the child. *Kellie v. Lutheran Family & Social Service*, 208 Neb. 767, 305 N.W.2d 874 (1981).

The legislative intent as to the finality of a child relinquishment is not the same in the case of a private placement, governed by section 43-111, R.R.S.1943, as it is in an agency placement, governed by section 43-106.01, R.R.S.1943. *Gray v. Maxwell*, 206 Neb. 385, 293 N.W.2d 90 (1980).

A voluntary relinquishment in accordance herewith, and accepted, is not revocable. *Kane v. United Catholic Social Services*, 187 Neb. 467, 191 N.W.2d 824 (1971).

Child which received inheritance from adoptive parents may also receive inheritance from natural parents. *Wulf v. Ibsen*, 184 Neb. 314, 167 N.W.2d 181 (1969).

43-106.02 Relinquishment of child; presentation of nonconsent form required.

Prior to the relinquishment of a child for adoption, a representative of the Department of Health and Human Services or of any child placement agency licensed by the department or an attorney and a witness shall present a copy or copies of the nonconsent form as provided in section 43-146.06 to the relinquishing parent or parents and explain the effects of signing such form.

Source: Laws 1988, LB 372, § 3; Laws 1996, LB 1044, § 112; Laws 1997, LB 307, § 20.

43-107 Investigation by Department of Health and Human Services; adoptive home studies required; when; medical history; required; exceptions; report required.

(1)(a) For adoption placements occurring or in effect prior to January 1, 1994, upon the filing of a petition for adoption, the county judge shall, except in the adoption of children by stepparents when the requirement of an investigation is discretionary, request the Department of Health and Human Services or any child placement agency licensed by the department to examine the allegations set forth in the petition and to ascertain any other facts relating to such minor child and the person or persons petitioning to adopt such child as may be relevant to the propriety of such adoption, except that the county judge shall not be required to request such an examination if the judge determines that information compiled in a previous examination or study is sufficiently current and comprehensive. Upon the request being made, the department or other licensed agency shall conduct an investigation and report its findings to the county judge in writing at least one week prior to the date set for hearing.

(b)(i) For adoption placements occurring on or after January 1, 1994, a preplacement adoptive home study shall be filed with the court prior to the hearing required in section 43-103, which study is completed by the Department of Health and Human Services or a licensed child placement agency within one year before the date on which the adoptee is placed with the petitioner or petitioners and indicates that the placement of a child for the purpose of adoption would be safe and appropriate.

(ii) An adoptive home study shall not be required when the petitioner is a stepparent of the adoptee unless required by the court, except that for petitions filed on or after January 1, 1994, the judge shall order the petitioner or his or her attorney to request the Nebraska State Patrol to file a national criminal history record information check and to request the department to conduct and file a check of the central register created in section 28-718 for any history of the petitioner of behavior injurious to or which may endanger the health or morals of a child. An adoption decree shall not be issued until such records are on file with the court. The petitioner shall pay the cost of the national criminal history record information check and the check of the central register.

(iii) The placement of a child for foster care made by or facilitated by the department or a licensed child placement agency in the home of a person who later petitions the court to adopt the child shall be exempt from the requirements of a preplacement adoptive home study. The petitioner or petitioners who meet such criteria shall have a postplacement adoptive home study completed by the department or a licensed child placement agency and filed with the court at least one week prior to the hearing for adoption.

(iv) A voluntary placement for purposes other than adoption made by a parent or guardian of a child without assistance from an attorney, physician, or other individual or agency which later results in a petition for the adoption of the child shall be exempt from the requirements of a preplacement adoptive home study. The petitioner or petitioners who meet such criteria shall have a postplacement adoptive home study completed by the department or a licensed child placement agency and filed with the court at least one week prior to the hearing for adoption.

(v) The adoption of an adult child as provided in subsection (2) of section 43-101 shall be exempt from the requirements of an adoptive home study unless the court specifically orders otherwise. The court may order an adoptive home study, a background investigation, or both if the court determines that such would be in the best interests of the adoptive party or the person to be adopted.

(vi) Any adoptive home study required by this section shall be conducted by the department or a licensed child placement agency at the expense of the petitioner or petitioners unless such expenses are waived by the department or licensed child placement agency. The department or licensed agency shall determine the fee or rate for the adoptive home study.

(vii) The preplacement or postplacement adoptive home study shall be performed as prescribed in rules and regulations of the department and shall include at a minimum an examination into the facts relating to the petitioner or petitioners as may be relevant to the propriety of such adoption. Such rules and regulations shall require an adoptive home study to include a national criminal history record information check and a check of the central register created in section 28-718 for any history of the petitioner or petitioners of behavior injurious to or which may endanger the health or morals of a child.

(2) Upon the filing of a petition for adoption, the judge shall require that a complete medical history be provided on the child, except that in the adoption of a child by a stepparent the provision of a medical history shall be discretionary. A medical history shall be provided, if available, on the biological mother and father and their biological families, including, but not limited to, siblings, parents, grandparents, aunts, and uncles, unless the child is foreign born or was abandoned. The medical history or histories shall be reported on a form provided by the department and filed along with the report of adoption as provided by section 71-626. If the medical history or histories do not accompany the report of adoption, the department shall inform the court and the State Court Administrator. The medical history or histories shall be made part of the court record. After the entry of a decree of adoption, the court shall retain a copy and forward the original medical history or histories to the department. This subsection shall only apply when the relinquishment or consent for an adoption is given on or after September 1, 1988.

Source: Laws 1943, c. 104, § 5, p. 351; R.S.1943, § 43-107; Laws 1978, LB 566, § 1; Laws 1980, LB 681, § 1; Laws 1988, LB 372, § 1;

Laws 1988, LB 301, § 7; Laws 1989, LB 231, § 1; Laws 1993, LB 16, § 2; Laws 1996, LB 1044, § 113; Laws 1997, LB 307, § 21; Laws 1998, LB 1041, § 10; Laws 1999, LB 594, § 18; Laws 2004, LB 1005, § 4; Laws 2007, LB296, § 67.

43-108 Personal appearance of parties; exceptions.

The minor child to be adopted, unless such child is over fourteen years of age, and the person or persons desiring to adopt the child must appear in person before the judge at the time of hearing, except that when the petitioners are husband and wife and one of them is present in court, the court, in its discretion, may accept the affidavit of an absent spouse who is in the armed forces of the United States and it appears to the court the absent spouse will not be able to be present in court for more than a year because of his or her military assignment, which affidavit sets forth that the absent spouse favors the adoption.

Source: Laws 1943, c. 104, § 6, p. 351; R.S.1943, § 43-108; Laws 1969, c. 340, § 1, p. 1199; Laws 1998, LB 1041, § 11.

43-109 Decree; conditions; content.

(1) If, upon the hearing, the court finds that such adoption is for the best interests of such minor child or such adult child, a decree of adoption shall be entered. No decree of adoption shall be entered unless (a) it appears that the child has resided with the person or persons petitioning for such adoption for at least six months next preceding the entering of the decree of adoption, except that such residency requirement shall not apply in an adoption of an adult child, (b) the medical histories required by subsection (2) of section 43-107 have been made a part of the court record, and (c) the court record includes an affidavit or affidavits signed by the relinquishing biological parent, or parents if both are available, in which it is affirmed that, pursuant to section 43-106.02, prior to the relinquishment of the child for adoption, the relinquishing parent was, or parents if both are available were, (i) presented a copy or copies of the nonconsent form provided for in section 43-146.06 and (ii) given an explanation of the effects of filing or not filing the nonconsent form. Subdivisions (b) and (c) of this subsection shall only apply when the relinquishment or consent for an adoption is given on or after September 1, 1988.

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

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

Source: Laws 1943, c. 104, § 7, p. 351; R.S.1943, § 43-109; Laws 1984, LB 510, § 4; Laws 1985, LB 255, § 22; Laws 1988, LB 372, § 2; Laws 1988, LB 301, § 8; Laws 1989, LB 231, § 2; Laws 1999, LB 594, § 19.

The issue of the children's best interests in the context of adoption is within the dominion of the county court. *Smith v. Smith*, 242 Neb. 812, 497 N.W.2d 44 (1993).

A decision as to whether or not to permit adoption is required to be based on the best interests of the child. *Nebraska Children's Home Soc. v. Collins*, 195 Neb. 531, 239 N.W.2d 258 (1976).

Child must reside with adoptive parents at least six months preceding the rendition of decree. *Hiatt v. Menendez*, 157 Neb. 914, 62 N.W.2d 123 (1954).

Decree of adoption should be granted only if it will be for best interests of child. *Krell v. Jenkins*, 157 Neb. 554, 60 N.W.2d 613 (1953).

43-110 Decree; effect as between parties.

After a decree of adoption is entered, the usual relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent shall thereafter exist between such adopted child and the person or persons adopting such child and his, her or their kindred.

Source: Laws 1943, c. 104, § 8, p. 351.

No distinction between adult and minor adoptees will be made for the purposes of this section. *Satterfield v. Bonyhady*, 233 Neb. 513, 446 N.W.2d 214 (1989).

Under the provisions of this section an adopted child, in the absence of specific testamentary directions to the contrary, inherits from the antecedents of an adoptive parent to the same extent as do the adoptive parent's natural children. *In re Trust Estate of Darling*, 219 Neb. 705, 365 N.W.2d 821 (1985).

Habeas corpus petition of natural parents for children who had been in adoptive home over five years was properly dismissed. *Syrovatka ex rel. Syrovatka v. Graham*, 190 Neb. 355, 208 N.W.2d 281 (1973).

The next of kin of adoptive parents have the same right to inherit property from an adoptive child as from a natural child of the adoptive parents. *Neil v. Masterson*, 187 Neb. 364, 191 N.W.2d 448 (1971).

43-111 Decree; effect as to natural parents.

Except as provided in section 43-106.01 and the Nebraska Indian Child Welfare Act, after a decree of adoption has been entered, the natural parents of the adopted child shall be relieved of all parental duties toward and all responsibilities for such child and have no rights over such adopted child or to his or her property by descent and distribution.

Source: Laws 1943, c. 104, § 9, p. 352; R.S.1943, § 43-111; Laws 1965, c. 234, § 2, p. 679; Laws 1985, LB 255, § 23.

Cross References

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

In an agency adoption, the rights of the relinquishing parent are terminated when the agency accepts responsibility for the child in writing, and once the agency accepts such responsibility, the agency retains custody until such time as the child is actually adopted; whereas in a private adoption, the child is relinquished directly into the hands of the prospective adoptive parents without interference by the state or a private agency, and the relinquishing parent's rights are not totally extinguished until the child has been formally adopted by the prospective parents. *Gomez v. Savage*, 254 Neb. 836, 580 N.W.2d 523 (1998).

In a private adoption situation, the relinquishing parent's rights are not totally extinguished until the child has been formally adopted. *Yopp v. Batt*, 237 Neb. 779, 467 N.W.2d 868 (1991).

In a private placement, where relinquishment was not voluntary and the natural mother attempted to revoke the relinquishment within hours, the adoptive parents have no standing to contest the custody of the child. *Gray v. Maxwell*, 206 Neb. 385, 293 N.W.2d 90 (1980).

The legislative intent as to the finality of a child relinquishment is not the same in the case of a private placement, governed by section 43-111, R.R.S.1943, as it is in an agency placement, governed by section 43-106.01, R.R.S.1943. *Gray v. Maxwell*, 206 Neb. 385, 293 N.W.2d 90 (1980).

This section does not prohibit an adopted child from inheriting from its natural parents. *Wulf v. Ibsen*, 184 Neb. 314, 167 N.W.2d 181 (1969).

43-111.01 Denial of petition; court; powers.

Except as otherwise provided in the Nebraska Indian Child Welfare Act, if, upon a hearing, the court shall deny a petition for adoption, the court may take custody of the child involved and determine whether or not it is in the best interests of the child to remain in the custody of the proposed adopting parents. The court may also, on its own motion, appoint a legal guardian over the person and property of such minor and make disposition in the best interests of the child without further notice, relinquishments, or consents as may otherwise be required by sections 43-102 to 43-112.

Source: Laws 1965, c. 231, § 1, p. 674; Laws 1971, LB 384, § 1; Laws 1985, LB 255, § 24.

Cross References

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

Where abandonment is found so as to permit substitute consent to be given, the county court may still refuse to allow the adoption, in which case the parental rights remain intact until a

decree of adoption is in fact granted. *In re Guardianship of Sain*, 211 Neb. 508, 319 N.W.2d 100 (1982).

43-112 Decree; appeal.

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

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

Source: Laws 1943, c. 104, § 10, p. 352; R.S.1943, § 43-112; Laws 1981, LB 42, § 22; Laws 1995, LB 538, § 8.

43-113 Adoption records; access; retention.

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

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

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

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

Cross References

Birth certificate, adoptive, see sections 71-626 and 71-627.02.

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

Records Management Act, see section 84-1220.

Report of adoption, court required to file, see section 71-626.

43-114 Repealed. Laws 1949, c. 95, § 2.**43-115 Prior adoptions.**

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

Source: Laws 1943, c. 104, § 13, p. 352.

43-116 Validity of decrees.

When any court in the State of Nebraska shall (1) have entered of record a decree of adoption prior to August 27, 1949, it shall be conclusively presumed

that such adoption and all instruments and proceedings in connection therewith are valid in all respects notwithstanding some defect or defects may appear on the face of the record, or the absence of any record of such court, unless an action shall be brought within two years from August 27, 1949, attacking its validity, or (2) hereafter enter of record such a decree of adoption, it shall in like manner be conclusively presumed that the adoption and all instruments and proceedings in connection therewith are valid in all respects notwithstanding some defect or defects may appear on the face of the record, or the absence of any record of such court, unless an action is brought within two years from the entry of such decree of adoption attacking its validity.

Source: Laws 1949, c. 130, § 1, p. 340; Laws 1998, LB 1041, § 13.

Any action to set aside an adoption must be brought under this section. The matter of adoption is statutory, and the manner of procedure and terms are all specifically prescribed and must be followed. *In re Adoption of Hemmer*, 260 Neb. 827, 619 N.W.2d 848 (2000).

All instruments and proceedings connected with adoption are conclusively presumed valid unless decree is attacked within two years. *Syrovatka ex rel. Syrovatka v. Graham*, 190 Neb. 355, 208 N.W.2d 281 (1973).

After two years from entry of decree of adoption, there is conclusive presumption of validity of decree of adoption. *Hiatt v. Menendez*, 157 Neb. 914, 62 N.W.2d 123 (1954).

Natural parents are barred from collaterally challenging the adoption of their natural children once the statutory period of two years had passed for a direct appeal of the adoption order. *Syrovatka v. Erlich*, 608 F.2d 307 (8th Cir. 1979).

(b) WARDS AND CHILDREN WITH SPECIAL NEEDS

43-117 Adoptive parents; assistance; medical assessment of child.

(1) The Department of Health and Human Services may make payments as needed in behalf of a ward of the department with special needs after the legal completion of his or her adoption. Such payments to adoptive parents may include maintenance costs, medical and surgical expenses, and other costs incidental to the care of the child. Payments for maintenance and medical care shall terminate on or before the child's twentieth birthday.

(2) The Department of Health and Human Services shall pay the treatment costs for the care of an adopted minor child which are the result of an illness or condition if within three years after the decree of adoption is entered the child is diagnosed as having a physical or mental illness or condition which predates the adoption and the child was adopted through the department, the department did not inform the adopting parents of such condition prior to the adoption, and the condition is of such nature as to require medical, psychological, or psychiatric treatment and is more extensive than ordinary childhood illness.

(3) The Department of Health and Human Services shall conduct a medical assessment of the mental and physical needs of any child to be adopted through the department.

Source: Laws 1971, LB 425, § 1; Laws 1996, LB 1044, § 114; Laws 1997, LB 788, § 1.

43-117.01 Ward of a child placement agency; adoptive parents; assistance.

The Department of Health and Human Services may make payments as needed on behalf of a ward of a child placement agency with special needs after the legal completion of the child's adoption as authorized by the federal adoption assistance program, 42 U.S.C. 673. Such payments to adoptive parents may include maintenance costs, medical and surgical expenses, and other

costs incidental to the care of the child. Payments for maintenance and medical care shall terminate on or before the child's nineteenth birthday.

Source: Laws 1990, LB 1070, § 1; Laws 1996, LB 1044, § 115.

43-117.02 Child with special needs; adoptive parents; reimbursement for adoption expenses.

The Department of Health and Human Services may make a payment of up to two thousand dollars on behalf of a child with special needs after the legal completion of the child's adoption. The payment to the adoptive parents shall be a reimbursement for nonrecurring adoption expenses, including reasonable and necessary adoption fees, court costs, attorney's fees, and other expenses which are directly related to the legal adoption of the child, which are not incurred in violation of law, and which have not been reimbursed from any other source or funds.

Source: Laws 1990, LB 1070, § 2; Laws 1996, LB 1044, § 116.

43-118 Assistance; conditions.

All actions of the Department of Health and Human Services under the programs authorized by sections 43-117 to 43-117.02 shall be subject to the following criteria:

(1) The child so adopted shall have been a child for whom adoption would not have been possible without the financial aid provided for by sections 43-117 to 43-117.02; and

(2) The department shall adopt and promulgate rules and regulations for the administration of sections 43-117 to 43-118.

Source: Laws 1971, LB 425, § 2; Laws 1990, LB 1070, § 3; Laws 1996, LB 1044, § 117; Laws 2007, LB296, § 68.

43-118.01 Ward of state; adoption assistance payment.

(1) For adoptions decreed on or after January 1, 2000, and on or before October 1, 2002, every individual or couple that adopts a ward of the State of Nebraska shall be entitled to a payment of one thousand dollars for the year of adoption and for up to four succeeding years. Payments shall be made after approval of an application submitted by the adoptive parent or parents to the Department of Health and Human Services. The application shall be on a form prescribed by the department. An application shall be submitted during January of the year following the year for which the payment is sought. An applicant shall be eligible for payment for the year of adoption and for the earliest of four subsequent years or until the adopted child reaches the age of majority, is emancipated, or is no longer living in the home of the adoptive parent or parents. To be eligible for payment in the years subsequent to the adoption, the requirements of this section must be met for the entire year.

(2) The department shall review all applications for eligibility for payment. The department shall approve or deny payment within thirty days after receipt of the application. If approved, the department shall certify the necessary information to the Director of Administrative Services for the issuance of a warrant. Warrants shall be issued within thirty days after certification. Any person aggrieved by a decision of the department may appeal. The appeal shall be in accordance with the Administrative Procedure Act.

(3) The department shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2000, LB 482, § 1; Laws 2002, Second Spec. Sess., LB 22, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

(c) RELEASE OF INFORMATION

43-119 Definitions, where found.

For purposes of sections 43-119 to 43-146.16, unless the context otherwise requires, the definitions found in sections 43-121 to 43-123.01 shall be used.

Source: Laws 1980, LB 992, § 1; Laws 1988, LB 372, § 5; Laws 1997, LB 307, § 22; Laws 2007, LB296, § 69.

43-120 Repealed. Laws 1997, LB 307, § 236.

43-121 Agency, defined.

Agency shall mean a child placement agency licensed by the Department of Health and Human Services.

Source: Laws 1980, LB 992, § 3; Laws 1997, LB 307, § 23.

43-122 Department, defined.

Department shall mean the Department of Health and Human Services.

Source: Laws 2007, LB296, § 70.

43-123 Relative, defined.

Relative shall mean the biological parents or biological siblings of an adopted person.

Source: Laws 1980, LB 992, § 5.

43-123.01 Medical history, defined.

Medical history shall mean medical history as defined by the department in its rules and regulations.

Source: Laws 1988, LB 372, § 22; Laws 1996, LB 1044, § 120; Laws 2007, LB296, § 71.

43-124 Department; provide relative consent form.

The department shall provide a form which may be signed by a relative indicating the fact that such relative consents to his or her name being released to such relative's adopted person as provided by sections 43-113, 43-119 to 43-146.16, 71-626, 71-626.01, and 71-627.02. Such consent shall be effective as of the time of filing the form with the department.

Source: Laws 1980, LB 992, § 6; Laws 1997, LB 307, § 24; Laws 2007, LB296, § 72.

43-125 Relative consent form.

The form provided by section 43-124 shall contain the following information:

- (1) The name of the person completing the form and, if different, the name of such person at the time of birth of the adopted person;
- (2) The relationship of the person to the adopted person;
- (3) The date of birth of the adopted person;
- (4) The sex of the adopted person;
- (5) The place of birth of the adopted person;
- (6) Authorization that the name, last-known address, and last-known telephone number of the relative and the original birth certificate of the adopted person may be released to the adopted person as provided by sections 43-113, 43-119 to 43-146.16, 71-626, 71-626.01, and 71-627.02; and
- (7) A notice in the following form:

IMPORTANT NOTICE

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form allows the Department of Health and Human Services to give your name and other information to the adopted person designated, upon his or her written request after reaching twenty-five years of age. You may file additional copies of this consent if your name or address changes. You may revoke this consent at any time by filing a revocation of consent with the Department of Health and Human Services.

Source: Laws 1980, LB 992, § 7; Laws 1997, LB 307, § 25; Laws 2007, LB296, § 73.

43-126 Relative; revocation of consent; form.

At any time after signing the consent form, a relative may revoke such consent form. A form for revocation of consent shall be provided by the department. The revocation shall be effective as of the time of filing the form with the department. The revocation form shall contain the following notice:

IMPORTANT NOTICE

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form means that the Department of Health and Human Services will not disclose your name or address to any person without a court order. If you sign this form and later decide you do want your name and address given to a relative properly requesting the information, you may file another consent for that purpose.

Source: Laws 1980, LB 992, § 8; Laws 1997, LB 307, § 26; Laws 2007, LB296, § 74.

43-127 Relative; consent and revocation forms; notarized; filing.

The forms provided by sections 43-124 and 43-126 shall be notarized and filed with the department which shall keep such forms with all other records of an individual adopted person.

Source: Laws 1980, LB 992, § 9; Laws 1997, LB 307, § 27; Laws 2007, LB296, § 75.

43-128 Medical history; access; contents.

A child placement agency shall maintain, and shall provide to the adopting parents upon placement of the person with such parents and to the adopted person upon his or her request, the available medical history of the person placed for adoption and of the biological parents. The medical history shall not include the names of the biological parents of the adopted person or the place of birth of the adopted person.

Source: Laws 1980, LB 992, § 10; Laws 1983, LB 146, § 4.

43-129 Original birth certificate; access by medical professionals; when.

If at any time an individual licensed to practice medicine and surgery pursuant to the Medicine and Surgery Practice Act or licensed to engage in the practice of psychology pursuant to the Psychology Practice Act, through his or her professional relationship with an adopted person, determines that information contained on the original birth certificate of the adopted person may be necessary for the treatment of the health of the adopted person, whether physical or mental in nature, he or she may petition a court of competent jurisdiction for the release of the information contained on the original birth certificate, and the court may release the information on good cause shown.

Source: Laws 1980, LB 992, § 11; Laws 1988, LB 372, § 23; Laws 1994, LB 1210, § 6; Laws 1999, LB 366, § 5; Laws 2007, LB463, § 1131.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.

Psychology Practice Act, see section 38-3101.

43-130 Adopted person; request for information; form.

Except as otherwise provided in the Nebraska Indian Child Welfare Act, an adopted person twenty-five years of age or older born in this state who desires access to the names of relatives or access to his or her original certificate of birth shall file a written request for such information with the department. The department shall provide a form for making such a request.

Source: Laws 1980, LB 992, § 12; Laws 1985, LB 255, § 26; Laws 1997, LB 307, § 28; Laws 2007, LB296, § 76.

Cross References

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

43-131 Release of information; procedure.

(1) Upon receipt of a request for information, the department shall check the records of the adopted person making the request to determine whether the consent form provided by section 43-124 has been signed and filed by any relative of the adopted person and whether an unrevoked nonconsent form is on file from a biological parent or parents pursuant to section 43-132 or from an adoptive parent or parents pursuant to section 43-143.

(2) If the consent form has been signed and filed and has not been revoked and if no nonconsent form has been filed by an adoptive parent or parents pursuant to section 43-143, the department shall release the information on such form to the adopted person.

(3) If no consent forms have been filed, or if the consent form has been revoked, and if no nonconsent form has been filed pursuant to section 43-143, the following information shall be released to the adopted person:

- (a) The name and address of the court which issued the adoption decree;
 - (b) The name and address of the child placement agency, if any, involved in the adoption; and
 - (c) The fact that an agency may assist the adopted person in searching for relatives as provided in sections 43-132 to 43-141.
- (4) The provisions of this section shall not apply to persons subject to the Nebraska Indian Child Welfare Act.

Source: Laws 1980, LB 992, § 13; Laws 1985, LB 255, § 27; Laws 1997, LB 307, § 29; Laws 2007, LB296, § 77.

Cross References

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

43-132 Biological parent; notice of nonconsent; filing.

A biological parent or parents may at any time, if they desire, file a notice of nonconsent with the department stating that at no time after his or her death and prior to the death of his or her spouse, if such spouse is not a biological parent, may any information on the adopted person's original birth certificate be released to such adopted person. The provisions of this section shall not apply to persons subject to the Nebraska Indian Child Welfare Act.

Source: Laws 1980, LB 992, § 14; Laws 1985, LB 255, § 28; Laws 1997, LB 307, § 30; Laws 2007, LB296, § 78.

Cross References

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

43-133 Biological parent; nonconsent form.

The nonconsent form provided for in section 43-132 shall contain the following information:

- (1) The name of the person completing the form and, if different, the name of such person at the time of birth of the adopted person;
- (2) The relationship of the person to the adopted person;
- (3) The date of birth of the adopted person;
- (4) The sex of the adopted person;
- (5) The place of birth of the adopted person;
- (6) A statement that no information concerning the information contained in the original birth certificate of the adopted person shall be released following the death of the parent or parents signing the form and such information shall not be released to the adopted person prior to the death of the spouse of such parent or parents, if such spouse is not a biological parent; and
- (7) A notice in the following form:

IMPORTANT NOTICE

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form means that the Department of Health and Human Services will not disclose any information contained on the birth

certificate of the adopted person to any person following your death and prior to the death of your spouse, if such spouse is not a biological parent, without a court order. If you later decide that you do not object to the release of such information you may file a form stating that purpose.

Source: Laws 1980, LB 992, § 15; Laws 1997, LB 307, § 31; Laws 2007, LB296, § 79.

43-134 Biological parent; revocation of nonconsent; form.

At any time after signing the notice of nonconsent provided for in section 43-132, the parent or parents may revoke such notice. A form of revocation shall be provided by the department and shall take effect at the time of filing of the form with the department. The revocation form shall contain the following notice:

IMPORTANT NOTICE

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form means that the Department of Health and Human Services may disclose any information contained on the birth certificate of the adopted person following your death. If you sign this form and later decide you do not want this information released following your death and prior to the death of your spouse, if such spouse is not a biological parent, you may file another form for that purpose.

Source: Laws 1980, LB 992, § 16; Laws 1997, LB 307, § 32; Laws 2007, LB296, § 80.

43-135 Biological parent; deceased; release of information.

If the department has information indicating that both biological parents of the adopted person are deceased, or if only one biological parent is known and information indicates that such parent is deceased, and no nonconsent form, as provided in section 43-132 or 43-143, has been filed, all information on the adopted person's original birth certificate regarding such deceased parent or parents shall be released to the adopted person notwithstanding the fact that no consent form was signed and filed by such deceased parent or parents prior to death.

Source: Laws 1980, LB 992, § 17; Laws 1997, LB 307, § 33; Laws 2007, LB296, § 81.

43-136 Release of original birth certificate; when.

If a consent form has been signed and filed by both biological parents or by the biological mother of a child born out of wedlock, and no nonconsent form, as provided in section 43-143, has been filed, a copy of the adopted person's original birth certificate shall be provided to the adopted person.

Source: Laws 1980, LB 992, § 18.

43-137 Adopted person; contact child placement agency or department; when.

If an adopted person twenty-five years of age or older, after following the procedures set forth in sections 43-130 and 43-131 is not able to obtain information about such person's relatives, such person may then contact the child placement agency which handled the adoption if the name of the agency

has been given to the adopted person by the department. If it is not feasible for the adopted person to contact the agency, such person may contact the department.

Source: Laws 1980, LB 992, § 19; Laws 1997, LB 307, § 34; Laws 2007, LB296, § 82.

43-138 Department or agency; acquire information in court or department records; disclosure requirements.

After being contacted by an adopted person, if no valid nonconsent form, as provided in section 43-132 or 43-143, is on file, the department or agency as the case may be shall apply to the clerk of the court which issued the adoption decree or the department for any information in the records of the court or the department regarding the adopted person or his or her relatives, including names, locations, and any birth, marriage, divorce, or death certificates. Any information which is available shall be given only to the department or agency. The department or agency shall keep such information confidential and shall not disclose it either directly or indirectly to the adopted person. The provisions of this section shall not apply to persons subject to the Nebraska Indian Child Welfare Act.

Source: Laws 1980, LB 992, § 20; Laws 1985, LB 255, § 29; Laws 1993, LB 205, § 1; Laws 1997, LB 307, § 35; Laws 1998, LB 1041, § 14; Laws 2007, LB296, § 83.

Cross References

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

43-139 Court or department records provided; record required.

When any information is provided to the department or agency pursuant to section 43-138, the person providing the information shall record in the records of the adopted person the nature of the information disclosed, to whom the information was disclosed, and the date of the disclosure.

Source: Laws 1980, LB 992, § 21; Laws 1993, LB 205, § 2; Laws 1997, LB 307, § 36; Laws 2007, LB296, § 84.

43-140 Department or agency; contact relative; limitations; reunion or release of information; when.

(1) Upon determining the identity and location of the relative being sought, the department or agency shall attempt to contact the relative to determine such relative's willingness to be contacted by the adopted person.

(2) In contacting the relative, the department or agency shall not discuss or reveal in any other manner to any person other than that particular relative who is being sought the nature of the contact, the name, nature, or business of the adoption agency, or any other information which might indicate or imply that such relative is the biological parent of an adopted person.

(3) In contacting the relative, the department or agency shall not reveal the identity or any other information about the adopted person.

(4) No reunion of a relative and an adopted person shall be arranged, nor shall any information about the relative be released to the adopted person until

such relative has signed the consent form provided by section 43-124 and the form has been filed with the department.

Source: Laws 1980, LB 992, § 22; Laws 1997, LB 307, § 37; Laws 2007, LB296, § 85.

43-141 Department or agency; fees; rules and regulations.

The department or agency may charge a reasonable fee in an amount established by the department or agency in rules and regulations to recover expenses in carrying out sections 43-137 to 43-140. The department or agency shall use the fees to defray costs incurred to carry out such sections. The department or agency may waive the fee if the requesting party shows that the fee would work an undue financial hardship on the party.

The department may adopt and promulgate rules and regulations to carry out such sections.

Source: Laws 1980, LB 992, § 23; Laws 1993, LB 205, § 3; Laws 1997, LB 307, § 38; Laws 2007, LB296, § 86.

43-142 Department or agency; file report with clerk.

The department or an agency which receives information as provided in section 43-138 shall file a written report with the clerk of the court within nine months of receipt of the information. The report shall indicate whether the relative has been located and whether a contact between the relative and the adopted person has been arranged or has occurred. If the relative has not been located, the report shall set forth the efforts made to identify and locate the relative.

Source: Laws 1980, LB 992, § 24; Laws 1997, LB 307, § 39; Laws 2007, LB296, § 87.

43-143 Adoptive parent; notice of nonconsent; filing.

For adoptions in which the relinquishment or consent for adoption was given prior to July 20, 2002: An adoptive parent or parents may at any time, if they desire, file a notice of nonconsent with the department stating that at no time prior to his or her death or the death of both parents if each signed the form may any information on the adopted person's original birth certificate be released to such adopted person. The provisions of this section shall not apply to persons subject to the Nebraska Indian Child Welfare Act.

Source: Laws 1980, LB 992, § 25; Laws 1985, LB 255, § 30; Laws 1997, LB 307, § 40; Laws 2002, LB 952, § 3; Laws 2007, LB296, § 88.

Cross References

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

43-144 Adoptive parent; nonconsent form.

The nonconsent form provided for in section 43-143 shall contain the following information:

- (1) The name of the person completing the form and, if different, the name of such person at the time of birth of the adopted person;
- (2) The relationship of the person to the adopted person;

- (3) The date of birth of the adopted person;
- (4) The sex of the adopted person;
- (5) The place of birth of the adopted person;
- (6) A statement that no information concerning the information contained in the original birth certificate of the adopted person shall be released prior to the death of the adoptive parent or parents signing the form; and
- (7) A notice in the following form:

IMPORTANT NOTICE

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form means that the Department of Health and Human Services will not disclose any information contained on the birth certificate of the adopted person to any person prior to your death and the death of your spouse, if he or she signed the form, without a court order. If you later decide that you do not object to the release of such information you may file a form stating that purpose.

Source: Laws 1980, LB 992, § 26; Laws 1997, LB 307, § 41; Laws 2007, LB296, § 89.

43-145 Adoptive parent; revocation of nonconsent; form.

At any time after signing the notice of nonconsent provided for in section 43-143, the adoptive parent or parents may revoke such notice. A form of revocation shall be provided by the department and shall take effect at the time of filing of the form with the department. The revocation form shall contain the following notice:

IMPORTANT NOTICE

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form means that the Department of Health and Human Services may disclose any information contained on the birth certificate of the adopted person pursuant to sections 43-113, 43-119 to 43-146.16, 71-626, 71-626.01, and 71-627.02. If you sign this form and later decide you do not want this information released prior to your death you may file another form for that purpose.

Source: Laws 1980, LB 992, § 27; Laws 1997, LB 307, § 42; Laws 2007, LB296, § 90.

43-146 Forms; notarized; filing.

The forms provided by sections 43-132, 43-134, 43-143, and 43-145 shall be notarized and filed with the department which shall keep such forms with all other records of an individual adopted person.

Source: Laws 1980, LB 992, § 28; Laws 1997, LB 307, § 43; Laws 2007, LB296, § 91.

43-146.01 Sections; applicability.

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

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

(3) Except as otherwise provided in subsection (2) of section 43-107, subdivisions (1)(b) and (1)(c) of section 43-109, and subsection (4) of this section: Sections 43-101 to 43-118, 43-143 to 43-146, 43-146.17, 71-626, 71-626.01, and 71-627.02 shall apply to all adoptions.

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

Source: Laws 1988, LB 372, § 6; Laws 1988, LB 301, § 9; Laws 2002, LB 952, § 4.

43-146.02 Medical history; requirements.

A child placement agency, the department, or a private agency handling the adoption, as the case may be, shall maintain and shall provide to the adopting parents upon placement of the person with such parents and to the adopted person, upon his or her request, the available medical history of the person placed for adoption and of the biological parents. The medical history shall not include the names of the biological parents of the adopted person or any other identifying information.

Source: Laws 1988, LB 372, § 7; Laws 1997, LB 307, § 44; Laws 2007, LB296, § 92.

43-146.03 Information on original birth certificate; release; when.

If at any time an individual licensed to practice medicine and surgery pursuant to the Medicine and Surgery Practice Act or licensed to engage in the practice of psychology pursuant to the Psychology Practice Act, through his or her professional relationship with an adopted person, determines that information contained on the original birth certificate of the adopted person may be necessary for the treatment of the health of the adopted person, whether physical or mental in nature, he or she may petition a court of competent jurisdiction for the release of the information contained on the original birth certificate, and the court may release the information on good cause shown.

Source: Laws 1988, LB 372, § 8; Laws 1994, LB 1210, § 7; Laws 1999, LB 366, § 6; Laws 2007, LB463, § 1132.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.

Psychology Practice Act, see section 38-3101.

43-146.04 Adopted person; request for information; form.

An adopted person twenty-one years of age or older born in this state who desires access to the names of relatives or access to his or her original certificate of birth shall file a written request for such information with the department. The department shall provide a form for making such request.

Source: Laws 1988, LB 372, § 9; Laws 1997, LB 307, § 45; Laws 2007, LB296, § 93.

43-146.05 Release of information; procedure.

(1) Upon receipt of a request for information made under section 43-146.04, the department shall check the records of the adopted person to determine

whether an unrevoked nonconsent form is on file from a biological parent pursuant to section 43-146.06.

(2) If no nonconsent form has been filed pursuant to section 43-146.06, the following information shall be released to the adopted person:

- (a) The name and address of the court which issued the adoption decree;
- (b) The name and address of the child placement agency, if any, involved in the adoption;
- (c) The fact that an agency or the department may assist the adopted person in searching for relatives as provided in sections 43-146.10 to 43-146.14;
- (d) A copy of the person's original birth certificate; and
- (e) A copy of the person's medical history and any medical records on file.

(3) If an unrevoked nonconsent form has been filed pursuant to section 43-146.06, no information may be released to the adopted person except a copy of the person's medical history as provided in section 43-107 if requested. The medical history shall not include the names of the biological parents or relatives of the adopted person or any other identifying information.

Source: Laws 1988, LB 372, § 10; Laws 1997, LB 307, § 46; Laws 2007, LB296, § 94.

43-146.06 Biological parent; notice of nonconsent; filing; failure to sign; effect.

A biological parent may at any time file a notice of nonconsent with the department stating that at no time prior to his or her death may any information on the adopted person's original birth certificate or any other identifying information, except medical histories as provided in section 43-107, be released to such adopted person. Failure by a biological parent to sign the notice of nonconsent shall be deemed a notice of consent by such parent to release the adopted person's original birth certificate to such adopted person.

Source: Laws 1988, LB 372, § 11; Laws 1997, LB 307, § 47; Laws 2007, LB296, § 95.

43-146.07 Biological parent; nonconsent form.

The nonconsent form provided for in section 43-146.06 shall be designed by the department and shall contain the following information:

- (1) The name of the person completing the form and, if different, the name of such person at the time of birth of the adopted person;
- (2) The relationship of the person to the adopted person;
- (3) The date of birth of the adopted person;
- (4) The sex of the adopted person;
- (5) The place of birth of the adopted person;
- (6) A statement that no information contained in the original birth certificate or any other identifying information, except medical histories as provided in section 43-107, shall be released prior to the death of the parent signing the form;
- (7) A statement that the person signing understands the effect and consequences of filing or not filing a nonconsent form; and
- (8) A notice in the following form:

IMPORTANT NOTICE

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form means that the Department of Health and Human Services will not disclose any information contained in the original birth certificate of the adopted person or any other identifying information to any person prior to your death without a court order. If you later decide that you do not object to the release of such information, you may file a form stating that purpose.

Source: Laws 1988, LB 372, § 12; Laws 1997, LB 307, § 48; Laws 2007, LB296, § 96.

43-146.08 Biological parent; revocation of nonconsent; form.

At any time after signing the notice of nonconsent provided for in section 43-146.06, the biological parent may revoke such notice. A form of revocation shall be provided by the department and shall take effect at the time of filing of the form with the department. The revocation form shall contain the following notice:

IMPORTANT NOTICE

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form means that the Department of Health and Human Services may at any time disclose to the adopted person any information contained on the original birth certificate of the adopted person.

Source: Laws 1988, LB 372, § 13; Laws 1997, LB 307, § 49; Laws 2007, LB296, § 97.

43-146.09 Biological parent; deceased; release of information.

If the department has verified information indicating that both biological parents of the adopted person are deceased or if only one biological parent is known and verified information indicates that such parent is deceased, all information on the adopted person's original birth certificate regarding such deceased parent or parents shall be released to the adopted person upon request. The department shall establish a policy for verifying information about the death of the biological parent or parents.

Source: Laws 1988, LB 372, § 14; Laws 1997, LB 307, § 50; Laws 2007, LB296, § 98.

43-146.10 Adopted person; contact child placement agency or department; when.

If an adopted person twenty-one years of age or older, after following the procedures set forth in sections 43-146.04 and 43-146.05, is unable to obtain information about the adopted person's relatives and there is no unrevoked nonconsent form as provided in section 43-146.06 on file with the department, such person may then contact the child placement agency which handled the adoption or the department.

Source: Laws 1988, LB 372, § 15; Laws 1997, LB 307, § 51; Laws 2007, LB296, § 99.

43-146.11 Department or agency; acquire information in court or department records; disclosure requirements.

After being contacted by an adopted person as provided in section 43-146.10, the department or agency, as the case may be, shall verify that no unrevoked nonconsent form is on file with the department. If an unrevoked nonconsent form is not on file, the department or agency, as the case may be, shall apply to the clerk of the court which issued the adoption decree or the department for any information in the court or department records regarding the adopted person or his or her relatives, including names, locations, and any birth, marriage, divorce, or death certificates. Any information which is available shall be given by the court or department only to the department or agency. The department or agency shall keep such information confidential.

Source: Laws 1988, LB 372, § 16; Laws 1993, LB 205, § 4; Laws 1997, LB 307, § 52; Laws 1998, LB 1041, § 15; Laws 2007, LB296, § 100.

43-146.12 Court or department records provided; record required.

When any information is provided to the department or agency pursuant to section 43-146.11, the person providing the information shall record in the records of the adopted person the nature of the information disclosed, to whom the information was disclosed, and the date of the disclosure.

Source: Laws 1988, LB 372, § 17; Laws 1993, LB 205, § 5; Laws 1997, LB 307, § 53; Laws 2007, LB296, § 101.

43-146.13 Department or agency; contact relative; release of information; condition.

(1) Upon determining the identity and location of the relative being sought, the department or agency shall attempt to contact the relative to determine such relative's willingness to be contacted by the adopted person.

(2) Information about the relative shall not be released to the adopted person by the department or agency unless such relative agrees to be contacted by the adopted person.

Source: Laws 1988, LB 372, § 18; Laws 1997, LB 307, § 54; Laws 2007, LB296, § 102.

43-146.14 Department or agency; fees; department; rules and regulations.

The department or agency may charge a reasonable fee in an amount established by the department or agency in rules and regulations to recover expenses in carrying out sections 43-146.10 to 43-146.13. The department or agency shall use the fees to defray costs incurred to carry out such sections. The department or agency may waive the fee if the requesting party shows that the fee would work an undue financial hardship on the party.

The department may adopt and promulgate rules and regulations to carry out sections 43-123.01 and 43-146.01 to 43-146.16.

Source: Laws 1988, LB 372, § 19; Laws 1993, LB 205, § 6; Laws 1997, LB 307, § 55; Laws 2007, LB296, § 103.

43-146.15 Department or agency; written report; contents.

The department or an agency which receives information as provided in section 43-146.11 shall file a written report with the clerk of the court or department within nine months of receipt of the information. The report shall

indicate whether the relative has been located and whether a contact between the relative and the adopted person has been arranged or has occurred. If the relative has not been located, the report shall set forth the efforts made to identify and locate the relative.

Source: Laws 1988, LB 372, § 20; Laws 1997, LB 307, § 56; Laws 2007, LB296, § 104.

43-146.16 Forms; notarized; filing.

The forms provided by sections 43-146.06 and 43-146.08 shall be notarized and filed with the department which shall keep such forms with all other records of the adopted person.

Source: Laws 1988, LB 372, § 21; Laws 1997, LB 307, § 57; Laws 2007, LB296, § 105.

43-146.17 Heir of adopted person; access to information; when; fee.

(1) Notwithstanding sections 43-119 to 43-146.16 and except as otherwise provided in this section, an heir twenty-one years of age or older of an adopted person shall have access to all information on file at the Department of Health and Human Services related to such adopted person, including information contained in the original birth certificate of the adopted person, if: (a)(i) The adopted person is deceased, (ii) both biological parents of the adopted person are deceased or, if only one biological parent is known, such parent is deceased, and (iii) each spouse of the biological parent or parents of the adopted person, if any, is deceased, if such spouse is not a biological parent; or (b) at least one hundred years has passed since the birth of the adopted person.

(2) The following information relating to an adopted person shall not be released to the heir of such person under this section: (a) Tests conducted for the human immunodeficiency virus or acquired immunodeficiency syndrome; (b) the revocation of a license to practice medicine in the State of Nebraska; (c) child protective services reports or records; (d) adult protective services reports or records; (e) information from the central register of child protection cases and the Adult Protective Services Central Registry; or (f) law enforcement investigative reports.

(3) The department shall provide a form that an heir of an adopted person may use to request information under this section. The department may charge a reasonable fee in an amount established by rules and regulations of the department to recover expenses incurred by the department in carrying out this section. Such fee may be waived if the requesting party shows that the fee would work an undue financial hardship on the party. When any information is provided to an heir of an adopted person under this section, the disclosure of such information shall be recorded in the records of the adopted person, including the nature of the information disclosed, to whom the information was disclosed, and the date of the disclosure.

(4) For purposes of this section, an heir of an adopted person means a direct biological descendent of such adopted person.

(5) The department may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2002, LB 952, § 1; Laws 2005, LB 61, § 1; Laws 2007, LB296, § 106.

(d) ADOPTION AND MEDICAL ASSISTANCE

43-147 Legislative findings.

The Legislature finds that:

(1) Finding adoptive families for children for whom state assistance is provided pursuant to sections 43-117 and 43-118 and assuring the protection of the interests of the children affected during the entire assistance period require special measures when the adoptive parents move to other states or are residents of another state; and

(2) Providing medical and other necessary services for children, with state assistance, is more difficult when the services are provided in other states.

Source: Laws 1985, LB 447, § 1.

43-148 Purposes of sections.

The purposes of sections 43-147 to 43-154 are to:

(1) Authorize the department to enter into interstate agreements with agencies of other states for the protection of children on whose behalf adoption assistance is being provided by the department; and

(2) Provide procedures for interstate children's adoption assistance payments, including medical payments.

Source: Laws 1985, LB 447, § 2.

43-149 Terms, defined.

As used in sections 43-147 to 43-154, unless the context otherwise requires:

(1) Adoption assistance state shall mean the state that is signatory to an adoption assistance agreement in a particular case;

(2) Department shall mean the Department of Health and Human Services; and

(3) State shall mean a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or administered by the United States.

Source: Laws 1985, LB 447, § 3; Laws 1996, LB 1044, § 121.

43-150 Interstate compact; department; powers; effect.

The department may develop, participate in the development of, negotiate, and enter into one or more interstate compacts on behalf of this state with other states to implement one or more of the purposes set forth in sections 43-147 to 43-154. When entered into and for so long as it shall remain in force, such a compact shall have the force and effect of law.

Source: Laws 1985, LB 447, § 4.

43-151 Interstate compact; requirements.

A compact entered into pursuant to sections 43-147 to 43-154 shall include:

(1) A provision making it available for joinder by all states;

(2) A provision for withdrawal from the compact upon written notice to the parties, but with a period of one year between the date of the notice and the effective date of the withdrawal;

(3) A requirement that the protection afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who on the effective date of the withdrawal are receiving adoption assistance from a party state other than the one in which they are residents and have their principal place of abode;

(4) A requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement in writing between the adoptive parents and the state child welfare agency of the state which undertakes to provide the adoption assistance and that any such agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents and the state agency providing the adoption assistance; and

(5) Such other provisions as may be appropriate to implement the proper administration of the compact.

Source: Laws 1985, LB 447, § 5.

43-152 Interstate compact; discretionary provisions.

A compact entered into pursuant to sections 43-147 to 43-154 may contain provisions in addition to those required pursuant to section 43-151, including:

(1) Provisions establishing procedures and entitlements to medical, developmental, child care, or other social services for the child in accordance with applicable laws even though the child and the adoptive parents are in a state other than the one responsible for or providing the services or the funds to defray part or all of the costs thereof; and

(2) Such other provisions as may be appropriate or incidental to the proper administration of the compact.

Source: Laws 1985, LB 447, § 6.

43-153 Child with special needs; medical assistance identification; how obtained; payment; violations; penalty.

(1) A child with special needs residing in this state who is the subject of an adoption assistance agreement with another state shall be entitled to receive a medical assistance identification from this state upon the filing with the department of a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with rules and regulations of the department, the adoptive parents shall be required at least annually to show that the agreement is still in force or has been renewed.

(2) The department shall consider the holder of a medical assistance identification pursuant to this section the same as any other holder of a medical assistance identification under the laws of this state and shall process and make payment on claims on account of such holder in the same manner and pursuant to the same conditions and procedures as for other recipients of medical assistance.

(3) Any person who by means of a willfully false statement or representation or by impersonation or other device obtains or attempts to obtain or who aids or abets any other person in obtaining assistance under sections 43-147 to 43-154 shall, upon conviction thereof, be punished pursuant to section 68-1017.

(4) This section shall apply only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this state under which the other state provides medical assistance to children with special needs under adoption assistance agreements made by this state. All other children entitled to medical assistance pursuant to adoption assistance agreements entered into by this state shall be eligible to receive it in accordance with the laws and procedures applicable thereto.

Source: Laws 1985, LB 447, § 7.

43-154 State plan; administer federal aid.

Consistent with federal law, the department, in connection with the administration of sections 43-147 to 43-154 and any compact entered into pursuant to such sections, shall include in any state plan made pursuant to the Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272, Titles IV(e) and XIX of the Social Security Act, and any other applicable federal laws, the provision of adoption assistance and medical assistance for which the federal government pays some or all of the cost. The department shall apply for and administer all relevant federal aid in accordance with law.

Source: Laws 1985, LB 447, § 8.

(e) EXCHANGE-OF-INFORMATION CONTRACTS

43-155 Legislative intent.

The Legislature finds that there are children in temporary foster care situations who would benefit from the stability of adoption. It is the intent of the Legislature that such situations be accommodated through the use of adoptions involving exchange-of-information contracts between the department and the adoptive or biological parent or parents.

Source: Laws 1988, LB 301, § 1.

43-156 Terms, defined.

For purposes of sections 43-155 to 43-160, unless the context otherwise requires:

(1) Adoption involving exchange of information shall mean an adoption of a child in which one or both of the child's biological parents contract with the department for information about the child obtained through his or her adoptive family;

(2) Exchange-of-information contract shall mean a two-year, renewable obligation, voluntarily agreed to and signed by both the adoptive and biological parent or parents as well as the department; and

(3) Department shall mean the Department of Health and Human Services.

Source: Laws 1988, LB 301, § 2; Laws 1996, LB 1044, § 122.

43-157 Determination by department.

The department may, when planning the placement of a child for adoption, determine whether the best interests of such child might be served by placing the child in an adoption involving exchange of information.

Source: Laws 1988, LB 301, § 3.

43-158 Information included; effect on visitation.

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 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 court-ordered parenting time, visitation, or other access with the child and the biological parent or parents.

Source: Laws 1988, LB 301, § 4; Laws 2002, LB 1105, § 437; Laws 2007, LB554, § 39.

43-159 Alteration.

When, after placement of a child for adoption, it is determined by the department, in consultation with the adoptive parent or parents, that certain or all exchanges of information are no longer in the best interests of the child, the department may enter into an agreement with the biological parent or parents to alter the original contract made between the department and the biological parent or parents.

Source: Laws 1988, LB 301, § 5.

43-160 Effect; enforcement.

The existence of any agreement or agreements of the kind specified in section 43-158 shall not operate to impair the validity of any relinquishment or any decree of adoption entered by a court of the State of Nebraska. The violation of the terms of any agreement or agreements of the kind specified in section 43-158 shall not operate to impair the validity of any relinquishment or any decree of adoption entered by a court of competent jurisdiction. The parties to an exchange-of-information contract shall have the authority to bring suit in a court of competent jurisdiction for the enforcement of any agreement entered into pursuant to section 43-158.

Source: Laws 1988, LB 301, § 6; Laws 1998, LB 1041, § 16.

(f) NEBRASKA INDUSTRIAL HOME AT MILFORD RECORDS

43-161 Client records; maintained by Department of Health and Human Services; access.

All client records from the Nebraska Industrial Home at Milford shall be maintained by the Department of Health and Human Services as confidential records but shall be accessible as provided by statute or by the rules and regulations of the department.

Source: Laws 1993, LB 205, § 7; Laws 1996, LB 1044, § 123; Laws 2007, LB296, § 107.

(g) COMMUNICATION OR CONTACT AGREEMENTS

43-162 Communication or contact agreement; authorized; approval.

The prospective adoptive parent or parents and the birth parent or parents of a prospective adoptee may enter into an agreement regarding communication or contact after the adoption between or among the prospective adoptee and his or her birth parent or parents if the prospective adoptee is in the custody of the Department of Health and Human Services. Any such agreement shall not be enforceable unless approved by the court pursuant to section 43-163.

Source: Laws 1993, LB 205, § 8; Laws 1996, LB 1044, § 124; Laws 1998, LB 1041, § 17.

43-163 Guardian ad litem; appointment; order approving agreement; considerations.

(1) Before approving an agreement under section 43-162, the court shall appoint a guardian ad litem if the prospective adoptee is not already represented by a guardian ad litem, and the guardian ad litem of the prospective adoptee shall represent the best interests of the child concerning such agreement. The court may enter an order approving the agreement upon motion of one of the prospective adoptee's birth parents or one of the prospective adoptive parents if the terms of the agreement are approved in writing by the prospective adoptive parent or parents and the birth parent or parents and if the court finds, after consideration of the recommendations of the guardian ad litem and the Department of Health and Human Services and other factors, that such communication with the birth parent or parents and the maintenance of birth family history would be in the best interests of the prospective adoptee.

(2) In determining if the agreement is in the best interests of the prospective adoptee, the court shall consider the following factors as favoring communication with the birth parent or parents: Whether the prospective adoptee and birth parent or parents lived together for a substantial period of time; the prospective adoptee exhibits attachment or bonding to such birth parent or parents; and the adoption is a foster-parent adoption with the birth parent or parents having relinquished the prospective adoptee due to an inability to provide him or her with adequate parenting.

Source: Laws 1993, LB 205, § 9; Laws 1996, LB 1044, § 125; Laws 1998, LB 1041, § 18.

43-164 Failure to comply with court order; effect.

Failure to comply with the terms of an order entered pursuant to section 43-163 shall not be grounds for setting aside an adoption decree, for revocation of a written consent to adoption after the consent has been approved by the court, or for revocation of a relinquishment of parental rights after the relinquishment has been accepted in writing by the Department of Health and Human Services as provided in section 43-106.01.

Source: Laws 1993, LB 205, § 10; Laws 1996, LB 1044, § 126; Laws 1998, LB 1041, § 19.

43-165 Enforcement of order; modification; when.

An order entered pursuant to section 43-163 may be enforced by a civil action, and the prevailing party may be awarded, as part of the costs of the

action, reasonable attorney's fees. The court shall not modify an order issued under such section unless it finds that the modification is necessary to serve the best interests of the adoptee and (1) that the modification is agreed to by the adoptive parent or parents and the birth parent or parents or (2) exceptional circumstances have arisen since the order was entered that justify modification of the order.

Source: Laws 1993, LB 205, § 11.

ARTICLE 2 JUVENILE CODE

Cross References

Constitutional provision:

Establishment of separate juvenile courts authorized, see Article V, section 27, Constitution of Nebraska.

Children committed to the Department of Health and Human Services, see sections 43-903 to 43-908.

County court sitting as juvenile court, see sections 24-517 and 43-2,113.

Death penalty, imposition on person under eighteen prohibited, see section 28-105.01.

Health and Human Services, Office of Juvenile Services Act, see section 43-401.

Juvenile cases:

Procedure for payment of uncollectible costs, see section 29-2709.

Recording and preservation of evidence, separate juvenile courts, see section 24-1003.

Juvenile criminal matters, county court, fees, see section 33-124.

Juvenile detention facilities, standards, see sections 83-4,124 to 83-4,134.

Juvenile Services Act, see section 43-2401.

Office of Juvenile Services Act, Health and Human Services, see section 43-401.

Physician-patient privilege, inapplicable to judicial proceedings under Nebraska Juvenile Code, see section 27-504.

Secure youth confinement facility, Department of Correctional Services, see sections 43-404 and 83-905.

Separate juvenile courts, see sections 43-2,111 to 43-2,127.

(a) FORMER PROVISIONS

Section	
43-201.	Repealed. Laws 1981, LB 346, § 88.
43-201.01.	Repealed. Laws 1981, LB 346, § 88.
43-202.	Repealed. Laws 1981, LB 346, § 88.
43-202.01.	Repealed. Laws 1981, LB 346, § 88.
43-202.02.	Repealed. Laws 1981, LB 346, § 88.
43-202.03.	Repealed. Laws 1981, LB 346, § 88.
43-202.04.	Repealed. Laws 1981, LB 346, § 88.
43-203.	Repealed. Laws 1957, c. 174, § 1.
43-204.	Repealed. Laws 1978, LB 169, § 3.
43-205.	Repealed. Laws 1981, LB 346, § 88.
43-205.01.	Repealed. Laws 1981, LB 346, § 88.
43-205.02.	Repealed. Laws 1981, LB 346, § 88.
43-205.03.	Repealed. Laws 1981, LB 346, § 88.
43-205.04.	Repealed. Laws 1981, LB 346, § 88.
43-205.05.	Repealed. Laws 1981, LB 346, § 88.
43-205.06.	Repealed. Laws 1981, LB 346, § 88.
43-205.07.	Repealed. Laws 1981, LB 346, § 88.
43-206.	Repealed. Laws 1981, LB 346, § 88.
43-206.01.	Repealed. Laws 1981, LB 346, § 88.
43-206.02.	Repealed. Laws 1981, LB 346, § 88.
43-206.03.	Repealed. Laws 1981, LB 346, § 88.
43-206.04.	Repealed. Laws 1981, LB 346, § 88.
43-207.	Repealed. Laws 1978, LB 624, § 5.
43-208.	Repealed. Laws 1981, LB 346, § 88.
43-209.	Repealed. Laws 1981, LB 346, § 88.
43-210.	Repealed. Laws 1981, LB 346, § 88.
43-210.01.	Repealed. Laws 1981, LB 346, § 88.
43-210.02.	Repealed. Laws 1981, LB 346, § 88.
43-210.03.	Repealed. Laws 1981, LB 346, § 88.
43-210.04.	Repealed. Laws 1981, LB 346, § 88.
43-211.	Repealed. Laws 1972, LB 1032, § 287.
43-212.	Repealed. Laws 1981, LB 346, § 88.

INFANTS AND JUVENILES

Section	
43-212.01.	Repealed. Laws 1981, LB 346, § 88.
43-212.02.	Repealed. Laws 1981, LB 346, § 88.
43-212.03.	Repealed. Laws 1981, LB 346, § 88.
43-213.	Repealed. Laws 1969, c. 817, § 87.
43-214.	Repealed. Laws 1981, LB 346, § 88.
43-215.	Repealed. Laws 1981, LB 346, § 88.
43-216.	Repealed. Laws 1981, LB 346, § 88.
43-217.	Repealed. Laws 1981, LB 346, § 88.
43-218.	Repealed. Laws 1981, LB 346, § 88.
43-219.	Repealed. Laws 1981, LB 346, § 88.
43-220.	Repealed. Laws 1981, LB 346, § 88.
43-221.	Repealed. Laws 1961, c. 118, § 2.
43-222.	Repealed. Laws 1963, c. 251, § 8.
43-223.	Repealed. Laws 1963, c. 251, § 8.
43-224.	Repealed. Laws 1963, c. 251, § 8.
43-225.	Repealed. Laws 1963, c. 251, § 8.
43-226.	Repealed. Laws 1981, LB 346, § 88.
43-227.	Repealed. Laws 1981, LB 346, § 88.
43-228.	Transferred to section 43-2,111.
43-229.	Transferred to section 43-2,112.
43-230.	Transferred to section 43-2,113.
43-230.01.	Transferred to section 43-2,114.
43-230.02.	Repealed. Laws 1981, LB 346, § 88.
43-230.03.	Transferred to section 43-2,115.
43-230.04.	Transferred to section 43-2,116.
43-230.05.	Transferred to section 43-2,117.
43-231.	Repealed. Laws 1963, c. 244, § 7.
43-232.	Repealed. Laws 1963, c. 244, § 7.
43-233.	Transferred to section 43-2,118.
43-233.01.	Transferred to section 43-2,119.
43-233.02.	Repealed. Laws 1979, LB 373, § 5.
43-234.	Transferred to section 43-2,120.
43-234.01.	Transferred to section 43-2,121.
43-235.	Transferred to section 43-2,122.
43-236.	Transferred to section 43-2,123.
43-236.01.	Transferred to section 43-2,124.
43-237.	Transferred to section 43-2,125.
43-238.	Transferred to section 43-2,126.
43-239.	Transferred to section 43-2,127.
43-240.	Repealed. Laws 1981, LB 346, § 88.
43-241.	Repealed. Laws 1981, LB 346, § 88.
43-242.	Repealed. Laws 1981, LB 346, § 88.
43-243.	Repealed. Laws 1981, LB 346, § 88.
43-243.01.	Repealed. Laws 1981, LB 346, § 88.
43-244.	Repealed. Laws 1981, LB 346, § 88.

(b) GENERAL PROVISIONS

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- 43-2,124. Repealed. Laws 1984, LB 13, § 90.
- 43-2,125. Designation of alternative judge; when authorized.
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- 43-2,127. Abolition; petition; election; transfer of dockets.

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- 43-201 Repealed. Laws 1981, LB 346, § 88.**
- 43-201.01 Repealed. Laws 1981, LB 346, § 88.**
- 43-202 Repealed. Laws 1981, LB 346, § 88.**
- 43-202.01 Repealed. Laws 1981, LB 346, § 88.**
- 43-202.02 Repealed. Laws 1981, LB 346, § 88.**
- 43-202.03 Repealed. Laws 1981, LB 346, § 88.**
- 43-202.04 Repealed. Laws 1981, LB 346, § 88.**
- 43-203 Repealed. Laws 1957, c. 174, § 1.**
- 43-204 Repealed. Laws 1978, LB 169, § 3.**
- 43-205 Repealed. Laws 1981, LB 346, § 88.**
- 43-205.01 Repealed. Laws 1981, LB 346, § 88.**
- 43-205.02 Repealed. Laws 1981, LB 346, § 88.**
- 43-205.03 Repealed. Laws 1981, LB 346, § 88.**
- 43-205.04 Repealed. Laws 1981, LB 346, § 88.**
- 43-205.05 Repealed. Laws 1981, LB 346, § 88.**
- 43-205.06 Repealed. Laws 1981, LB 346, § 88.**
- 43-205.07 Repealed. Laws 1981, LB 346, § 88.**

- 43-206 Repealed. Laws 1981, LB 346, § 88.
- 43-206.01 Repealed. Laws 1981, LB 346, § 88.
- 43-206.02 Repealed. Laws 1981, LB 346, § 88.
- 43-206.03 Repealed. Laws 1981, LB 346, § 88.
- 43-206.04 Repealed. Laws 1981, LB 346, § 88.
- 43-207 Repealed. Laws 1978, LB 624, § 5.
- 43-208 Repealed. Laws 1981, LB 346, § 88.
- 43-209 Repealed. Laws 1981, LB 346, § 88.
- 43-210 Repealed. Laws 1981, LB 346, § 88.
- 43-210.01 Repealed. Laws 1981, LB 346, § 88.
- 43-210.02 Repealed. Laws 1981, LB 346, § 88.
- 43-210.03 Repealed. Laws 1981, LB 346, § 88.
- 43-210.04 Repealed. Laws 1981, LB 346, § 88.
- 43-211 Repealed. Laws 1972, LB 1032, § 287.
- 43-212 Repealed. Laws 1981, LB 346, § 88.
- 43-212.01 Repealed. Laws 1981, LB 346, § 88.
- 43-212.02 Repealed. Laws 1981, LB 346, § 88.
- 43-212.03 Repealed. Laws 1981, LB 346, § 88.
- 43-213 Repealed. Laws 1969, c. 817, § 87.
- 43-214 Repealed. Laws 1981, LB 346, § 88.
- 43-215 Repealed. Laws 1981, LB 346, § 88.
- 43-216 Repealed. Laws 1981, LB 346, § 88.
- 43-217 Repealed. Laws 1981, LB 346, § 88.
- 43-218 Repealed. Laws 1981, LB 346, § 88.
- 43-219 Repealed. Laws 1981, LB 346, § 88.
- 43-220 Repealed. Laws 1981, LB 346, § 88.
- 43-221 Repealed. Laws 1961, c. 118, § 2.
- 43-222 Repealed. Laws 1963, c. 251, § 8.
- 43-223 Repealed. Laws 1963, c. 251, § 8.
- 43-224 Repealed. Laws 1963, c. 251, § 8.
- 43-225 Repealed. Laws 1963, c. 251, § 8.

- 43-226 Repealed. Laws 1981, LB 346, § 88.
- 43-227 Repealed. Laws 1981, LB 346, § 88.
- 43-228 Transferred to section 43-2,111.
- 43-229 Transferred to section 43-2,112.
- 43-230 Transferred to section 43-2,113.
- 43-230.01 Transferred to section 43-2,114.
- 43-230.02 Repealed. Laws 1981, LB 346, § 88.
- 43-230.03 Transferred to section 43-2,115.
- 43-230.04 Transferred to section 43-2,116.
- 43-230.05 Transferred to section 43-2,117.
- 43-231 Repealed. Laws 1963, c. 244, § 7.
- 43-232 Repealed. Laws 1963, c. 244, § 7.
- 43-233 Transferred to section 43-2,118.
- 43-233.01 Transferred to section 43-2,119.
- 43-233.02 Repealed. Laws 1979, LB 373, § 5.
- 43-234 Transferred to section 43-2,120.
- 43-234.01 Transferred to section 43-2,121.
- 43-235 Transferred to section 43-2,122.
- 43-236 Transferred to section 43-2,123.
- 43-236.01 Transferred to section 43-2,124.
- 43-237 Transferred to section 43-2,125.
- 43-238 Transferred to section 43-2,126.
- 43-239 Transferred to section 43-2,127.
- 43-240 Repealed. Laws 1981, LB 346, § 88.
- 43-241 Repealed. Laws 1981, LB 346, § 88.
- 43-242 Repealed. Laws 1981, LB 346, § 88.
- 43-243 Repealed. Laws 1981, LB 346, § 88.
- 43-243.01 Repealed. Laws 1981, LB 346, § 88.
- 43-244 Repealed. Laws 1981, LB 346, § 88.

(b) GENERAL PROVISIONS

- 43-245 Terms, defined.

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

- (1) Age of majority means nineteen years of age;
- (2) Approved center means a center that has applied for and received approval from the Director of the Office of Dispute Resolution under section 25-2909;
- (3) Cost or costs means (a) the sum or equivalent expended, paid, or charged for goods or services, or expenses incurred, or (b) the contracted or negotiated price;
- (4) Juvenile means any person under the age of eighteen;
- (5) Juvenile court means the separate juvenile court where it has been established pursuant to sections 43-2,111 to 43-2,127 and the county court sitting as a juvenile court in all other counties. Nothing in the Nebraska Juvenile Code shall be construed to deprive the district courts of their habeas corpus, common-law, or chancery jurisdiction or the county courts and district courts of jurisdiction of domestic relations matters as defined in section 25-2740;
- (6) Juvenile detention facility has the same meaning as in section 83-4,125;
- (7) Mediator for juvenile offender and victim mediation means a person who (a) has completed at least thirty hours of training in conflict resolution techniques, neutrality, agreement writing, and ethics set forth in section 25-2913, (b) has an additional eight hours of juvenile offender and victim mediation training, and (c) meets the apprenticeship requirements set forth in section 25-2913;
- (8) Mental health facility means a treatment facility as defined in section 71-914 or a government, private, or state hospital which treats mental illness;
- (9) Nonoffender means a juvenile who is subject to the jurisdiction of the juvenile court for reasons other than legally prohibited conduct, including, but not limited to, juveniles described in subdivision (3)(a) of section 43-247;
- (10) Nonsecure detention means detention characterized by the absence of restrictive hardware, construction, and procedure. Nonsecure detention services may include a range of placement and supervision options, such as home detention, electronic monitoring, day reporting, drug court, tracking and monitoring supervision, staff secure and temporary holdover facilities, and group homes;
- (11) Parent means one or both parents or a stepparent when such stepparent is married to the custodial parent as of the filing of the petition;
- (12) Parties means the juvenile as described in section 43-247 and his or her parent, guardian, or custodian;
- (13) Except in proceedings under the Nebraska Indian Child Welfare Act, relative means father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece;
- (14) Secure detention means detention in a highly structured, residential, hardware-secured facility designed to restrict a juvenile's movement;
- (15) Status offender means a juvenile who has been charged with or adjudicated for conduct which would not be a crime if committed by an adult,

including, but not limited to, juveniles charged under subdivision (3)(b) of section 43-247 and sections 53-180.01 and 53-180.02; and

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

Source: Laws 1981, LB 346, § 1; Laws 1985, LB 447, § 11; Laws 1987, LB 638, § 1; Laws 1989, LB 182, § 9; Laws 1996, LB 1296, § 20; Laws 1997, LB 622, § 62; Laws 1998, LB 1041, § 20; Laws 1998, LB 1073, § 11; Laws 2000, LB 1167, § 11; Laws 2004, LB 1083, § 91.

Cross References

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

The language of subsection (2) (now subsection (11)) of this section is not exclusive; it merely identifies the necessary parties to a juvenile proceeding. The grandparents of a child subject to dependency proceedings under section 43-247 are entitled to intervene as a matter of right in the proceedings. In re Interest of Kayle C. & Kylee C., 253 Neb. 685, 574 N.W.2d 473 (1998).

43-246 Code, how construed.

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

- (1) To assure the rights of all juveniles to care and protection and a safe and stable living environment and to development of their capacities for a healthy personality, physical well-being, and useful citizenship and to protect the public interest;
- (2) To provide for the intervention of the juvenile court in the interest of any juvenile who is within the provisions of the Nebraska Juvenile Code, with due regard to parental rights and capacities and the availability of nonjudicial resources;
- (3) To remove juveniles who are within the Nebraska Juvenile Code from the criminal justice system whenever possible and to reduce the possibility of their committing future law violations through the provision of social and rehabilitative services to such juveniles and their families;
- (4) To offer selected juveniles the opportunity to take direct personal responsibility for their individual actions by reconciling with the victims through juvenile offender and victim mediation and fulfilling the terms of the resulting agreement which may require restitution and community service;
- (5) To achieve the purposes of subdivisions (1) through (3) of this section in the juvenile’s own home whenever possible, separating the juvenile from his or her parent when necessary for his or her welfare, the juvenile’s health and safety being of paramount concern, or in the interest of public safety and, when temporary separation is necessary, to consider the developmental needs of the individual juvenile in all placements, to consider relatives as a preferred potential placement resource, and to make reasonable efforts to preserve and reunify the family if required under section 43-283.01;
- (6) To promote adoption, guardianship, or other permanent arrangements for children in the custody of the Department of Health and Human Services who are unable to return home;
- (7) To provide a judicial procedure through which these purposes and goals are accomplished and enforced in which the parties are assured a fair hearing

and their constitutional and other legal rights are recognized and enforced; and

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

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

Cross References

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

The state Department of Social Services is not required to institute a plan for rehabilitation of a parent whose child has been found to be dependent and neglected. In re Interest of L.C., J.C., and E.C., 235 Neb. 703, 457 N.W.2d 274 (1990).

The juvenile code must be liberally construed to effectuate its purpose of securing the best interests of those juveniles who fall within it. In re Interest of R.A. and V.A., 225 Neb. 157, 403 N.W.2d 357 (1987).

43-247 Juvenile court; jurisdiction.

The juvenile court shall have exclusive original jurisdiction as to any juvenile defined in subdivision (1) of this section who is under the age of sixteen, as to any juvenile defined in subdivision (3) of this section, and as to the parties and proceedings provided in subdivisions (5), (6), and (8) of this section. As used in this section, all references to the juvenile's age shall be the age at the time the act which occasioned the juvenile court action occurred. The juvenile court shall have concurrent original jurisdiction with the district court as to any juvenile defined in subdivision (2) of this section. The juvenile court shall have concurrent original jurisdiction with the district court and county court as to any juvenile defined in subdivision (1) of this section who is age sixteen or seventeen, any juvenile defined in subdivision (4) of this section, and any proceeding under subdivision (7) or (11) of this section. The juvenile court shall have concurrent original jurisdiction with the county court as to any proceeding under subdivision (9) or (10) of this section. Notwithstanding any disposition entered by the juvenile court under the Nebraska Juvenile Code, the juvenile court's jurisdiction over any individual adjudged to be within the provisions of this section shall continue until the individual reaches the age of majority or the court otherwise discharges the individual from its jurisdiction.

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

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

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

(3) Any juvenile (a) who is homeless or destitute, or without proper support through no fault of his or her parent, guardian, or custodian; who is abandoned by his or her parent, guardian, or custodian; who lacks proper parental care by reason of the fault or habits of his or her parent, guardian, or custodian; whose parent, guardian, or custodian neglects or refuses to provide proper or necessary subsistence, education, or other care necessary for the health, morals, or well-being of such juvenile; whose parent, guardian, or custodian is unable to provide or neglects or refuses to provide special care made necessary by the mental condition of the juvenile; or who is in a situation or engages in an occupation dangerous to life or limb or injurious to the health

or morals of such juvenile, (b) who, by reason of being wayward or habitually disobedient, is uncontrolled by his or her parent, guardian, or custodian; who deports himself or herself so as to injure or endanger seriously the morals or health of himself, herself, or others; or who is habitually truant from home or school, or (c) who is mentally ill and dangerous as defined in section 71-908;

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

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

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

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

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

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

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

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

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

Source: Laws 1981, LB 346, § 3; Laws 1982, LB 215, § 2; Laws 1982, LB 787, § 2; Laws 1984, LB 13, § 77; Laws 1985, LB 255, § 32; Laws 1985, LB 447, § 13; Laws 1996, LB 1044, § 127; Laws 1997, LB 307, § 58; Laws 1997, LB 622, § 63; Laws 1998, LB 1041, § 22; Laws 2001, LB 23, § 1; Laws 2004, LB 1083, § 92; Laws 2006, LB 1115, § 31; Laws 2008, LB280, § 3; Laws 2008, LB1014, § 37.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB280, section 3, with LB1014, section 37, to reflect all amendments.

Note: Changes made by LB280 became effective July 18, 2008. Changes made by LB1014 became operative July 18, 2008.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.
Paternity determinations, jurisdiction, see section 25-2740.

- 1. Jurisdiction of court
- 2. Appeal of order
- 3. Termination of parental rights
- 4. Rehabilitation plan
- 5. Placement with Department of Health and Human Services
- 6. Presence of child
- 7. Evidence
- 8. Abused or neglected child
- 9. Miscellaneous

1. Jurisdiction of court

Subject matter jurisdiction is vested in the juvenile court by an adjudication that a child is a juvenile described in subsection (3)(a) of this section, and pursuant to subsection (5) of this section, the juvenile court's jurisdiction is extended to parents who have custody of any juvenile who has been found to be a child described in this section. In re Interest of Devin W. et al., 270 Neb. 640, 707 N.W.2d 758 (2005).

In order for a juvenile court to assume jurisdiction of minor children under subsection (3)(a) of this section, the State must prove the allegations of the petition by a preponderance of the evidence. The court's only concern is whether the conditions in which the juvenile presently finds himself or herself fit within the asserted subsection of this section. In re Interest of Corey P. et al., 269 Neb. 925, 697 N.W.2d 647 (2005).

When a juvenile court has obtained exclusive jurisdiction over a minor under this section, the district court lacks jurisdiction to hear an action seeking grandparent visitation. Ponseigo v. Mary W., 267 Neb. 72, 672 N.W.2d 36 (2003).

The Legislature intended that the issue of reasonable efforts required under section 43-283.01 must be reviewed by the juvenile court (1) when removing from the home a juvenile adjudged to be under subsections (3) or (4) of this section pursuant to section 43-284, (2) when the court continues a juvenile's out-of-home placement pending adjudication pursuant to section 43-254, (3) when the court reviews a juvenile's status and permanency planning pursuant to section 43-1315, and (4) when termination of parental rights to a juvenile is sought by the State under subsection (6) of section 43-292. In re Interest of DeWayne G., Jr. & Devon G., 263 Neb. 43, 638 N.W.2d 510 (2002).

A county court's jurisdiction over a previously established guardianship must yield to the juvenile court's exclusive jurisdiction over a minor and his or her guardian if the juvenile court determines that there is a sufficient factual basis for an adjudication under this section. In re Interest of Sabrina K., 262 Neb. 871, 635 N.W.2d 727 (2001).

Under this section, once a minor is adjudged to be within the jurisdiction of the juvenile court, the juvenile court shall have exclusive jurisdiction as to any such juvenile and as to the parent, guardian, or custodian who has custody of any juvenile described within this section. In re Guardianship of Rebecca B. et al., 260 Neb. 922, 621 N.W.2d 289 (2000).

When a minor is adjudged to be within the jurisdiction of the juvenile court, a guardianship appointment must be made pursuant to the juvenile code. In re Guardianship of Rebecca B. et al., 260 Neb. 922, 621 N.W.2d 289 (2000).

Proof of venue is immaterial to the determination of whether a juvenile falls within the meaning of this section. In re Interest of Leo L. II, 258 Neb. 877, 606 N.W.2d 783 (2000).

The plain language of subsection (6) of this section states that the juvenile court shall have jurisdiction of the proceedings for termination of parental rights as provided in the Nebraska Juvenile Code. Subsection (6) of this section and section 43-291 indicate that the juvenile court may properly acquire jurisdiction over an original action to terminate parental rights as provided in the Nebraska Juvenile Code without prior juvenile court action, including adjudication. In re Interest of Joshua M. et al., 256 Neb. 596, 591 N.W.2d 557 (1999).

Subsection (3)(b) of this section does not give a juvenile court the power to interfere with a parent's rights over a nonadjudicated child. In re Interest of D.W., 249 Neb. 133, 542 N.W.2d 407 (1996).

The trial court did not err in basing a finding of juvenile court jurisdiction upon the father's two prior convictions for committing sex crimes against children, his lack of treatment for his sexual disorder, and upon the mother's inability to prevent unsupervised contact between the father and the children, even though no evidence of inappropriate contact by the father with the children existed. In re Interest of M.B. and A.B., 239 Neb. 1028, 480 N.W.2d 160 (1992).

Verification of a petition alleging a child to be a juvenile within subsection (3)(a) of this section is not required to vest jurisdiction in a juvenile court. In re Interest of L.D. et al., 224 Neb. 249, 398 N.W.2d 91 (1986).

The juvenile court has exclusive original jurisdiction as to a child who is habitually truant from school, regardless of whether the reason for truancy is an act of the child or parent. The cause of the truancy is insignificant. In re Interest of K.S., 216 Neb. 926, 346 N.W.2d 417 (1984).

Under subsection (3)(a) of this section, the juvenile court continues to have jurisdiction over adjudicated children, either until their age of majority or until they become adopted, and until such time, the court has the authority to enter orders that are in the best interests of the children. In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

Only the county attorney can initiate proceedings in juvenile court under subsections (1) through (4) of this section. In re Interest of Valentin V., 12 Neb. App. 390, 674 N.W.2d 793 (2004).

Pursuant to subsection (1) of this section, the juvenile court has jurisdiction of any juvenile who has committed an act other than a traffic offense which would constitute a misdemeanor or an infraction under the laws of this state. In re Interest of Steven K., 11 Neb. App. 828, 661 N.W.2d 320 (2003).

A juvenile court's commitment of a juvenile to a youth rehabilitation treatment center does not constitute a discharge within the meaning of this section, and therefore, the juvenile court retains jurisdiction. In re Interest of David C., 6 Neb. App. 198, 572 N.W.2d 392 (1997).

When a minor has been adjudicated a juvenile as defined under subsection (3) of this section and the juvenile court retains jurisdiction, a probate court cannot appoint a guardian of that juvenile without the consent of the juvenile court. In re Guardianship of Alice D. et al., 4 Neb. App. 726, 548 N.W.2d 18 (1996).

Jurisdiction of a juvenile court under subsection (3)(a) of this section is dependent upon whether the child is in need of care at the commencement of the proceedings and not on whether a parent is allowed to participate in the proceedings. In re Interest of Amanda H., 4 Neb. App. 293, 542 N.W.2d 79 (1996).

2. Appeal of order

A judicial determination made following an adjudication in a special proceeding which affects the substantial right of parents to raise their children is a final, appealable order. In re Interest of Ty M. & Devon M., 265 Neb. 150, 655 N.W.2d 672 (2003).

A dispositional order in which a juvenile court declines to order a rehabilitation plan for parents of a child adjudicated under subsection (3)(a) of this section is a final, appealable order. A juvenile court is not required to order or implement a rehabilitation plan for the parent of a child adjudicated under subsection (3)(a) of this section if the plan has very little chance of success and is not in the best interests of the child. Where a child's substantial medical needs resulting from injury caused by parental abuse necessitated 24-hour daily nursing care for the child, the juvenile court did not err in accepting recommendation of the Department of Health and Human Services that no rehabilitation plan be implemented to reunite a child with his or her parents. In re Interest of Tabatha R., 255 Neb. 818, 587 N.W.2d 109 (1998).

A detention order issued under subsection (3)(a) of this section and section 43-254 after a hearing which continues to withhold the custody of a juvenile from the parent pending an adjudication hearing to determine whether the juvenile is neglected is a final order and thus appealable. Thus, where an appeal from such an order has been perfected, a trial court is without jurisdiction to terminate parental rights until resolution of the parent's appeal from the original detention order regarding that child. In re Interest of Joshua M. et al., 251 Neb. 614, 558 N.W.2d 548 (1997).

Proceedings under this section are reviewed de novo on the record, and the appellate court is required to reach a conclusion

independent of the trial court's finding; however, where the evidence is in conflict, the appellate court will consider and may give weight to the fact that the trial court observed the witnesses and accepted one version of the facts over another. After a determination pursuant to this section that juveniles are within subsection (3)(a) of this section, and before entering an order containing a rehabilitative plan for a parent, the juvenile court shall inform the parent that the court may order such a plan, and shall hold a hearing and make findings on the record to determine reasonable provisions material to the plan's rehabilitative object of correcting, eliminating, or ameliorating the situation or condition upon which the adjudication was based. In re Interest of L.P. and R.P., 240 Neb. 112, 480 N.W.2d 421 (1992).

An ex parte temporary detention order keeping a juvenile's custody from his or her parent for a short period of time pending a hearing as to whether the detention should be continued is not final; however, a detention order entered after a hearing continuing to keep a juvenile's custody from his or her parent pending an adjudication hearing to determine whether the juvenile is neglected, and thus within the purview of subsection (3)(a) of this section, is final and thus appealable. In re Interest of R.G., 238 Neb. 405, 470 N.W.2d 780 (1991).

An order finding a child to be a juvenile as described in subsection (3)(a) of this section is an adjudication order, which is an appealable order. Notice of appeal must be filed within 30 days from the rendition of the judgment; after expiration of the 30 days, the order may not be reviewed. In re Interest of Z.R., 226 Neb. 770, 415 N.W.2d 128 (1987).

The standard of review applicable to a juvenile proceeding under this section is de novo on the record. In re Interest of R.A. and V.A., 225 Neb. 157, 403 N.W.2d 357 (1987).

Although an ex parte temporary detention order keeping a juvenile's custody from his or her parent for a short period of time is not final, an order under section 43-254 and subsection (3)(a) of this section after a hearing which continues to keep a juvenile's custody from the parent pending an adjudication hearing is final and thus appealable. In re Interest of Stephanie H. et al., 10 Neb. App. 908, 639 N.W.2d 668 (2002).

Pursuant to subsection (3)(a) of this section, an order changing the placement of a juvenile who has been adjudicated under this section affects a substantial right of the State and is a final and appealable order. In re Interest of Tanisha P. et al., 9 Neb. App. 344, 611 N.W.2d 418 (2000).

An adjudication under this section of the Nebraska Juvenile Code is an appealable order. In re Interest of Simon H., 8 Neb. App. 225, 590 N.W.2d 421 (1999).

Although an ex parte temporary detention order keeping a juvenile's custody from his or her parent for a short period of time is not final, one entered under this section, after a hearing which continues to keep a juvenile's custody from the parent pending an adjudication hearing to determine whether the juvenile is neglected, is final and thus appealable. In re Interest of Cassandra L. & Trevor L., 4 Neb. App. 333, 543 N.W.2d 199 (1996).

3. Termination of parental rights

Pursuant to this section, a child, not the parent, is adjudicated in order to protect the child's rights. The rights of a parent are determined in the dispositional phase of the case. In re Interest of Devin W. et al., 270 Neb. 640, 707 N.W.2d 758 (2005).

A court is not prohibited from considering prior events when determining whether to terminate parental rights, but the court may need to consider the reasonableness of a plan or its individual provisions. In re Interest of Ty M. & Devon M., 265 Neb. 150, 655 N.W.2d 672 (2003).

Evidence that established (1) a child sustained injuries of a nature not likely to occur in the normal course of the child's movement, (2) such injuries would have some physical manifestations associated with them, and (3) the parent failed to seek medical treatment for 2 to 4 weeks is sufficient to find the child is a neglected child within the Nebraska Juvenile Code. In re Interest of A.L.G., 230 Neb. 732, 432 N.W.2d 852 (1988).

Where parents are unable or unwilling to rehabilitate themselves within a reasonable time, the best interests of the child require that parental rights be terminated. In re Interest of N.B., 230 Neb. 717, 432 N.W.2d 850 (1988).

Where poor housekeeping degenerates into a continuing health hazard, the best interests of the children require termination of parental rights. In re Interest of E.R., J.R., and A.R., 230 Neb. 646, 432 N.W.2d 834 (1988).

Section 43-292(6) does not require the court to proceed under that subsection whenever a determination has been made under this section; the court may terminate parental rights when it appears that any one of the six conditions under section 43-292 has been met. In re Interest of J.A. and T.A., 229 Neb. 271, 426 N.W.2d 277 (1988).

Pursuant to subsection (6) of section 43-292, termination of parental rights requires a finding that following a determination that the juvenile is one as described in subsection (3)(a) of this section, reasonable efforts to preserve and reunify the family if required under section 43-283.01, under the direction of the court, have failed to correct the conditions leading to the determination. In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

This section allows the juvenile court to "otherwise discharge" the juvenile from its jurisdiction without providing any limitations on the reasons for the court to order such discharge. In re Interest of Steven K., 11 Neb. App. 828, 661 N.W.2d 320 (2003).

Pursuant to subsection (3)(a) of this section, the trial court's failure to advise a mother of her rights, of the possible dispositions, or of the nature of juvenile court proceedings arising from the State's petition alleging that the mother inappropriately disciplined her 20-month-old child and that the child was without proper parental care through the mother's fault or habits violated the mother's due process rights, even though the mother vigorously defended against the charges. In re Interest of Billie B., 8 Neb. App. 791, 601 N.W.2d 799 (1999).

In the absence of an adjudication petition and hearing in compliance with this section, an order purporting to terminate parental rights pursuant to section 43-292 is a nullity. In re Interest of Joelyann H., 6 Neb. App. 472, 574 N.W.2d 185 (1998).

4. Rehabilitation plan

A dispositional order imposing a rehabilitation plan for parents in a juvenile case is a final, appealable order. In re Interest of Ty M. & Devon M., 265 Neb. 150, 655 N.W.2d 672 (2003).

A dispositional order in which a juvenile court declines to order a rehabilitation plan for parents of a child adjudicated under subsection (3)(a) of this section is a final, appealable order. A juvenile court is not required to order or implement a rehabilitation plan for the parent of a child adjudicated under subsection (3)(a) of this section if the plan has very little chance of success and is not in the best interests of the child. Where a child's substantial medical needs resulting from injury caused by parental abuse necessitated 24-hour daily nursing care for the child, the juvenile court did not err in accepting recommendation of the Department of Health and Human Services that no rehabilitation plan be implemented to reunite a child with his or her parents. In re Interest of Tabatha R., 255 Neb. 818, 587 N.W.2d 109 (1998).

The purpose of section 43-292(6) is to advance the best interests of the child by giving the juvenile court power to terminate parental rights where the grounds for adjudicating the child within subsection (3)(a) of this section have not been corrected. Whether a parent is willful or not in his or her noncompliance with a rehabilitation plan is not directly relevant to this purpose. While it is true that one purpose of a rehabilitation plan is to ameliorate the particular conditions that serve as the basis for an allegation supporting the adjudication that a child is within the meaning of subsection (3)(a) of this section, a rehabilitation plan also has the larger goal of reuniting the child with the parent. To advance this goal, the juvenile court has broad discretion to prescribe a reasonable plan to rehabilitate a parent whose child has been adjudicated to be within the

meaning of subsection (3)(a) of this section. In re Interest of Joshua M. et al., 251 Neb. 614, 558 N.W.2d 548 (1997).

After an adjudication hearing and before entering an order with a rehabilitation plan for a parent, the court shall inform the parent that a rehabilitation plan may be ordered and shall hold a hearing to determine reasonable provisions. The court's findings of fact supporting the provisions of the rehabilitation plan shall be stated in the record. Petition must allege that the parent's poor parenting skills adversely affected the child in question. In re Interest of D.M.B., 240 Neb. 349, 481 N.W.2d 905 (1992).

After an adjudication under subdivision (3)(a) of this section and before entering an order containing a rehabilitative plan for a parent, a juvenile court shall inform the juvenile's parents that the court may order a rehabilitative plan and thereafter shall hold an evidentiary hearing to determine reasonable provisions material to the parental plan's rehabilitative objective of correcting, eliminating, or ameliorating the situation or condition on which the adjudication has been obtained. In re Interest of J.S., A.C., and C.S., 227 Neb. 251, 417 N.W.2d 147 (1987).

5. Placement with Department of Health and Human Services

The Nebraska Department of Health and Human Services is responsible for the costs of placing and caring for juveniles within its custody, regardless of which subsection of this section that juvenile is adjudicated under. In re Interest of Jeremy T., 257 Neb. 736, 600 N.W.2d 747 (1999).

A juvenile court has no statutory authority to place children adjudged under subsection (1) with the Department of Social Services. In re Interest of C.G. and G.G.T., 221 Neb. 409, 377 N.W.2d 529 (1985).

Disposition of juveniles adjudicated as falling within this section is pursuant to sections 43-283 to 43-2,101. Juveniles adjudged under subsection (3)(a) or (b) may be placed under the custody and care of the Department of Social Services. Juvenile courts have broad discretion as to the disposition of children found to be neglected under this section. In re Interest of V.T. and L.T., 220 Neb. 256, 369 N.W.2d 94 (1985).

The burden is upon the State to allege and prove in a detention hearing that the juvenile court should not place children with their other natural parent after the expiration of the first 48 hours of emergency detention under subsection (4) of section 43-250 during a period of temporary detention pending adjudication spawned by allegations under subsection (3)(a) of this section against their custodial parent. In re Interest of Stephanie H. et al., 10 Neb. App. 908, 639 N.W.2d 668 (2002).

In addition to lacking the authority to order the Department of Health and Human Services to supervise a juvenile's probation, the juvenile court also lacks the authority to order the Department of Health and Human Services to supervise a juvenile's house arrest or to oversee a juvenile's payment of restitution. In re Interest of Juan L., 6 Neb. App. 683, 577 N.W.2d 319 (1998).

6. Presence of child

It is within the trial court's discretion whether or not to permit a child to be present at an adjudication hearing in a proceeding pursuant to subsection (3)(a) of this section. In re Interest of D.D.P., 235 Neb. 864, 458 N.W.2d 193 (1990).

7. Evidence

Subsection (3)(a) of this section is not void for vagueness because it is interpreted in light of its common understanding. At the adjudication stage, in order for a juvenile court to assume jurisdiction of minor children under subsection (3)(a) of this section, the State must prove the allegations of the petition by a preponderance of the evidence. In re Interest of T.M.B. et al., 241 Neb. 828, 491 N.W.2d 58 (1992).

Evidence was sufficient to establish minors were in a situation dangerous to life or limb or injurious to their health or morals. In re Interest of D.P.Y. and J.L.Y., 239 Neb. 647, 477 N.W.2d 573 (1991).

The fact that a juvenile comes within the purview of this section must be established by a preponderance of the evidence. In re Interest of D.A., 239 Neb. 264, 475 N.W.2d 511 (1991).

Circumstantial evidence may be sufficient to prove that a child is a juvenile within the meaning of subsection (3)(a) of this section where the record shows (1) a parent's control over the child during the period when the abuse or neglect occurred and (2) multiple injuries or other serious impairment of health have occurred which ordinarily would not occur in the absence of abuse or neglect. In re Interest of McCauley H., 3 Neb. App. 474, 529 N.W.2d 77 (1995).

8. Abused or neglected child

Once a plan of reunification has been ordered to correct the conditions underlying the adjudication under subsection (3)(a) of this section, the plan must be reasonably related to the objective of reuniting the parent with the child. In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004).

Given the broad power granted by the Legislature to juvenile courts to determine whether in proceedings under subsection (3)(a) of this section the guardian ad litem role and the role of counsel for the juvenile should be split, an appellate court reviews the decision to use or not use that power de novo on the record for an abuse of discretion. In re Interest of J.K., 265 Neb. 253, 656 N.W.2d 253 (2003).

The determination whether "special reasons" exist for appointing separate counsel for a juvenile in proceedings under subsection (3)(a) of this section must be based on a case-by-case basis, taking into consideration the totality of the circumstances. In re Interest of J.K., 265 Neb. 253, 656 N.W.2d 253 (2003).

When an attorney is appointed for a juvenile under subsections (2) and (3) of section 43-272 in proceedings under subsection (3)(a) of this section, the attorney generally serves as both guardian ad litem and as counsel for the child. In re Interest of J.K., 265 Neb. 253, 656 N.W.2d 253 (2003).

Section 43-258 does not apply to requests for mental and physical examinations after a juvenile has been adjudicated under subsection (3)(a) of this section. In re Interest of Ty M. & Devon M., 265 Neb. 150, 655 N.W.2d 672 (2003).

A guardian's admission of allegations of abuse in a juvenile petition is a sufficient basis for an adjudication under this section when evidence shows that a parent has previously lost custody of his or her natural child and plays no role in the child's living conditions at the time the child is taken into custody. In re Interest of Sabrina K., 262 Neb. 871, 635 N.W.2d 727 (2001).

A petition brought under subsection (3)(a) of this section is brought on behalf of the child, not to punish the parents. In re Interest of Danielle D. et al., 257 Neb. 198, 595 N.W.2d 544 (1999).

Pursuant to subsection (3) of this section, while the State's *parens patriae* interest in the welfare of a child authorizes it to initiate abuse and neglect proceedings pursuant to this section and request temporary custody pending adjudication, the denial of such a request does not affect any substantial right of the State. In re Interest of Anthony G., 255 Neb. 442, 586 N.W.2d 427 (1998).

Under subsection (3)(a) of this section, a petition filed under this section is brought on behalf of the child, not to punish the parents. In re Interest of Amber G. et al., 250 Neb. 973, 554 N.W.2d 142 (1996).

The dual purpose of proceedings brought under subsection (3)(a) of this section on the ground that a juvenile is homeless, destitute, or without proper support through no fault of the parents, guardian, or custodian is to protect the welfare of the minor and to safeguard the parents' right to properly raise their own child, and a petition thereunder is brought on behalf of the child, not to punish the parents. In re Interest of Constance G., 247 Neb. 629, 529 N.W.2d 534 (1995).

Subsection (3)(a) of this section is not void for vagueness because it is interpreted in light of its common understanding. At the adjudication stage, in order for a juvenile court to assume

jurisdiction of minor children under subsection (3)(a) of this section, the State must prove the allegations of the petition by a preponderance of the evidence. In re Interest of T.M.B. et al., 241 Neb. 828, 491 N.W.2d 58 (1992).

The juvenile court has broad discretion as to the disposition of children neglected as defined in subdivision (3)(a) of this section. In re Interest of K.L.C. and K.C., 227 Neb. 76, 416 N.W.2d 18 (1987).

9. Miscellaneous

The dual purpose of proceedings brought under subsection (3)(a) of this section, to protect the welfare of the child and to safeguard the parent's right to properly raise his or her own child, is applicable even though the allegation is that the child lacks proper parental care by reason of the fault or habits of his or her parent. In re Interest of Stephanie H. et al., 10 Neb. App. 908, 639 N.W.2d 668 (2002).

43-247.01 Facilitated conferencing; confidential; privileged communications.

(1) Pending the adjudication of any case, the court may provide the parties the opportunity to address issues involving the child's care and placement, services to the family, and other concerns through facilitated conferencing. Facilitated conferencing may include prehearing conferences and family group conferences. All discussions taking place during such facilitated conferences, including plea negotiations, shall be considered confidential and privileged communications, except communications required by mandatory reporting under section 28-711 for new allegations of child abuse or neglect which were not previously known or reported.

(2) For purposes of this section:

(a) Prehearing conference means a facilitated meeting prior to appearing in court and held to gain the cooperation of the parties, to offer services and treatment, and to develop a problem-solving atmosphere in the best interests of children involved in the juvenile court system; and

(b) Family group conference means a facilitated collaborative process in which families work with extended family members and others to make decisions and develop plans for the best interests of children who are under the jurisdiction of the court.

Source: Laws 2008, LB1014, § 38.
Operative date July 18, 2008.

(c) LAW ENFORCEMENT PROCEDURES

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

A juvenile may be taken into temporary custody by any peace officer without a warrant or order of the court when:

(1) A juvenile has violated a state law or municipal ordinance in the presence of the officer;

(2) A felony has been committed and the officer has reasonable grounds to believe such juvenile committed it;

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

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

(5) There are reasonable grounds to believe that the juvenile has run away from his or her parent, guardian, or custodian.

Source: Laws 1981, LB 346, § 4; Laws 1997, LB 622, § 64; Laws 2004, LB 1083, § 93.

Although subsection (3) of this section allows the State to take a juvenile into custody without a warrant or order of the court when it appears the juvenile is seriously endangered in his or her surroundings and immediate removal appears to be necessary for the juvenile's protection, the parent retains a liberty interest in the continuous custody of his or her child. In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004).

When a juvenile is taken into temporary custody pursuant to subsection (5) of this section, a peace officer may conduct a search incident to temporary detention. In re Interest of Jabreco G., 12 Neb. App. 667, 683 N.W.2d 386 (2004).

When a juvenile is taken into temporary custody pursuant to this section, the peace officer may conduct a search incident to temporary detention. In re Interest of Adrian B., 11 Neb. App. 656, 658 N.W.2d 722 (2003).

43-248.01 Juvenile in custody; right to call or consult an attorney.

All law enforcement personnel or other governmental officials having custody of any person under eighteen years of age who has been arrested, restrained, detained, or deprived of his or her liberty for whatever reason shall permit the person in custody, without unnecessary delay after arrival at a police station or detention facility, to call or consult an attorney who is retained by or on behalf of such person in custody or whom the person in custody may desire to consult, except when exigent circumstances exist. An attorney shall be permitted to see and consult with the person in custody alone and in private at the place of custody.

Source: Laws 1993, LB 652, § 1.

43-249 Temporary custody; not an arrest; exception.

No juvenile taken into temporary custody under section 43-248 shall be considered to have been arrested, except for the purpose of determining the validity of such custody under the Constitution of Nebraska or the United States.

Source: Laws 1981, LB 346, § 5; Laws 1982, LB 787, § 3.

43-250 Temporary custody; disposition; custody requirements.

A peace officer who takes a juvenile into temporary custody under section 43-248 shall immediately take reasonable measures to notify the juvenile's parent, guardian, custodian, or relative and shall proceed as follows:

- (1) The peace officer shall release such juvenile;
- (2) The peace officer shall prepare in triplicate a written notice requiring the juvenile to appear before the juvenile court of the county in which such juvenile was taken into custody at a time and place specified in the notice or at the call of the court. The notice shall also contain a concise statement of the reasons such juvenile was taken into custody. The peace officer shall deliver one copy of the notice to such juvenile and require such juvenile or his or her parent, guardian, other custodian, or relative, or both, to sign a written promise that such signer will appear at the time and place designated in the notice. Upon the execution of the promise to appear, the peace officer shall immediately release such juvenile. The peace officer shall, as soon as practicable, file one copy of the notice with the county attorney and, when required by the juvenile court, also file a copy of the notice with the juvenile court or the officer appointed by the court for such purpose;
- (3) While retaining temporary custody, the peace officer shall communicate all relevant available information regarding such juvenile to the probation officer and shall deliver the juvenile, if necessary, to the probation officer. The probation officer shall determine the need for detention of the juvenile as provided in section 43-260.01. Upon determining that the juvenile should be placed in a secure or nonsecure placement and securing placement in such

secure or nonsecure setting by the probation officer, the peace officer shall implement the probation officer's decision to release or to detain and place the juvenile. When secure detention of a juvenile is necessary, such detention shall occur within a juvenile detention facility except:

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

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

(c) Whenever a juvenile is held in a secure area of any jail or other facility intended or used for the detention of adults, there shall be no verbal, visual, or physical contact between the juvenile and any incarcerated adult and there shall be adequate staff to supervise and monitor the juvenile's activities at all times. This subdivision shall not apply to a juvenile charged with a felony as an adult in county or district court if he or she is sixteen years of age or older;

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

(e) If, within the time limits specified in subdivision (3)(a) or (3)(b) of this section, a felony charge is filed against the juvenile as an adult in county or district court, he or she may be securely held in a jail or other facility intended or used for the detention of adults beyond the specified time limits;

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

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

(4) When a juvenile is taken into temporary custody pursuant to subdivision (3) of section 43-248, the peace officer shall deliver the custody of such juvenile to the Department of Health and Human Services which shall make a temporary placement of the juvenile in the least restrictive environment consistent with the best interests of the juvenile as determined by the department. The department shall supervise such placement and, if necessary, consent to any necessary emergency medical, psychological, or psychiatric treatment for such juvenile. The department shall have no other authority with regard to such temporary custody until or unless there is an order by the court placing the juvenile in the custody of the department. If the peace officer delivers temporary custody of the juvenile pursuant to this subdivision, the peace officer shall make a full written report to the county attorney within twenty-four hours of taking such juvenile into temporary custody. If a court order of temporary custody is not issued within forty-eight hours of taking the juvenile into custody, the temporary custody by the department shall terminate and the juvenile shall be returned to the custody of his or her parent, guardian, custodian, or relative; or

(5) If the peace officer takes the juvenile into temporary custody pursuant to subdivision (4) of section 43-248, the peace officer may place the juvenile at a mental health facility for evaluation and emergency treatment or may deliver the juvenile to the Department of Health and Human Services as provided in subdivision (4) of this section. At the time of the admission or turning the juvenile over to the department, the peace officer responsible for taking the juvenile into custody shall execute a written certificate as prescribed by the Department of Health and Human Services which will indicate that the peace officer believes the juvenile to be mentally ill and dangerous, a summary of the subject's behavior supporting such allegations, and that the harm described in section 71-908 is likely to occur before proceedings before a juvenile court may be invoked to obtain custody of the juvenile. A copy of the certificate shall be forwarded to the county attorney. The peace officer shall notify the juvenile's parents, guardian, custodian, or relative of the juvenile's placement.

In determining the appropriate temporary placement of a juvenile under this section, the peace officer shall select the placement which is least restrictive of the juvenile's freedom so long as such placement is compatible with the best interests of the juvenile and the safety of the community.

Source: Laws 1981, LB 346, § 6; Laws 1982, LB 787, § 4; Laws 1985, LB 447, § 14; Laws 1988, LB 790, § 24; Laws 1996, LB 1044, § 128; Laws 1997, LB 622, § 65; Laws 1998, LB 1073, § 13; Laws 2000, LB 1167, § 12; Laws 2001, LB 451, § 5; Laws 2003, LB 43, § 12; Laws 2004, LB 1083, § 94.

The intent of this section was and is to ensure that a juvenile's due process rights are not violated by providing that parents will be notified after the juvenile is taken into custody. The potential injury contemplated by this section is the violation of the juvenile's due process right to have his or her parents notified prior to a dispositional proceeding. It is not the intent of this section to protect juveniles from harming themselves after being released by law enforcement, nor is there any indication that the Legislature intended to create a civil remedy for its violation. *Claypool v. Hibberd*, 261 Neb. 818, 626 N.W.2d 539 (2001).

The information upon which the State seeks an ex parte temporary detention order under the provisions of this section shall be contained in the affidavit of one who has knowledge of the relevant facts; such affidavit shall be presented to the

juvenile court and made a part of the record of the proceedings, and the affected juvenile's parent shall be given prompt notice of the order. The State's failure to comply with the statutory requirements relating to the entry of an ex parte temporary detention order under the provisions of this section does not deprive the juvenile court of jurisdiction. *In re Interest of R.G.*, 238 Neb. 405, 470 N.W.2d 780 (1991).

Failure to immediately take reasonable measures, as provided in this section, to notify a parent that temporary custody has been taken of a juvenile pursuant to section 43-248 does not deprive the juvenile court of jurisdiction. *In re Interest of S.S.L.*, 219 Neb. 911, 367 N.W.2d 710 (1985).

The burden is upon the State to allege and prove in a detention hearing that the juvenile court should not place chil-

dren with their other natural parent after the expiration of the first 48 hours of emergency detention under subsection (4) of this section during a period of temporary detention pending adjudication spawned by allegations under subsection (3)(a) of section 43-247 against their custodial parent. In re Interest of Stephanie H. et al., 10 Neb. App. 908, 639 N.W.2d 668 (2002).

43-251 Preadjudication placement or detention; mental health placement; prohibitions.

(1) When a juvenile is taken into custody pursuant to sections 43-248 and 43-250, the court or magistrate may take any action for preadjudication placement or detention prescribed in the Nebraska Juvenile Code.

(2) Any juvenile taken into custody under the Nebraska Juvenile Code for allegedly being mentally ill and dangerous shall not be placed in a jail or detention facility designed for juveniles who are accused of criminal acts or for juveniles as described in subdivision (1), (2), or (4) of section 43-247 either as a temporary placement by a peace officer, as a temporary placement by a court, or as an adjudication placement by the court.

Source: Laws 1981, LB 346, § 7; Laws 1985, LB 447, § 15; Laws 1997, LB 622, § 66; Laws 1998, LB 1073, § 14.

43-251.01 Juveniles; placements and commitments; restrictions.

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

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

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

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

(4) A juvenile under the age of twelve years shall not be placed with or committed to a youth rehabilitation and treatment center except as provided in section 43-286.

Source: Laws 1998, LB 1073, § 25.

43-252 Fingerprints; when authorized; disposition.

(1) The fingerprints of any juvenile less than fourteen years of age, who has been taken into custody in the investigation of a suspected unlawful act, shall not be taken unless the consent of any district, county, associate county, associate separate juvenile court, or separate juvenile court judge has first been obtained.

(2) If the judge permits the fingerprinting, the fingerprints must be filed by law enforcement officers in files kept separate from those of persons of the age of majority.

(3) The fingerprints of any juvenile shall not be sent to a state or federal depository by a law enforcement agency of this state unless: (a) The juvenile has been convicted of or adjudged to have committed a felony; (b) the juvenile

has unlawfully terminated his or her commitment to a youth rehabilitation and treatment center; or (c) the juvenile is a runaway and a fingerprint check is needed for identification purposes to return the juvenile to his or her parent.

Source: Laws 1981, LB 346, § 8; Laws 1982, LB 787, § 5; Laws 1994, LB 988, § 19.

(d) PREADJUDICATION PROCEDURES

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

(1) Upon delivery to the probation officer of a juvenile who has been taken into temporary custody under sections 43-248 and 43-250, the probation officer shall immediately investigate the situation of the juvenile and the nature and circumstances of the events surrounding his or her being taken into custody. Such investigation may be by informal means when appropriate.

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

(3) No juvenile who has been taken into temporary custody under subdivision (3) of section 43-250 shall be detained in any secure detention facility for longer than twenty-four hours, excluding nonjudicial days, after having been taken into custody unless such juvenile has appeared personally before a court of competent jurisdiction for a hearing to determine if continued detention is necessary. If continued secure detention is ordered, such detention shall be in a juvenile detention facility, except that a juvenile charged with a felony as an adult in county or district court may be held in an adult jail as set forth in subdivision (3)(e) of section 43-250.

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

(5) The court may admit such juvenile to bail by bond in such amount and on such conditions and security as the court, in its sole discretion, shall determine, or the court may proceed as provided in section 43-254. In no case shall the court or probation officer release such juvenile if it appears that further detention or placement of such juvenile is a matter of immediate and urgent necessity for the protection of such juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court.

Source: Laws 1981, LB 346, § 9; Laws 1982, LB 787, § 6; Laws 1994, LB 451, § 2; Laws 1998, LB 1073, § 15; Laws 2000, LB 1167, § 15; Laws 2001, LB 451, § 6.

Cross References

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

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

Pending the adjudication of any case, if it appears that the need for placement or further detention exists, the juvenile may be (1) placed or detained a reasonable period of time on order of the court in the temporary custody of either the person having charge of the juvenile or some other suitable person, (2) kept in some suitable place provided by the city or county authorities, (3) placed in any proper and accredited charitable institution, (4) placed in a state institution, except any adult correctional facility, when proper facilities are available and the only local facility is a city or county jail, at the expense of the committing county on a per diem basis as determined from time to time by the head of the particular institution, or (5) placed in the temporary care and custody of the Department of Health and Human Services when it does not appear that there is any need for secure detention. The court may assess the cost of such placement or detention in whole or in part to the parent of the juvenile as provided in section 43-290.

If a juvenile has been removed from his or her parent, guardian, or custodian pursuant to subdivision (3) of section 43-248, the court may enter an order continuing detention or placement upon a written determination that continuation of the juvenile in his or her home would be contrary to the health, safety, or welfare of such juvenile and that reasonable efforts were made to preserve and reunify the family if required under subsections (1) through (4) of section 43-283.01.

Source: Laws 1981, LB 346, § 10; Laws 1985, LB 447, § 16; Laws 1987, LB 635, § 1; Laws 1987, LB 638, § 2; Laws 1996, LB 1044, § 129; Laws 1998, LB 1041, § 23; Laws 2000, LB 1167, § 16.

- 1. Detention
- 2. Burden of proof
- 3. Reasonable efforts

1. Detention

A detention hearing is a parent's opportunity to be heard on the need for the removal and the satisfaction of the State's obligations under section 43-283.01, and it is not optional when a child is detained for any significant period of time. In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004).

A temporary detention order, entered after a hearing pursuant to section 43-247(3)(a), is a final, appealable order. In re Interest of R.R., 239 Neb. 250, 475 N.W.2d 518 (1991).

Although an ex parte temporary detention order keeping a juvenile's custody from his or her parent for a short period of time is not final, an order under this section and subsection (3)(a) of section 43-247 after a hearing which continues to keep a juvenile's custody from the parent pending an adjudication hearing is final and thus appealable. In re Interest of Stephanie H. et al., 10 Neb. App. 908, 639 N.W.2d 668 (2002).

Although an ex parte temporary detention order keeping a juvenile's custody from his or her parent for a short period of time is not final, one entered under this section, after a hearing which continues to keep a juvenile's custody from the parent pending an adjudication hearing to determine whether the juvenile is neglected, is final and thus appealable. In re Interest of Cassandra L. & Trevor L., 4 Neb. App. 333, 543 N.W.2d 199 (1996).

State did not meet statutory requirements to justify child's continued detention pending adjudication where there was no evidence showing that it would be contrary to the juvenile's welfare to remain in her home pending adjudication and no evidence regarding any efforts made by the State to prevent the need to remove the child. In re Interest of Cherita W., 4 Neb. App. 287, 541 N.W.2d 677 (1996).

2. Burden of proof

Continued detention pending adjudication is not permitted under the Nebraska Juvenile Code unless the State can establish by a preponderance of the evidence at an adversarial hearing that such detention is necessary for the welfare of the juvenile. In re Interest of Anthony G., 255 Neb. 442, 586 N.W.2d 427 (1998).

To sustain the continued temporary custody of a child, the State must prove the requirements of this section by a preponderance of the evidence. In re Interest of Borius H. et al., 251 Neb. 397, 558 N.W.2d 31 (1997).

The State must prove by a preponderance of the evidence that the custody of an alleged dependent or neglected juvenile should be in the Department of Social Services pending adjudication. In re Interest of R.G., 238 Neb. 405, 470 N.W.2d 780 (1991).

3. Reasonable efforts

The Legislature intended that the issue of reasonable efforts required under section 43-283.01 must be reviewed by the

juvenile court (1) when removing from the home a juvenile adjudged to be under subsections (3) or (4) of section 43-247 pursuant to section 43-284, (2) when the court continues a juvenile's out-of-home placement pending adjudication pursuant to this section, (3) when the court reviews a juvenile's status and permanency planning pursuant to section 43-1315, and (4) when termination of parental rights to a juvenile is sought by the State under subsection (6) of section 43-292. In re Interest of DeWayne G., Jr. & Devon G., 263 Neb. 43, 638 N.W.2d 510 (2002).

Provision in this section which requires the State to show that reasonable efforts have been made to prevent the need for a juvenile's removal applies only when the juvenile is taken into

temporary custody without a court order under the authority of section 43-248(3). Thus, where a juvenile is taken into custody pursuant to a juvenile court order, this section does not apply. A detention order issued under section 43-247(3)(a) and this section after a hearing which continues to withhold the custody of a juvenile from the parent pending an adjudication hearing to determine whether the juvenile is neglected is a final order and thus appealable. Thus, where an appeal from such an order has been perfected, a trial court is without jurisdiction to terminate parental rights until resolution of the parent's appeal from the original detention order regarding that child. In re Interest of Joshua M. et al., 251 Neb. 614, 558 N.W.2d 548 (1997).

43-254.01 Temporary mental health placement; evaluation; procedure.

(1) Any time a juvenile is temporarily placed at a mental health facility pursuant to subdivision (5) of section 43-250 or by a court as a juvenile who is mentally ill and dangerous, a mental health professional as defined in section 71-906 shall evaluate the mental condition of the juvenile as soon as reasonably possible but not later than thirty-six hours after the juvenile's admission, unless the juvenile was evaluated by a mental health professional immediately prior to the juvenile being placed in temporary custody and the temporary custody is based upon the conclusions of that evaluation. The mental health professional who performed the evaluation prior to the temporary custody or immediately after the temporary custody shall, without delay, convey the results of his or her evaluation to the county attorney.

(2) If it is the judgment of the mental health professional that the juvenile is not mentally ill and dangerous or that the harm described in section 71-908 is not likely to occur before the matter may be heard by a juvenile court, the mental health professional shall immediately notify the county attorney of that conclusion and the county attorney shall either proceed to hearing before the court within twenty-four hours or order the immediate release of the juvenile from temporary custody. Such release shall not prevent the county attorney from proceeding on the petition if he or she so chooses.

(3) A juvenile taken into temporary protective custody under subdivision (5) of section 43-250 shall have the opportunity to proceed to adjudication hearing within seven days unless the matter is continued. Continuances shall be liberally granted at the request of the juvenile, his or her guardian ad litem, attorney, parents, or guardian. Continuances may be granted to permit the juvenile an opportunity to obtain voluntary treatment.

Source: Laws 1997, LB 622, § 67; Laws 2004, LB 1083, § 95.

43-254.02 Temporary detention rules and regulations; Nebraska Commission on Law Enforcement and Criminal Justice; duties.

The Nebraska Commission on Law Enforcement and Criminal Justice shall adopt, promulgate, and implement rules and regulations to harmonize state and federal law on the temporary detention of juveniles.

Source: Laws 1998, LB 1073, § 18.

43-255 Detention or placement; release required; exceptions.

Whenever a juvenile is detained or placed under section 43-250 or 43-253, the juvenile shall be released unconditionally within forty-eight hours after the detention or placement order or the setting of bond, excluding nonjudicial days, unless within such period of time (1) a petition has been filed alleging that such

juvenile has violated an order of the juvenile court, (2) a petition has been filed pursuant to section 43-274, or (3) a criminal complaint has been filed in a court of competent jurisdiction.

Source: Laws 1981, LB 346, § 11; Laws 1982, LB 787, § 7; Laws 1987, LB 635, § 2; Laws 1998, LB 1073, § 16.

43-256 Continued placement or detention; probable cause hearing; release requirements; exceptions.

When the court enters an order continuing placement or detention pursuant to section 43-253, upon request of the juvenile, or his or her parent, guardian, or attorney, the court shall hold a hearing within forty-eight hours, at which hearing the burden of proof shall be upon the state to show probable cause that such juvenile is within the jurisdiction of the court. Strict rules of evidence shall not apply at the probable cause hearing. The juvenile shall be released if probable cause is not shown. At the option of the court, it may hold the adjudication hearing provided in section 43-279 as soon as possible instead of the probable cause hearing if held within a reasonable period of time. This section and section 43-255 shall not apply to a juvenile (1) who has escaped from a commitment or (2) who has been taken into custody for his or her own protection as provided in subdivision (3) of section 43-248 in which case the juvenile shall be held on order of the court with jurisdiction for a reasonable period of time.

Source: Laws 1981, LB 346, § 12; Laws 1982, LB 787, § 8; Laws 1998, LB 1073, § 17; Laws 2006, LB 1113, § 38.

43-257 Unlawful detention or placement; penalty.

Any person who knowingly holds a juvenile in detention or placement in violation of any of the provisions of section 43-255 or 43-256 shall be guilty of a Class III misdemeanor.

Source: Laws 1981, LB 346, § 13.

43-258 Preadjudication physical and mental evaluation; placement; restrictions; reports; costs.

(1) Pending the adjudication of any case under the Nebraska Juvenile Code, the court may order the juvenile examined by a physician, surgeon, psychiatrist, duly authorized community mental health service program, or psychologist to aid the court in determining (a) a material allegation in the petition relating to the juvenile's physical or mental condition, (b) the juvenile's competence to participate in the proceedings, (c) the juvenile's responsibility for his or her acts, or (d) whether or not to provide emergency medical treatment.

(2) Pending the adjudication of any case under the Nebraska Juvenile Code and after a showing of probable cause that the juvenile is within the court's jurisdiction, for the purposes of subsection (1) of this section, the court may order such juvenile to be placed in one of the facilities or institutions of the State of Nebraska. Such juvenile shall not be placed in an adult correctional facility, the secure youth confinement facility operated by the Department of Correctional Services, or a youth rehabilitation and treatment center. Any placement for evaluation may be made on a residential or nonresidential basis for a period not to exceed thirty days except as provided by section 43-415. The

head of any facility or institution shall make a complete evaluation of the juvenile, including any authorized area of inquiry requested by the court.

(3) Upon completion of the evaluation, the juvenile shall be returned to the court together with a written report of the results of the evaluation. Such report shall include an assessment of the basic needs of the juvenile and recommendations for continuous and long-term care and shall be made to effectuate the purposes in subdivision (1) of section 43-246.

(4) In order to encourage the use of the procedure provided in this section, all costs incurred during the period the juvenile is being evaluated at a state facility or program funded by the Office of Juvenile Services shall be the responsibility of the state unless otherwise ordered by the court pursuant to section 43-290. The county in which the case is pending shall be liable only for the cost of delivering the juvenile to the facility or institution and the cost of returning him or her to the court for disposition.

Source: Laws 1981, LB 346, § 14; Laws 1982, LB 787, § 9; Laws 1985, LB 447, § 17; Laws 1987, LB 638, § 3; Laws 1994, LB 988, § 20; Laws 1996, LB 1155, § 9; Laws 1998, LB 1073, § 19.

This section does not apply to requests for mental and physical examinations after a juvenile has been adjudicated under subsection (3)(a) of section 43-247. In re Interest of Ty M. & Devon M., 265 Neb. 150, 655 N.W.2d 672 (2003).

Pursuant to subsection (4) of this section, the Department of Social Services is not required to pay costs for preadjudication evaluation that is conducted at a private facility. In re Interest of Todd T., 249 Neb. 738, 545 N.W.2d 711 (1996).

43-259 Evaluation; motion for release of juvenile in custody.

The juvenile, his or her attorney, parent, guardian, or custodian may file a motion to release the juvenile from custody and request a hearing after the initial commitment order for evaluation provided in section 43-258 is entered. Pending the hearing on such application, the juvenile shall remain in custody in such manner as the court determines to be in the best interests of the juvenile, taking into account the results of a standardized juvenile detention screening instrument as provided in section 43-260.01.

Source: Laws 1981, LB 346, § 15; Laws 2000, LB 1167, § 17.

43-260 Standardized juvenile detention screening instrument.

The Office of Probation Administration shall prepare and distribute to probation officers a standardized juvenile detention screening instrument. The types of risk factors to be included as well as the format of this standardized juvenile detention screening instrument shall be determined by the office. The standardized juvenile detention screening instrument shall be used as an assessment tool statewide by probation officers under section 43-260.01 in order to determine if detention of the juvenile is necessary and, if so, whether secure or nonsecure detention is indicated. Probation officers trained to administer the juvenile detention screening instrument shall act as juvenile intake probation officers. Only duly trained probation officers shall be authorized to administer the juvenile detention screening instrument.

Source: Laws 2000, LB 1167, § 13; Laws 2001, LB 451, § 7; Laws 2004, LB 940, § 1.

43-260.01 Detention; factors.

The need for preadjudication placement or supervision and the need for detention of a juvenile and whether secure or nonsecure detention is indicated may be determined as follows:

- (1) The standardized juvenile detention screening instrument shall be used to evaluate the juvenile;
- (2) If the results indicate that secure detention is not required, nonsecure detention placement or supervision options shall be pursued; and
- (3) If the results indicate that secure detention is required, detention at the secure level as indicated by the instrument shall be pursued.

Source: Laws 2000, LB 1167, § 14.

43-260.02 Juvenile pretrial diversion program; authorized.

A county attorney may establish a juvenile pretrial diversion program with the concurrence of the county board. If the county is part of a multicounty juvenile services plan under the Nebraska County Juvenile Services Plan Act, the county attorney may establish a juvenile pretrial diversion program in conjunction with other county attorneys from counties that are a part of such multicounty plan. A city attorney may establish a juvenile pretrial diversion program with the concurrence of the governing body of the city. Such programs shall meet the requirements of sections 43-260.02 to 43-260.07.

Source: Laws 2003, LB 43, § 1.

Cross References

Nebraska County Juvenile Services Plan Act, see section 43-3501.

43-260.03 Juvenile pretrial diversion program; goals.

The goals of a juvenile pretrial diversion program are:

- (1) To provide eligible juvenile offenders with an alternative program in lieu of adjudication through the juvenile court;
- (2) To reduce recidivism among diverted juvenile offenders;
- (3) To reduce the costs and caseload burdens on the juvenile justice system and the criminal justice system; and
- (4) To promote the collection of restitution to the victim of the juvenile offender's crime.

Source: Laws 2003, LB 43, § 2.

43-260.04 Juvenile pretrial diversion program; requirements.

A juvenile pretrial diversion program shall:

- (1) Be an option available for the county attorney or city attorney based upon his or her determination under this subdivision. The county attorney or city attorney may use the following information:
 - (a) The juvenile's age;
 - (b) The nature of the offense and role of the juvenile in the offense;
 - (c) The number and nature of previous offenses involving the juvenile;
 - (d) The dangerousness or threat posed by the juvenile to persons or property;
 or
 - (e) The recommendations of the referring agency, victim, and advocates for the juvenile;
- (2) Permit participation by a juvenile only on a voluntary basis and shall include a juvenile diversion agreement described in section 43-260.06;

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

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

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

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

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

Source: Laws 2003, LB 43, § 3.

43-260.05 Juvenile pretrial diversion program; optional services.

A juvenile pretrial diversion program may:

(1) Provide screening services to the court and county attorney or city attorney to help identify likely candidates for the program;

(2) Establish goals for diverted juvenile offenders and monitor performance of the goals;

(3) Perform chemical dependency assessments of diverted juvenile offenders when indicated, make appropriate referrals for treatment, and monitor treatment and aftercare;

(4) Provide individual, group, and family counseling services;

(5) Oversee the payment of victim restitution by diverted juvenile offenders;

(6) Assist diverted juvenile offenders in identifying and contacting appropriate community resources;

(7) Provide educational services to diverted juvenile offenders to enable them to earn a high school diploma or general education development diploma; and

(8) Provide accurate information on how diverted juvenile offenders perform in the program to the juvenile courts, county attorneys, city attorneys, defense attorneys, and probation officers.

Source: Laws 2003, LB 43, § 4.

43-260.06 Juvenile diversion agreement; contents.

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

(1) A letter of apology;

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

(3) Restitution;

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

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

(6) Upon agreement of the victim, participation in juvenile offender and victim mediation.

Source: Laws 2003, LB 43, § 5.

43-260.07 Juvenile pretrial diversion program; data; duties.

(1) Beginning December 1, 2003, and every December 1 thereafter, every county attorney or city attorney of a county or city which has a juvenile pretrial diversion program shall report the information pertaining to the program required by rules and regulations adopted and promulgated by the Nebraska Commission on Law Enforcement and Criminal Justice to the commission.

(2) Juvenile pretrial diversion program data shall be maintained and compiled by the Nebraska Commission on Law Enforcement and Criminal Justice.

Source: Laws 2003, LB 43, § 6.

43-261 Repealed. Laws 2008, LB 1014, § 82.

43-262 Issuance of process; notice in lieu of summons.

No summons or notice shall be required to be served on any person who shall voluntarily appear before the court and whose appearance is noted on the records thereof. In actions involving a juvenile who may invoke the jurisdiction of the court under the Nebraska Juvenile Code, the court, in its discretion, may cause the issuance of a notice in lieu of summons to the juvenile and to the juvenile's parent or the person who has the custody or control of the juvenile. Such notice in lieu of summons may be delivered by mail, shall be accompanied by a copy of the petition in cases when jurisdiction under subdivision (1) or (2) of section 43-247 is alleged, and shall contain a statement that (1) the recipient is entitled by statute to have the summons or notice, as the case may be, served upon him or her by personnel of the sheriff's office or some other person under the direction of the court, (2) service by the sheriff's office has been dispensed with for the convenience of the recipient, (3) if the recipient appears in court for the hearing fixed in the notice, he or she shall be deemed to have waived issuance and service of a notice and the seventy-two-hour waiting period, as the case may be, and (4) if he or she does not appear, a summons or notice, as the case may be, shall be served upon him or her by personnel of the sheriff's office or some other suitable person under the direction of the court.

Source: Laws 1981, LB 346, § 18; Laws 1985, LB 447, § 19.

43-263 Issuance of process; summons.

Upon the filing of the petition, a summons with a copy of the petition attached shall issue requiring the person who has custody of the juvenile or with whom the juvenile may be staying to appear personally and, unless the court orders otherwise, to bring the juvenile before the court at the time and place stated. Service of the summons shall be effected not less than seventy-two hours prior to the hearing set therein, except that service may be waived by the parties. Every summons sent shall comply with the Nebraska Indian Child Welfare Act, if applicable.

Source: Laws 1981, LB 346, § 19; Laws 1985, LB 255, § 33.

Cross References

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

43-264 Summons; service.

If the petition filed under section 43-274 alleges that the juvenile is a juvenile as described in subdivision (1), (2), or (3)(b) of section 43-247, a summons with a copy of the petition attached shall be served as provided in section 43-263 on such juvenile and his or her parent, guardian, or custodian requiring the juvenile and such parent, guardian, or custodian to appear personally at the time and place stated. When so ordered by the court, personal service shall be obtained upon such juvenile notwithstanding any other provisions of the Nebraska Juvenile Code.

Source: Laws 1981, LB 346, § 20; Laws 1985, LB 447, § 20.

43-265 Summons; notice to parent, guardian, or relative required; appointment of guardian ad litem.

If the person so summoned under section 43-263 is other than a parent or guardian of the juvenile, then the parent or guardian or both, if their residence is known, shall also be notified of the pendency of the case and of the time and place appointed; if there is neither a parent nor guardian, or if his or her residence is not known, then some relative, if there be one and his or her residence is known, shall be notified, except that in any case the court may appoint a guardian ad litem to act in behalf of the juvenile.

Source: Laws 1981, LB 346, § 21; Laws 2000, LB 1167, § 18.

43-266 Immediate custody of juvenile; when.

If it appears that the juvenile is in such condition or surroundings that his or her welfare requires that his or her custody be immediately assumed by the court, the court may, by endorsement upon the summons provided under section 43-263, order the officer serving it to take the juvenile into custody at once.

Source: Laws 1981, LB 346, § 22.

43-267 Subpoena; notice of subsequent hearing.

(1) As provided under sections 43-263 to 43-266, subpoenas may be issued requiring the appearance of any other person whose presence, in the opinion of the judge, is necessary.

(2) Notice of the time, date, place, and purpose of any juvenile court hearing subsequent to the initial hearing, for which a summons or notice has been served or waived, shall be given to all parties either in court, by mail, or in such other manner as the court may direct.

Source: Laws 1981, LB 346, § 23.

43-268 Summons, notice, subpoena; manner given; time.

(1) Service of summons shall be made by the delivery of a copy of the summons to the person summoned or by leaving one at his or her usual place of residence with some person of suitable age and discretion residing therein.

(2) Except as provided in section 43-264, notice, when required, shall be given in the manner provided for service of a summons in a civil action. Any

published notice shall simply state that a proceeding concerning the juvenile is pending in the court and that an order making an adjudication and disposition will be entered therein. If the names of one or both parents or the guardian are unknown, he, she, or they may be notified as the parent or parents, or guardian of (naming or describing the juvenile) found (stating address or place where the juvenile was found). Such notice shall be published once each week for three weeks, the last publication of which shall be at least five days before the time of hearing.

(3) Personal or residence service shall be effected at least seventy-two hours before the time set for the hearing, but upon cause shown the court shall grant additional time to prepare for a hearing. A guardian ad litem, one of the parents, the person having custody if there be no guardian ad litem, or the attorney for such juvenile may waive such service for the juvenile, if such juvenile concurs in open court duly noted on the records of the court. Registered or certified mail shall be mailed at least five days before the time of the hearing.

(4) Service of summons, notice, or subpoena may be made by any suitable person under the direction of the court.

Source: Laws 1981, LB 346, § 24; Laws 1983, LB 447, § 51.

Service by publication under this provision can only be made after a reasonably diligent search fails to locate the party to be served. A reasonably diligent search for the purpose of justifying service by publication does not require the use of all possible or conceivable means of discovery, but is such an inquiry as a reasonably prudent person would make in view of the circumstances and must extend to those places where information is likely to be obtained and to those persons who, in the ordinary

course of events, would be likely to receive news of or from the absent person. In re Interest of A.W., 224 Neb. 764, 401 N.W.2d 477 (1987).

Notice of an adjudication hearing must be given to the biological father as well as the biological mother of the children. In re Interest of B.J.M. et al., 1 Neb. App. 851, 510 N.W.2d 418 (1993).

43-269 Failure to comply with summons or subpoena; contempt.

If the person summoned or subpoenaed as provided in sections 43-262 to 43-268 shall without reasonable cause fail to appear and abide the order of the court or bring the juvenile, he or she may be proceeded against as in the case of contempt of court.

Source: Laws 1981, LB 346, § 25.

43-270 Warrant; when issued.

In case the summons cannot be served or the parties fail to obey the summons and, in any case when it shall be made to appear to the court that such summons would be ineffectual, a warrant may issue on the order of the court, either against the parent or guardian or the person having custody of the juvenile, or with whom the juvenile may be, or against the juvenile himself or herself.

Source: Laws 1981, LB 346, § 26.

43-271 Prompt hearing and disposition; detention review hearing.

(1)(a) A juvenile taken into custody pursuant to sections 43-248, 43-250, and 43-253 shall be brought before the court for adjudication as soon as possible after the petition is filed. On the return of the summons or other process, or mailing of the notice in lieu of summons, or as soon thereafter as legally may be, the court shall proceed to hear and dispose of the case as provided in section 43-279.

(b) The hearing as to a juvenile in custody of the probation officer or the court shall be held as soon as possible but, in all cases, within a six-month period after the petition is filed, and as to a juvenile not in such custody as soon as practicable but, in all cases, within a six-month period after the petition is filed. The computation of the six-month period provided for in this section shall be made as provided in section 29-1207, as applicable.

(2) Any juvenile taken into custody pursuant to sections 43-248, 43-250, and 43-253 may request a detention review hearing. The detention review hearing shall be conducted within forty-eight hours after the request.

Source: Laws 1981, LB 346, § 27; Laws 1982, LB 787, § 11; Laws 2006, LB 1113, § 39.

This section and section 43-278 confer a statutory right to a prompt adjudication hearing to all juveniles within section 43-247(1), (2), (3)(b), and (4). This section and section 43-278 are directory and do not require absolute discharge of a juvenile not adjudicated within the prescribed time period. In re Interest of Brandy M. et al., 250 Neb. 510, 550 N.W.2d 17 (1996).

This section provides a statutory right to a prompt adjudication hearing for all juveniles, but absolute discharge for the

State's failure to comply with the 6-month period is not mandated and is within the discretion of the juvenile court, taking into consideration the best interests of the juvenile, the factors set forth in this section and section 43-278, the right of the juvenile to a prompt and fair adjudication, and the future treatment and rehabilitation of the juvenile in the event of an adjudication. In re Interest of Britny S., 11 Neb. App. 704, 659 N.W.2d 831 (2003).

43-272 Right to counsel; appointment; payment; guardian ad litem; appointment; when; duties.

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

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

A guardian ad litem shall have the duty to protect the interests of the juvenile for whom he or she has been appointed guardian, and shall be deemed a parent

of the juvenile as to those proceedings with respect to which his or her guardianship extends.

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

Source: Laws 1981, LB 346, § 28; Laws 1982, LB 787, § 12; Laws 2000, LB 1167, § 19.

Cross References

Representation by public defender, see section 29-3915.

A conflict of interest can develop between the roles of counsel for the juvenile and guardian ad litem if the juvenile expresses interests that are adverse to what the attorney considers to be in the juvenile's best interests. Usually when an actual conflict of interest develops between the two roles, separate counsel should be appointed for the child. In re Interest of J.K., 265 Neb. 253, 656 N.W.2d 253 (2003).

Given the broad power granted by the Legislature to juvenile courts to determine whether in proceedings under subsection (3)(a) of section 43-247 the guardian ad litem role and the role of counsel for the juvenile should be split, an appellate court reviews the decision to use or not to use that power de novo on the record for an abuse of discretion. In re Interest of J.K., 265 Neb. 253, 656 N.W.2d 253 (2003).

The determination whether "special reasons" exist for appointing separate counsel for a juvenile in proceedings under subsection (3)(a) of section 43-247 must be based on a case-by-case basis, taking into consideration the totality of circumstances. In re Interest of J.K., 265 Neb. 253, 656 N.W.2d 253 (2003).

The Nebraska Juvenile Code recognizes that generally, the role of guardian ad litem and counsel can be carried out by the

same attorney. But the code requires that the roles be split when there are "special reasons in a particular case." In re Interest of J.K., 265 Neb. 253, 656 N.W.2d 253 (2003).

The phrase "special reasons in a particular case" as used in subsection (3) of this section grants juvenile courts broad power to safeguard the interests of the juvenile and to ensure that the juvenile's statutory and constitutional rights are respected. In re Interest of J.K., 265 Neb. 253, 656 N.W.2d 253 (2003).

When an attorney is appointed for a juvenile under subsections (2) and (3) of this section in proceedings under subsection (3)(a) of section 43-247, the attorney generally serves as both guardian ad litem and as counsel for the child. In re Interest of J.K., 265 Neb. 253, 656 N.W.2d 253 (2003).

On a motion to revoke probation, the court must advise the juvenile and his or her parent or guardian of their right to retain counsel, inquire of the juvenile and his or her parent or guardian as to whether they desire to retain counsel, and inform the juvenile and his or her parent or guardian of the juvenile's right to counsel at county expense if none of them is able to afford counsel. In re Interest of David C., 6 Neb. App. 198, 572 N.W.2d 392 (1997).

43-272.01 Guardian ad litem; appointment; powers and duties; consultation; payment of costs.

(1) A guardian ad litem as provided for in subsections (2) and (3) of section 43-272 shall be appointed when a child is removed from his or her surroundings pursuant to subdivision (3) or (4) of section 43-248, subdivision (4) of section 43-250, or section 43-251. If removal has not occurred, a guardian ad litem shall be appointed at the commencement of all cases brought under subdivision (3)(a) or (8) of section 43-247 and section 28-707.

(2) In the course of discharging duties as guardian ad litem, the person so appointed shall consider, but not be limited to, the criteria provided in this subsection. The guardian ad litem:

(a) Is appointed to stand in lieu of a parent for a protected juvenile who is the subject of a juvenile court petition, shall be present at all hearings before the court in such matter unless expressly excused by the court, and may enter into such stipulations and agreements concerning adjudication and disposition deemed by him or her to be in the juvenile's best interests;

(b) Is not appointed to defend the parents or other custodian of the protected juvenile but shall defend the legal and social interests of such juvenile. Social interests shall be defined generally as the usual and reasonable expectations of

society for the appropriate parental custody and protection and quality of life for juveniles without regard to the socioeconomic status of the parents or other custodians of the juvenile;

(c) May at any time after the filing of the petition move the court of jurisdiction to provide medical or psychological treatment or evaluation as set out in section 43-258. The guardian ad litem shall have access to all reports resulting from any examination ordered under section 43-258, and such reports shall be used for evaluating the status of the protected juvenile;

(d) Shall make every reasonable effort to become familiar with the needs of the protected juvenile which (i) shall include consultation with the juvenile within two weeks after the appointment and once every six months thereafter and inquiry of the most current caseworker, foster parent, or other custodian and (ii) may include inquiry of others directly involved with the juvenile or who may have information or knowledge about the circumstances which brought the juvenile court action or related cases and the development of the juvenile, including biological parents, physicians, psychologists, teachers, and clergy members;

(e) May present evidence and witnesses and cross-examine witnesses at all evidentiary hearings. In any proceeding under this section relating to a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence;

(f) Shall be responsible for making recommendations to the court regarding the temporary and permanent placement of the protected juvenile and shall submit a written report to the court at every dispositional or review hearing, or in the alternative, the court may provide the guardian ad litem with a checklist that shall be completed and presented to the court at every dispositional or review hearing;

(g) Shall consider such other information as is warranted by the nature and circumstances of a particular case; and

(h) May file a petition in the juvenile court on behalf of the juvenile, including a supplemental petition as provided in section 43-291.

(3) Nothing in this section shall operate to limit the discretion of the juvenile court in protecting the best interests of a juvenile who is the subject of a juvenile court petition.

(4) For purposes of subdivision (2)(d) of this section, the court may order the expense of such consultation, if any, to be paid by the county in which the juvenile court action is brought or the court may, after notice and hearing, assess the cost of such consultation, if any, in whole or in part to the parents of the juvenile. The ability of the parents to pay and the amount of the payment shall be determined by the court by appropriate examination.

Source: Laws 1982, LB 787, § 13; Laws 1985, LB 447, § 21; Laws 1990, LB 1222, § 2; Laws 1992, LB 1184, § 12; Laws 1995, LB 305, § 1; Laws 1997, LB 622, § 68; Laws 2008, LB1014, § 39.
Operative date July 18, 2008.

Subsection (2) of this section is not rendered unconstitutional by its authorization for a guardian ad litem to perform the investigatory duties of a guardian ad litem as well as bring and try a motion to terminate parental rights. In re Interest of Kantril P. & Chenelle P., 257 Neb. 450, 598 N.W.2d 729 (1999).

A guardian ad litem has the authority to present evidence and witnesses, to cross-examine witnesses at all evidentiary hear-

ings, and to argue. In re Interest of R.G., 238 Neb. 405, 470 N.W.2d 780 (1991).

If the record supports the action, either the trial court or the appellate court can disallow guardian ad litem fees as too high, without the support of expert testimony. In re Interest of Antone C. et al., 12 Neb. App. 152, 669 N.W.2d 69 (2003).

The touchstone for awarding guardian ad litem fees is reasonableness, both of the necessity of the services rendered and the fees awarded. In re Interest of Antone C. et al., 12 Neb. App. 152, 669 N.W.2d 69 (2003).

disallowance of a charge as unreasonable on the ground that the investigation was unnecessary is questionable. In re Interest of Antone C. et al., 12 Neb. App. 152, 669 N.W.2d 69 (2003).

Without something to support a finding that a guardian ad litem's fact investigation was not proper or not required, the

43-272.02 Court appointed special advocate volunteer.

The court may appoint a court appointed special advocate volunteer pursuant to the Court Appointed Special Advocate Act.

Source: Laws 2000, LB 1167, § 22.

Cross References

Court Appointed Special Advocate Act, see section 43-3701.

43-273 Appointed counsel and guardians ad litem; fees; allowance.

Counsel and guardians ad litem appointed as provided in section 43-272 shall apply to the court before which the proceedings were had for fees for services performed. The court upon hearing the application shall fix reasonable fees. The county board of the county wherein the proceedings were had shall allow the account, bill, or claim presented by any attorney or guardian ad litem for services performed under section 43-272 in the amount determined by the court. No such account, bill, or claim shall be allowed by the county board until the amount thereof shall have been determined by the court.

Source: Laws 1981, LB 346, § 29.

(e) PROSECUTION

43-274 County attorney; preadjudication powers and duties; juvenile court petition, pretrial diversion, or mediation; procedures.

(1) The county attorney, having knowledge of a juvenile in his or her county who appears to be a juvenile described in subdivision (1), (2), (3), or (4) of section 43-247, may file with the clerk of the court having jurisdiction in the matter a petition in writing specifying which subdivision of section 43-247 is alleged, setting forth the facts verified by affidavit, and requesting the court to determine whether support will be ordered pursuant to section 43-290. Allegations under subdivisions (1), (2), and (4) of section 43-247 shall be made with the same specificity as a criminal complaint. It shall be sufficient if the affidavit is based upon information and belief. Such petition and all subsequent proceedings shall be entitled In the Interest of, a Juvenile Under Eighteen Years of Age, inserting the juvenile's name in the blank.

(2) In all cases involving violation of a city or village ordinance, the city attorney or village prosecutor may file a petition in juvenile court. If such a petition is filed, for purposes of such proceeding, references in the Nebraska Juvenile Code to county attorney shall be construed to include a city attorney or village prosecutor.

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

(4)(a) If a juvenile appears to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 because of a nonviolent act or acts, the county attorney may offer mediation to the juvenile and the victim of the juvenile's act.

If both the juvenile and the victim agree to mediation, the juvenile, his or her parent, guardian, or custodian, and the victim shall sign a mediation consent form and select a mediator or approved center from the roster made available pursuant to section 25-2908. The county attorney shall refer the juvenile and the victim to such mediator or approved center. The mediation sessions shall occur within thirty days after the date the mediation referral is made unless an extension is approved by the county attorney. The juvenile or his or her parent, guardian, or custodian shall pay the mediation fees. The fee shall be determined by the mediator in private practice or by the approved center. A juvenile shall not be denied services at an approved center because of an inability to pay.

(b) Terms of the agreement shall specify monitoring, completion, and reporting requirements. The county attorney, the court, or the probation office shall be notified by the designated monitor if the juvenile does not complete the agreement within the agreement's specified time.

(c) Terms of the agreement may include one or more of the following:

- (i) Participation by the juvenile in certain community service programs;
- (ii) Payment of restitution by the juvenile to the victim;
- (iii) Reconciliation between the juvenile and the victim; and
- (iv) Any other areas of agreement.

(d) If no mediation agreement is reached, the mediator or approved center will report that fact to the county attorney within forty-eight hours of the final mediation session excluding nonjudicial days.

(e) If a mediation agreement is reached and the agreement does not violate public policy, the agreement shall be approved by the county attorney. If the agreement is not approved and the victim agrees to return to mediation (i) the juvenile may be referred back to mediation with suggestions for changes needed in the agreement to meet approval or (ii) the county attorney may proceed with the filing of a criminal charge or juvenile court petition. If the juvenile agrees to return to mediation but the victim does not agree to return to mediation, the county attorney may consider the juvenile's willingness to return to mediation when determining whether or not to file a criminal charge or a juvenile court petition.

(f) If the juvenile meets the terms of an approved mediation agreement, the county attorney shall not file a criminal charge or juvenile court petition against the juvenile for the acts for which the juvenile was referred to mediation.

Source: Laws 1981, LB 346, § 30; Laws 1987, LB 638, § 4; Laws 1998, LB 1073, § 20; Laws 2003, LB 43, § 13.

Juvenile court did not err in refusing to allow an intervenor to proceed on the intervenor's petition where there was no evidence to establish the county attorney's consent to the filing of the intervenor's petition as required by this section. In re Interest of Jamie P., 12 Neb. App. 261, 670 N.W.2d 814 (2003).

A petition filed pursuant to this section, specifying facts under subsection (3)(a) of section 43-247, must allege facts which

would show that a child lacks proper parental care by reason of the inadequacy of any parent whose custody or right to custody might be affected, so that both parents may understand that the litigation concerns their respective rights. In re Interest of Kelly D., 3 Neb. App. 251, 526 N.W.2d 439 (1994).

43-275 Petition, complaint, or mediation consent form; filing; time.

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

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

Failure to file a petition within forty-eight hours, as provided in this section, after a juvenile has been taken into custody pursuant to section 43-248 does not deprive the juvenile court of jurisdiction. *In re Interest of S.S.L.*, 219 Neb. 911, 367 N.W.2d 710 (1985).

43-276 County attorney; criminal charge, juvenile court petition, pretrial diversion, or mediation; determination; considerations.

In cases coming within subdivision (1) of section 43-247, when there is concurrent jurisdiction, or subdivision (2) or (4) of section 43-247, when the juvenile is under the age of sixteen years, the county attorney shall, in making the determination whether to file a criminal charge, file a juvenile court petition, offer juvenile pretrial diversion, or offer mediation, consider: (1) The type of treatment such juvenile would most likely be amenable to; (2) whether there is evidence that the alleged offense included violence or was committed in an aggressive and premeditated manner; (3) the motivation for the commission of the offense; (4) the age of the juvenile and the ages and circumstances of any others involved in the offense; (5) the previous history of the juvenile, including whether he or she had been convicted of any previous offenses or adjudicated in juvenile court, and, if so, whether such offenses were crimes against the person or relating to property, and other previous history of antisocial behavior, if any, including any patterns of physical violence; (6) the sophistication and maturity of the juvenile as determined by consideration of his or her home, school activities, emotional attitude and desire to be treated as an adult, pattern of living, and whether he or she has had previous contact with law enforcement agencies and courts and the nature thereof; (7) whether there are facilities particularly available to the juvenile court for treatment and rehabilitation of the juvenile; (8) whether the best interests of the juvenile and the security of the public may require that the juvenile continue in secure detention or under supervision for a period extending beyond his or her minority and, if so, the available alternatives best suited to this purpose; (9) whether the victim agrees to participate in mediation; (10) whether there is a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07; (11) whether the juvenile has been convicted of or has acknowledged unauthorized use or possession of a firearm; (12) whether a juvenile court order has been issued for the juvenile pursuant to section 43-2,106.03; and (13) such other matters as the county attorney deems relevant to his or her decision.

Source: Laws 1981, LB 346, § 32; Laws 1998, LB 1073, § 22; Laws 2000, LB 1167, § 20; Laws 2003, LB 43, § 14; Laws 2008, LB1014, § 40.

Operative date July 18, 2008.

In deciding whether to transfer adult criminal proceedings to juvenile court, the court having jurisdiction must carefully consider the criteria set forth in this section. In weighing the criteria set forth in this section, there is no arithmetical computation or formula required in the court's consideration of the statutory criteria. In order to retain jurisdiction pursuant to section 29-1816, the district court does not need to resolve every factor in this section against the juvenile. *State v. McCracken*, 260 Neb. 234, 615 N.W.2d 902 (2000).

In weighing the factors set forth in this section, there is no arithmetical computation or formula required in the court's consideration of the statutory criteria. In order to retain the proceedings, the court need not resolve every factor against the juvenile. There are no weighted factors and no prescribed method by which more or less weight is assigned to each specific factor. It is a balancing test by which public protection and societal security are weighed against the practical and nonprob-

lematical rehabilitation of the juvenile. *State v. Mantich*, 249 Neb. 311, 543 N.W.2d 181 (1996).

In deciding whether to transfer adult criminal proceedings to juvenile court, the court having jurisdiction over a pending criminal prosecution must carefully consider the criteria set forth in this section. *State v. Reynolds*, 247 Neb. 608, 529 N.W.2d 64 (1995).

Where 16-year-old defendant was charged with violent adult crimes, was an obvious threat to the public, and, if convicted, could not easily be rehabilitated in the juvenile correctional system or properly punished for the atrocities he would be adjudged to have committed, no abuse of discretion occurred in denial of transfer to juvenile court. *State v. Garza*, 241 Neb. 934, 492 N.W.2d 32 (1992).

The court having jurisdiction over a pending criminal prosecution of a juvenile must consider the juvenile's request for waiver to transfer the proceedings to the juvenile court in light

of the criteria set forth in this section. *State v. Doyle*, 237 Neb. 944, 468 N.W.2d 594 (1991).

The factors set forth in this section provide a balancing test by which the protection of the public is weighed against the practical and not problematical rehabilitation of the juvenile. For retention of the criminal proceedings, the court need not resolve every factor against the juvenile. The standard of review applicable to an appeal from denial of a motion to transfer to juvenile court is abuse of discretion. *State v. Phinney*, 236 Neb. 76, 459 N.W.2d 200 (1990).

In deciding whether to grant a requested waiver of jurisdiction and transfer proceedings to juvenile court pursuant to section 29-1816, the court having jurisdiction over a pending criminal prosecution must carefully consider the juvenile's request in light of the criteria set forth in this section. *State v. Nevels*, 235 Neb. 39, 453 N.W.2d 579 (1990).

This section and section 29-1816 provide a balancing test in which public protection and security are weighed against practical, and not problematical, rehabilitation in determining whether there should be a waiver of jurisdiction over a criminal proceeding to the juvenile court. *State v. Trevino*, 230 Neb. 494, 432 N.W.2d 503 (1988).

This section and section 29-1816 involve a balancing test, namely, public protection and societal security weighed against practical and not problematic rehabilitation, in determining whether there should be a waiver of jurisdiction in criminal proceedings with a transfer to the juvenile court. Where the record supported the trial court's findings that the crime was violent, that the defendant may require treatment beyond the age of majority, that defendant's rehabilitative needs were beyond the scope of the juvenile court, and that more protection of the public was required than would be available in juvenile court, the district court did not abuse its discretion in retaining jurisdiction. *State v. Ryan*, 226 Neb. 59, 409 N.W.2d 579 (1987).

(f) ADJUDICATION PROCEDURES

43-277 Juvenile in custody; adjudication hearing; requirements.

Except as provided in sections 43-254.01 and 43-277.01 and unless sooner released, a juvenile taken into custody or remaining in custody under sections 43-248, 43-250, 43-253, and 43-254 shall be brought before the juvenile court for an adjudication hearing as soon as possible but, in all cases, within a six-month period after a petition is filed. If the juvenile is not brought before the juvenile court within such period of time, he or she shall be released from custody, except that such hearing shall not be had until there is before the court the juvenile when charged under subdivision (1), (2), (3)(b), or (4) of section 43-247, and in all cases the juvenile's custodian or person with whom he or she may be, or his or her parent or guardian, or, if they fail to appear, and in all cases under subdivision (3)(a) of section 43-247, a guardian ad litem. The computation of the six-month period provided for in this section shall be made as provided in section 29-1207, as applicable.

Source: Laws 1981, LB 346, § 33; Laws 1982, LB 787, § 14; Laws 1997, LB 622, § 69.

43-277.01 Mental health hearing; requirements.

All hearings concerning a juvenile court petition filed pursuant to subdivision (3)(c) of section 43-247 shall be closed to the public except at the request of the juvenile or the juvenile's parent or guardian. Such hearings shall be held in a courtroom or at any convenient and suitable place designated by the juvenile court judge. The proceeding may be conducted where the juvenile is currently residing if the juvenile is unable to travel.

Source: Laws 1997, LB 622, § 70.

43-278 Adjudication hearing; held within ninety days after petition is filed; additional reviews; telephonic hearing; authorized.

Except as provided in sections 43-254.01 and 43-277.01, all cases filed under subdivision (3) of section 43-247 shall have an adjudication hearing not more than ninety days after a petition is filed. Upon a showing of good cause, the court may continue the case beyond the ninety-day period. The court shall also review every case filed under such subdivision which has been adjudicated or transferred to it for disposition not less than once every six months. All communications, notices, orders, authorizations, and requests authorized or

required in the Nebraska Juvenile Code, with the exception of any adjudication hearing, disposition hearing, or hearing to terminate parental rights, may be made by telephone when other means of communication are impractical as determined by the court. All of the orders generated by way of a telephonic hearing shall be recorded as if the judge were conducting a hearing on the record. Telephonic hearings allowed under this section shall not be in conflict with section 24-734.

Source: Laws 1981, LB 346, § 34; Laws 1992, LB 1184, § 13; Laws 1997, LB 622, § 71.

This section and section 43-271 confer a statutory right to a prompt adjudication hearing to all juveniles within section 43-247(1), (2), (3)(b), and (4). This section and section 43-271 are directory and do not require absolute discharge of a juvenile not adjudicated within the prescribed time period. In re Interest of Brandy M. et al., 250 Neb. 510, 550 N.W.2d 17 (1996).

The statutory provision requiring that an adjudication hearing be held within six months after a juvenile petition is filed is directory, not mandatory. In re Interest of C.P., 235 Neb. 276, 455 N.W.2d 138 (1990).

Section 43-271 provides a statutory right to a prompt adjudication hearing for all juveniles, but absolute discharge for the State's failure to comply with the 6-month period is not mandated and is within the discretion of the juvenile court, taking into consideration the best interests of the juvenile, the factors set forth in section 43-271 and this section, the right of the juvenile to a prompt and fair adjudication, and the future treatment and rehabilitation of the juvenile in the event of an adjudication. In re Interest of Britny S., 11 Neb. App. 704, 659 N.W.2d 831 (2003).

43-279 Juvenile violator or juvenile in need of special supervision; rights of parties; proceedings.

(1) The adjudication portion of hearings shall be conducted before the court without a jury, applying the customary rules of evidence in use in trials without a jury. When the petition alleges the juvenile to be within the provisions of subdivision (1), (2), (3)(b), or (4) of section 43-247 and the juvenile or his or her parent, guardian, or custodian appears with or without counsel, the court shall inform the parties:

(a) Of the nature of the proceedings and the possible consequences or dispositions pursuant to sections 43-284 to 43-286, 43-289, and 43-290 that may apply to the juvenile's case following an adjudication of jurisdiction;

(b) Of such juvenile's right to counsel as provided in sections 43-272 and 43-273;

(c) Of the privilege against self-incrimination by advising the juvenile, parent, guardian, or custodian that the juvenile may remain silent concerning the charges against the juvenile and that anything said may be used against the juvenile;

(d) Of the right to confront anyone who testifies against the juvenile and to cross-examine any persons who appear against the juvenile;

(e) Of the right of the juvenile to testify and to compel other witnesses to attend and testify in his or her own behalf;

(f) Of the right of the juvenile to a speedy adjudication hearing; and

(g) Of the right to appeal and have a transcript for such purpose.

After giving such warnings and admonitions, the court may accept an in-court admission by the juvenile of all or any part of the allegations in the petition if the court has determined from examination of the juvenile and those present that such admission is intelligently, voluntarily, and understandingly made and with an affirmative waiver of rights and that a factual basis for such admission exists. The court may base its adjudication provided in subsection (2) of this section on such admission.

(2) If the juvenile denies the petition or stands mute the court shall first allow a reasonable time for preparation if needed and then consider only the question of whether the juvenile is a person described by section 43-247. After hearing the evidence on such question, the court shall make a finding and adjudication, to be entered on the records of the court, whether or not the juvenile is a person described by subdivision (1), (2), (3)(b), or (4) of section 43-247 based upon proof beyond a reasonable doubt. If an Indian child is involved, the standard of proof shall be in compliance with the Nebraska Indian Child Welfare Act, if applicable.

(3) If the court shall find that the juvenile named in the petition is not within the provisions of section 43-247, it shall dismiss the case. If the court finds that the juvenile named in the petition is such a juvenile, it shall make and enter its findings and adjudication accordingly, designating which subdivision or subdivisions of section 43-247 such juvenile is within; the court shall allow a reasonable time for preparation if needed and then proceed to an inquiry into the proper disposition to be made of such juvenile.

Source: Laws 1981, LB 346, § 35; Laws 1982, LB 787, § 15; Laws 1985, LB 255, § 34; Laws 1985, LB 447, § 22; Laws 1998, LB 1073, § 23.

Cross References

Acceptance of plea, finding by court required, see section 29-401.
Nebraska Indian Child Welfare Act, see section 43-1501.

43-279.01 Juvenile in need of assistance or termination of parental rights; rights of parties; proceedings.

(1) When the petition alleges the juvenile to be within the provisions of subdivision (3)(a) of section 43-247 or when termination of parental rights is sought pursuant to subdivision (6) or (7) of section 43-247 and the parent or custodian appears with or without counsel, the court shall inform the parties of the:

- (a) Nature of the proceedings and the possible consequences or dispositions pursuant to sections 43-284, 43-285, and 43-288 to 43-295;
- (b) Right to engage counsel of their choice at their own expense or to have counsel appointed if unable to afford to hire a lawyer;
- (c) Right to remain silent as to any matter of inquiry if the testimony sought to be elicited might tend to prove the parent or custodian guilty of any crime;
- (d) Right to confront and cross-examine witnesses;
- (e) Right to testify and to compel other witnesses to attend and testify;
- (f) Right to a speedy adjudication hearing; and
- (g) Right to appeal and have a transcript or record of the proceedings for such purpose.

(2) After giving the parties the information prescribed in subsection (1) of this section, the court may accept an in-court admission, an answer of no contest, or a denial from any parent or custodian as to all or any part of the allegations in the petition. The court shall ascertain a factual basis for an admission or an answer of no contest.

(3) In the case of a denial, the court shall allow a reasonable time for preparation if needed and then proceed to determine the question of whether

the juvenile falls under the provisions of section 43-247 as alleged. After hearing the evidence, the court shall make a finding and adjudication to be entered on the records of the court as to whether the allegations in the petition have been proven by a preponderance of the evidence in cases under subdivision (3)(a) of section 43-247 or by clear and convincing evidence in proceedings to terminate parental rights. If an Indian child is involved, the standard of proof shall be in compliance with the Nebraska Indian Child Welfare Act, if applicable.

(4) If the court shall find that the allegations of the petition or motion have not been proven by the requisite standard of proof, it shall dismiss the case or motion. If the court sustains the petition or motion, it shall allow a reasonable time for preparation if needed and then proceed to inquire into the matter of the proper disposition to be made of the juvenile.

Source: Laws 1985, LB 447, § 23; Laws 1989, LB 22, § 3.

Cross References

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

- 1. Due Process
- 2. Miscellaneous

1. Due Process

If a parent has been afforded procedural due process at an adjudication hearing, allowing a parent who is incarcerated or otherwise confined in custody of a government to attend the adjudication is within the discretion of the trial court, whose decision will be upheld in the absence of an abuse of discretion. In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004).

Adequate notice of the possibility of the termination of parental rights must be given in adjudication hearings before the juvenile court may accept an in-court admission, an answer of no contest, or a denial from a parent. A parent in a juvenile court case has the right to appointed counsel if unable to hire a lawyer. In re Interest of N.M. and J.M., 240 Neb. 690, 484 N.W.2d 77 (1992).

Eight-month delay between the time when the child is “temporarily” taken from the child’s parent until an adjudication hearing is held cannot be condoned, even when the parties agree to repeated continuances. In re Interest of D.M.B., 240 Neb. 349, 481 N.W.2d 905 (1992).

To determine whether due process requires the assistance of counsel for the parent in a temporary detention proceeding under sections 43-247(3)(a) and 43-254, the court must weigh the interest of the parent, the interest of the State, and the risk of erroneous decision given the procedures in use. In re Interest of R.R., 239 Neb. 250, 475 N.W.2d 518 (1991).

The statutory provision requiring that an adjudication hearing be held within six months after a juvenile petition is filed is directory, not mandatory. In re Interest of C.P., 235 Neb. 276, 455 N.W.2d 138 (1990).

The trial court’s failure to advise a mother of her rights, of the possible dispositions, or of the nature of juvenile court proceedings arising from the State’s petition alleging that the mother inappropriately disciplined her 20-month-old child and that the child was without proper parental care through the mother’s fault or habits violated the mother’s due process rights, even though the mother vigorously defended against the charges. In re Interest of Billie B., 8 Neb. App. 791, 601 N.W.2d 799 (1999).

Failure to advise a party to a termination hearing of his or her rights as delineated in this section requires reversal of the order

of termination. In re Interest of Joelyann H., 6 Neb. App. 472, 574 N.W.2d 185 (1998).

Failure of a court to provide the parties with explanations and warnings as mandated by this section results in a denial of due process. In re Interest of A.D.S. and A.D.S., 2 Neb. App. 469, 511 N.W.2d 208 (1994).

2. Miscellaneous

The lower standard of proof under subsection (3) of this section for the Termination of parental rights to non-Indian children, as opposed to the higher standard of proof under the Nebraska Indian Child Welfare Act, sections 43-1501 to 43-1516, does not violate the equal protection rights of parents of non-Indian children. In re Interest of Phoenix L. et al., 270 Neb. 870, 708 N.W.2d 786 (2006).

Juvenile courts do not need to conduct an inquiry as to the whereabouts of every respondent parent who fails to appear for a scheduled hearing. In most situations, the burden to notify the juvenile court of a parent’s incarceration or confinement is properly placed on the parent or the parent’s attorney. In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004).

Subsection (1) of this section states in part that when a petition alleges a juvenile to be within the provisions of subsection (3)(a) of section 43-247 and the parent or custodian appears with or without counsel, the court shall inform the parties of the right to confront and cross-examine witnesses. Subsection (3) of this section provides that when adjudicating whether a juvenile is dependent or neglected within the purview of subsection (3)(a) of section 43-247, the State must establish its allegations by a preponderance of the evidence. In re Interest of Danielle D. et al., 257 Neb. 198, 595 N.W.2d 544 (1999).

A ruling refusing to permit the withdrawal of an answer of no contest filed pursuant to the provisions of this section is not a final, appealable order. In re Interest of C.D.A., 231 Neb. 267, 435 N.W.2d 681 (1989).

Burden of proof and standard of proof are interchangeable terms. In re Interest of Jaden H., 10 Neb. App. 87, 625 N.W.2d 218 (2001).

43-280 Adjudication; effect; use of in-court statements.

No adjudication by the juvenile court upon the status of a juvenile shall be deemed a conviction nor shall the adjudication operate to impose any of the

civil disabilities ordinarily resulting from conviction. The adjudication and the evidence given in the court shall not operate to disqualify such juvenile in any future civil or military service application or appointment. Any admission, confession, or statement made by the juvenile in court and admitted by the court, in a proceeding under section 43-279, shall be inadmissible against such juvenile in any criminal or civil proceeding but may be considered by a court as part of a presentence investigation involving a subsequent transaction.

Source: Laws 1981, LB 346, § 36.

Cross References

Juvenile adjudication, inadmissible for purpose of attacking credibility of witness, see section 27-609.

43-281 Adjudication of jurisdiction; temporary placement for evaluation.

Following an adjudication of jurisdiction and prior to final disposition, the court may place the juvenile with the Office of Juvenile Services or the Department of Health and Human Services for evaluation. The office or department shall make arrangements for an appropriate evaluation.

Source: Laws 1981, LB 346, § 37; Laws 1982, LB 787, § 16; Laws 1994, LB 436, § 1; Laws 1998, LB 1073, § 24.

An order placing a juvenile in the Youth Development Center temporarily for the purpose of evaluation preliminary to a dispositional hearing is not a final order for the purposes of appeal. In re Interest of J.M.S., 218 Neb. 72, 352 N.W.2d 186 (1984).

43-282 Juvenile court; transfer case and records to court of domicile.

If a petition alleging a juvenile to be within the jurisdiction of the Nebraska Juvenile Code is filed in a county other than the county where the juvenile is presently living or domiciled, the court, at any time after adjudication and prior to final termination of jurisdiction, may transfer the proceedings to the county where the juvenile lives or is domiciled and the court having juvenile court jurisdiction therein shall thereafter have sole charge of such proceedings and full authority to enter any order it could have entered had the adjudication occurred therein.

All documents, social histories, and records, or certified copies thereof, on file with the court pertaining to the case shall accompany the transfer.

Source: Laws 1981, LB 346, § 38; Laws 1985, LB 447, § 24.

(g) DISPOSITION

43-283 Dispositional hearing; rules of evidence.

Strict rules of evidence shall not be applied at any dispositional hearing.

Source: Laws 1981, LB 346, § 39.

This section is applicable at a hearing to determine who shall have custody of a juvenile pending an adjudication; thus, relaxed rules of evidence may be followed. In re Interest of R.G., 238 Neb. 405, 470 N.W.2d 780 (1991).

employ fundamentally fair procedures satisfying the requirements of due process. In re Interest of Tabitha J., 5 Neb. App. 609, 561 N.W.2d 252 (1997).

Although strict rules of evidence do not apply at a dispositional hearing, a proceeding to terminate parental rights must

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

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

(2) Except as provided in subsection (4) of this section, reasonable efforts shall be made to preserve and reunify families prior to the placement of a juvenile in foster care to prevent or eliminate the need for removing the juvenile from the juvenile's home and to make it possible for a juvenile to safely return to the juvenile's home.

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

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

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

(b) The parent of the juvenile has (i) committed first or second degree murder to another child of the parent, (ii) committed voluntary manslaughter to another child of the parent, (iii) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or (iv) committed a felony assault which results in serious bodily injury to the juvenile or another minor child of the parent; or

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

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

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

Source: Laws 1998, LB 1041, § 24.

A detention hearing is a parent's opportunity to be heard on the need for the removal and the satisfaction of the State's obligations under this section, and it is not optional when a child is detained for any significant period of time. In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004).

A finding of a fact that excuses the requirement of reasonable efforts at reunification under subsection (4) of this section must be based on clear and convincing evidence. In re Interest of Jac'Quez N., 266 Neb. 782, 669 N.W.2d 429 (2003).

The term "aggravated circumstances," as used in subsection (4)(a) of this section, embodies the concept that the nature of the abuse or neglect must have been so severe or repetitive that to attempt reunification would jeopardize and compromise the safety of the child and would place the child in a position of an unreasonable risk to be reabused. In re Interest of Jac'Quez N., 266 Neb. 782, 669 N.W.2d 429 (2003).

The plain language of this section contains no directive granting a parent or any other party the right to bring a motion requesting a separate hearing on the issue of reasonable efforts to preserve and reunify. The Legislature intended that the issue of reasonable efforts required under this section must be reviewed by the juvenile court (1) when removing from the home a juvenile adjudged to be under subsections (3) or (4) of section 43-247 pursuant to section 43-284, (2) when the court continues a juvenile's out-of-home placement pending adjudication pursuant to section 43-254, (3) when the court reviews a juvenile's status and permanency planning pursuant to section 43-1315, and (4) when termination of parental rights to a juvenile is sought by the State under subsection (6) of section 43-292. In re Interest of DeWayne G., Jr. & Devon G., 263 Neb. 43, 638 N.W.2d 510 (2002).

Pursuant to subsection (6) of section 43-292, termination of parental rights requires a finding that following a determination

that the juvenile is one as described in subsection (3)(a) of section 43-247, reasonable efforts to preserve and reunify the family if required under this section, under the direction of the court, have failed to correct the conditions leading to the determination. In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

Pursuant to subsection (4)(b) of this section, clear and convincing evidence that the parent of the juvenile has committed first or second degree murder of another child of the parent, or has committed voluntary manslaughter of another child of the parent, excuses the Department of Health and Human Services from the requirement to make reasonable efforts to reunify the

family. In re Interest of Anthony V., 12 Neb. App. 567, 680 N.W.2d 221 (2004).

A finding of "felony child abuse" does not satisfy the requirements of subsection (4)(b)(iv) of this section, and there is no crime called "felony child abuse" in Nebraska. In re Interest of Janet J., 12 Neb. App. 42, 666 N.W.2d 741 (2003).

Where the State removes a child from the family, this section requires the State to make reasonable efforts to preserve and reunify the family, and if properly raised, a parent is entitled to a ruling on whether the State has complied with the legislative mandate of this section. In re Interest of DeWayne G. & Devon G., 10 Neb. App. 177, 625 N.W.2d 849 (2001).

43-284 Juvenile in need of assistance or special supervision; care and custody; payments for support; removal from home; restrictions.

When any juvenile is adjudged to be under subdivision (3), (4), or (9) of section 43-247, the court may permit such juvenile to remain in his or her own home subject to supervision or may make an order committing the juvenile to (1) the care of some suitable institution, (2) inpatient or outpatient treatment at a mental health facility or mental health program, (3) the care of some reputable citizen of good moral character, (4) the care of some association willing to receive the juvenile embracing in its objects the purpose of caring for or obtaining homes for such juveniles, which association shall have been accredited as provided in section 43-296, (5) the care of a suitable family, or (6) the care and custody of the Department of Health and Human Services.

Under subdivision (1), (2), (3), (4), or (5) of this section, upon a determination by the court that there are no parental, private, or other public funds available for the care, custody, education, and maintenance of a juvenile, the court may order a reasonable sum for the care, custody, education, and maintenance of the juvenile to be paid out of a fund which shall be appropriated annually by the county where the petition is filed until suitable provisions may be made for the juvenile without such payment.

The amount to be paid by a county for education pursuant to this section shall not exceed the average cost for education of a public school student in the county in which the juvenile is placed and shall be paid only for education in kindergarten through grade twelve.

The court may enter a dispositional order removing a juvenile from his or her home upon a written determination that continuation in the home would be contrary to the health, safety, or welfare of such juvenile and that reasonable efforts to preserve and reunify the family have been made if required under section 43-283.01.

Source: Laws 1981, LB 346, § 40; Laws 1982, LB 353, § 1; Laws 1987, LB 635, § 3; Laws 1987, LB 638, § 5; Laws 1989, LB 182, § 10; Laws 1996, LB 1044, § 130; Laws 1997, LB 622, § 72; Laws 1998, LB 1041, § 25; Laws 2001, LB 23, § 2.

Cross References

Child removed from home, investigation and examination required, see section 43-1311.

The Legislature intended that the issue of reasonable efforts required under section 43-283.01 must be reviewed by the juvenile court (1) when removing from the home a juvenile adjudged to be under subsections (3) or (4) of section 43-247 pursuant to this section, (2) when the court continues a juvenile's out-of-home placement pending adjudication pursuant to section 43-254, (3) when the court reviews a juvenile's status and permanency planning pursuant to section 43-1315, and (4) when termination of parental rights to a juvenile is sought by

the State under subsection (6) of section 43-292. In re Interest of DeWayne G., Jr. & Devon G., 263 Neb. 43, 638 N.W.2d 510 (2002).

The terms "care" and "custody" as used in this section are not synonymous. In re Interest of Jeremy T., 257 Neb. 736, 600 N.W.2d 747 (1999).

This statutory provision, by its liberal use of the word "may," authorizes the juvenile court to exercise broad discretion in its

disposition of children who have been found to be abused or neglected. In re Interest of Amber G. et al., 250 Neb. 973, 554 N.W.2d 142 (1996).

This section does not authorize the Department of Social Services to determine or place restrictions on parental visitation rights; rather, such rights are matters for judicial determination. In re Interest of C.A., 235 Neb. 893, 457 N.W.2d 822 (1990).

Disposition of juveniles adjudged within section 43-247 is pursuant to sections 43-283 to 43-2,101. In re Interest of C.G. and G.G.T., 221 Neb. 409, 377 N.W.2d 529 (1985).

The dispositional statutes (sections 43-283 to 43-2,101) do not violate the equal protection provisions of either the U.S. Consti-

tution or the Constitution of the State of Nebraska, because they validly classify status offenders, who do not violate the state's criminal law, on the one hand, and juvenile criminal offenders, on the other, who violate the state's criminal law by their own volitional acts. In re Interest of C.G. and G.G.T., 221 Neb. 409, 377 N.W.2d 529 (1985).

The juvenile court may permit a juvenile adjudged to be under section 43-247(3) to remain in his or her own home subject to supervision or may make an order committing the juvenile to the care of some suitable institution, reputable citizen, or suitable family or to the care and custody of the Department of Health and Human Services. In re Interest of Crystal T. et al., 7 Neb. App. 921, 586 N.W.2d 479 (1998).

43-284.01 Juvenile voluntarily relinquished; custody; alternative disposition; effect.

Any juvenile adjudged to be under subdivision (8) of section 43-247 shall remain in the custody of the Department of Health and Human Services or the licensed child placement agency to whom the juvenile has been relinquished unless the court finds by clear and convincing evidence that the best interests of the juvenile require that an alternative disposition be made. If the court makes such finding, then alternative disposition may be made as provided under section 43-284. Such alternative disposition shall relieve the department or licensed child placement agency of all responsibility with regard to such juvenile.

Source: Laws 1985, LB 447, § 9; Laws 1989, LB 182, § 11; Laws 1996, LB 1044, § 131.

43-284.02 Ward of the department; appointment of guardian; payments allowed.

The Department of Health and Human Services may make payments as needed on behalf of a child who has been a ward of the department after the appointment of a guardian for the child. Such payments to the guardian may include maintenance costs, medical and surgical expenses, and other costs incidental to the care of the child. All such payments shall terminate on or before the child's nineteenth birthday. The child under guardianship shall be a child for whom the guardianship would not be possible without the financial aid provided under this section.

The Department of Health and Human Services shall adopt and promulgate rules and regulations for the administration of this section.

Source: Laws 1986, LB 600, § 14; Laws 1996, LB 1044, § 132; Laws 2007, LB296, § 108.

43-285 Care of juvenile; authority of guardian; placement plan and report; when; standing; State Foster Care Review Board; participation authorized; immunity.

(1) When the court awards a juvenile to the care of the Department of Health and Human Services, an association, or an individual in accordance with the Nebraska Juvenile Code, the juvenile shall, unless otherwise ordered, become a ward and be subject to the guardianship of the department, association, or individual to whose care he or she is committed. Any such association and the department shall have authority, by and with the assent of the court, to determine the care, placement, medical services, psychiatric services, training,

and expenditures on behalf of each juvenile committed to it. Such guardianship shall not include the guardianship of any estate of the juvenile.

(2) Following an adjudication hearing at which a juvenile is adjudged to be under subdivision (3) of section 43-247, the court may order the department to prepare and file with the court a proposed plan for the care, placement, services, and permanency which are to be provided to such juvenile and his or her family. The health and safety of the juvenile shall be the paramount concern in the proposed plan. The department shall include in the plan for a juvenile who is sixteen years of age or older and subject to the guardianship of the department a written proposal describing programs and services designed to assist the juvenile in acquiring independent living skills. If any other party, including, but not limited to, the guardian ad litem, parents, county attorney, or custodian, proves by a preponderance of the evidence that the department's plan is not in the juvenile's best interests, the court shall disapprove the department's plan. The court may modify the plan, order that an alternative plan be developed, or implement another plan that is in the juvenile's best interests. In its order the court shall include a finding regarding the appropriateness of the programs and services described in the proposal designed to assist the juvenile in acquiring independent living skills. Rules of evidence shall not apply at the dispositional hearing when the court considers the plan that has been presented. The department or any other party may request a review of the court's order concerning the plan by a juvenile review panel as provided in section 43-287.04.

(3) Within thirty days after an order awarding a juvenile to the care of the department, an association, or an individual and until the juvenile reaches the age of majority, the department, association, or individual shall file with the court a report stating the location of the juvenile's placement and the needs of the juvenile in order to effectuate the purposes of subdivision (1) of section 43-246. The department, association, or individual shall file a report with the court once every six months or at shorter intervals if ordered by the court or deemed appropriate by the department, association, or individual. The department, association, or individual shall file a report and notice of placement change with the court and shall send copies of the notice to all interested parties at least seven days before the placement of the juvenile is changed from what the court originally considered to be a suitable family home or institution to some other custodial situation in order to effectuate the purposes of subdivision (1) of section 43-246. The court, on its own motion or upon the filing of an objection to the change by an interested party, may order a hearing to review such a change in placement and may order that the change be stayed until the completion of the hearing. Nothing in this section shall prevent the court on an ex parte basis from approving an immediate change in placement upon good cause shown. The department may make an immediate change in placement without court approval only if the juvenile is in a harmful or dangerous situation or when the foster parents request that the juvenile be removed from their home. Approval of the court shall be sought within twenty-four hours after making the change in placement or as soon thereafter as possible. The department or any other party may request a review of the change in placement by a juvenile review panel in the manner set out in section 43-287.04. The department shall provide the juvenile's guardian ad litem with a copy of any report filed with the court by the department pursuant to this subsection.

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

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

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

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

(8) Any member of the State Foster Care Review Board, any of its agents or employees, or any member of any local foster care review board participating in an investigation or making any report pursuant to the Foster Care Review Act or participating in a judicial proceeding pursuant to this section shall be immune from any civil liability that would otherwise be incurred except for false statements negligently made.

Source: Laws 1981, LB 346, § 41; Laws 1982, LB 787, § 17; Laws 1984, LB 845, § 31; Laws 1985, LB 447, § 25; Laws 1989, LB 182, § 12; Laws 1990, LB 1222, § 3; Laws 1992, LB 1184, § 14; Laws 1993, LB 103, § 1; Laws 1996, LB 1044, § 133; Laws 1998, LB 1041, § 26.

Cross References

Foster Care Review Act, see section 43-1318.

Pursuant to subsection (3) of this section, when a separate juvenile court or county court sitting as a juvenile court awards custody of a minor to the Department of Health and Human Services, the court has authority to award custody to a family the department has designated as suitable guardians without resorting to a proceeding under section 30-2608. In re Guardianship of Rebecca B. et al., 260 Neb. 922, 621 N.W.2d 289 (2000).

The terms "care" and "custody" as used in this section are not synonymous. In re Interest of Jeremy T., 257 Neb. 736, 600 N.W.2d 747 (1999).

A dispositional order in which a juvenile court declines to order a rehabilitation plan for parents of a child adjudicated under section 43-247(3)(a) is a final, appealable order. A juvenile court is not required to order or implement a rehabilitation plan for the parent of a child adjudicated under section 43-247(3)(a) if the plan has very little chance of success and is not in the best interests of the child. Where a child's substantial medical needs resulting from injury caused by parental abuse necessitated 24-hour daily nursing care for the child, the juvenile court did not err in accepting recommendation of the Department of Health and Human Services that no rehabilitation plan be implemented to reunite a child with his or her parents. In re Interest of Tabatha R., 255 Neb. 818, 587 N.W.2d 109 (1998).

Because statutory provisions do not overcome constitutional rights, the provisions of subsection (6) of this section do not apply to proceedings brought under the Nebraska Juvenile Code

to terminate parental rights. Despite subsection (6) of this section, the hearsay report of the State Foster Care Review Board is not necessarily admissible in a hearing on termination of parental rights. In re Interest of Constance G., 254 Neb. 96, 575 N.W.2d 133 (1998).

Pursuant to subsection (1) of this section, deciding whether to remove one from life support measures and whether to resuscitate one constitute medical services. In re Tabatha R., 252 Neb. 687, 564 N.W.2d 598 (1997).

Where a proceeding to obtain the juvenile court's assent to the medical services determined by the department under subsection (1) of this section results in the functional equivalent of a proceeding to terminate parental rights, the same due process must be afforded in the assent proceeding as is required in a proceeding to terminate parental rights. In re Interest of Tabatha R., 252 Neb. 687, 564 N.W.2d 598 (1997).

Where the department's determination under subsection (1) of this section is likely to result in the juvenile's death, the juvenile court's assent is the functional equivalent of a judgment terminating parental rights. In re Tabatha R., 252 Neb. 687, 564 N.W.2d 598 (1997).

Pursuant to subsection (4) of this section (now subsection (5) of this section), the Department of Social Services acquires standing as a party only after a juvenile has been placed in its care. In re Interest of Archie C., 250 Neb. 123, 547 N.W.2d 913 (1996).

Foster parents are interested parties for the purposes of this section. Foster parents have standing to participate in foster care placement review hearings. In re Interest of Jorius G. & Cheralée G., 249 Neb. 892, 546 N.W.2d 796 (1996).

Standing alone, subsection (2) of this section appears to entitle the Department of Social Services to obtain an expedited review in any case; however, its reach is limited by the requirements set forth in sections 43-287.01 and 43-287.03, which require the application of a disjunctive test: First, the order must implement a different plan than that proposed by the department. Second, there must exist a belief in the department that the court-ordered plan is not in the best interests of the juvenile. Where this test is met, expedited review is the sole avenue of review available to the department. In re Interest of M.J.B., 242 Neb. 671, 496 N.W.2d 495 (1993).

When the Department of Social Services has custody of a child, the department retains authority similar to a guardian's authority. In re Interest of C.A., 235 Neb. 893, 457 N.W.2d 822 (1990).

The provision of this section which provides that the "Department of Social Services shall have the authority to determine the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each child committed to it" by a juvenile court, does not contravene the distribution of powers clause contained in Neb. Const., art. II, sec. 1. In re Interest of G.B., M.B., and T.B., 227 Neb. 512, 418 N.W.2d 258 (1988).

This section provides standing for the Department of Social Services to file any pleading or motion or to seek review or

relief, when the juvenile court orders a juvenile to the care of the department. In re Interest of C.G. and G.G.T., 221 Neb. 409, 377 N.W.2d 529 (1985).

When the court awards a juvenile to the Department of Health and Human Services, an association, or an individual in accordance with the Nebraska Juvenile Code, the juvenile shall, unless otherwise ordered, become a ward and be subject to the guardianship of the department, association, or individual to whose care he or she is committed. In re Interest of Eric O. and Shane O., 9 Neb. App. 676, 617 N.W.2d 824 (2000).

Pursuant to subsection (3) of this section, although the language of this section appears to authorize an expedited review in any case, its reach is limited by the requirements set forth in sections 43-287.01 and 43-287.03. In re Interest of Tanisha P. et al., 9 Neb. App. 344, 611 N.W.2d 418 (2000).

This section gives the court the power to assent and, by implication, to dissent from the placement and other decisions of the Department of Health and Human Services, as well as of other entities to whom the court might commit the care of a minor. This section indicates the Legislature's intent to remove from the Department of Health and Human Services the complete control of a minor whose care is given to the department under the Nebraska Juvenile Code. In re Interest of Crystal T. et al., 7 Neb. App. 921, 586 N.W.2d 479 (1998).

A juvenile court may not delegate to the Department of Social Services or any other third party the authority to determine the time, manner, and extent of parental visitation. In re Interest of Teela H., 3 Neb. App. 604, 529 N.W.2d 134 (1995).

43-286 Juvenile violator or juvenile in need of special supervision; disposition; violation of probation; procedure.

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

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

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

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

(iii) Cause the juvenile to be placed in a suitable family home or institution, subject to the supervision of the probation officer. If the court has committed the juvenile to the care and custody of the Department of Health and Human Services, the department shall pay the costs of the suitable family home or institution which are not otherwise paid by the juvenile's parents.

Under subdivision (1)(a) of this section, upon a determination by the court that there are no parental, private, or other public funds available for the care, custody, and maintenance of a juvenile, the court may order a reasonable sum for the care, custody, and maintenance of the juvenile to be paid out of a fund which shall be appropriated annually by the county where the petition is filed until a suitable provision may be made for the juvenile without such payment; or

(b) The court may commit such juvenile to the Office of Juvenile Services, but a juvenile under the age of twelve years shall not be placed at the Youth Rehabilitation and Treatment Center-Geneva or the Youth Rehabilitation and

Treatment Center-Kearney unless he or she has violated the terms of probation or has committed an additional offense and the court finds that the interests of the juvenile and the welfare of the community demand his or her commitment. This minimum age provision shall not apply if the act in question is murder or manslaughter.

(2) When any juvenile is found by the court to be a juvenile described in subdivision (3)(b) of section 43-247, the court may enter such order as it is empowered to enter under subdivision (1)(a) of this section or enter an order committing or placing the juvenile to the care and custody of the Department of Health and Human Services.

(3) Beginning July 15, 1998, when any juvenile is adjudicated to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 because of a nonviolent act or acts and the juvenile has not previously been adjudicated to be such a juvenile because of a violent act or acts, the court may, with the agreement of the victim, order the juvenile to attend juvenile offender and victim mediation with a mediator or at an approved center selected from the roster made available pursuant to section 25-2908.

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

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

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

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

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

(iv) The juvenile shall be given a preliminary hearing in all cases when the juvenile is confined, detained, or otherwise significantly deprived of his or her liberty as a result of his or her alleged violation of probation. Such preliminary

hearing shall be held before an impartial person other than his or her probation officer or any person directly involved with the case. If, as a result of such preliminary hearing, probable cause is found to exist, the juvenile shall be entitled to a hearing before the court in accordance with this subsection;

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

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

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

Cross References

Juvenile probation officers, appointment, see section 29-2253.

Placements and commitments, restrictions, see section 43-251.01.

As used in subsection (1)(a)(iii) of this section, the terms "supervision" and "custody" are not synonymous. In re Interest of Jeremy T., 257 Neb. 736, 600 N.W.2d 747 (1999).

In the absence of an order revoking probation, a juvenile court has no obligation to comply with former subsection (4)(f) of this section. In re Interest of J.A., 244 Neb. 919, 510 N.W.2d 68 (1994).

A juvenile adjudged to be a juvenile within the meaning of section 43-247(3)(b), i.e., a status offender, may not be committed to the Department of Correctional Services. In re Interest of A.M.H., 233 Neb. 610, 447 N.W.2d 40 (1989).

Since juvenile offenders and adult offenders are not similarly situated, there is no deprivation of equal protection when a juvenile adjudged to be a juvenile within the meaning of section 43-247(1), (2), or (4) is, pursuant to this section, confined for a longer period than an adult convicted of the same offense could be incarcerated. In re Interest of A.M.H., 233 Neb. 610, 447 N.W.2d 40 (1989).

A juvenile court has broad discretion as to the disposition of a child found to be delinquent. In re Interest of Jones, 230 Neb. 462, 432 N.W.2d 46 (1988).

Disposition of juveniles adjudged within section 43-247 is pursuant to sections 43-283 to 43-2,101. In re Interest of C.G. and G.G.T., 221 Neb. 409, 377 N.W.2d 529 (1985).

The dispositional statutes (sections 43-283 to 43-2,101) do not violate the equal protection provisions of either the U.S. Constitution or the Constitution of the State of Nebraska, because they validly classify status offenders, who do not violate the state's criminal law, on the one hand, and juvenile criminal offenders, on the other, who violate the state's criminal law by their own volitional acts. In re Interest of C.G. and G.G.T., 221 Neb. 409, 377 N.W.2d 529 (1985).

In exercising its jurisdiction, a juvenile court cannot modify a disposition order without, at least, a motion, appropriate notice, and a hearing satisfying the requirements of due process. In addition to lacking the authority to order the Department of Health and Human Services to supervise a juvenile's probation,

the juvenile court also lacks the authority to order the Department of Health and Human Services to supervise a juvenile's house arrest or to oversee a juvenile's payment of restitution. In re Interest of Juan L., 6 Neb. App. 683, 577 N.W.2d 319 (1998).

This section does not allow the juvenile court to place a juvenile on probation or exercise any of its other options under the former subsections (1) and (2) and at the same time continue the dispositional hearing. Subsection (4) outlines the procedures which must be followed when a court revokes probation, revokes supervision, or otherwise changes the juvenile's disposition, and the former subsection (4)(f) describes more particularly the procedures which must be followed when a court revokes probation. In re Interest of Torrey B., 6 Neb. App. 658, 577 N.W.2d 310 (1998).

A juvenile court does not have jurisdiction over the Office of Juvenile Services in placing, managing, or discharging a juvenile committed to a youth rehabilitation treatment center, even though the juvenile court retains jurisdiction of the juvenile. On a motion to revoke probation, the court must advise the juvenile and his or her parent or guardian of their right to retain counsel, inquire of the juvenile and his or her parent or guardian as to whether they desire to retain counsel, and inform the juvenile and his or her parent or guardian of the juvenile's right to counsel at county expense if none of them is able to afford counsel. In re Interest of David C., 6 Neb. App. 198, 572 N.W.2d 392 (1997).

There is no provision in either this section or section 43-287 that grants the juvenile court the authority to place a juvenile on probation subject to the supervision of the Department of Social Services. In re Interest of Robin C., 3 Neb. App. 936, 535 N.W.2d 831 (1995).

The written statement requirement contained in former subsection (4)(f) of this section is satisfied if the judge's oral statements appearing in the bill of exceptions from the revocation hearing, as well as in the revocation order, when taken together, reveal the evidence relied upon and reasons for the revocation. In re Interest of Thomas W., 3 Neb. App. 704, 530 N.W.2d 291 (1995).

43-287 Repealed. Laws 1998, LB 1073, § 179.

43-287.01 Dispositional review; purpose and intent.

The purpose of sections 43-287.01 to 43-287.06 is to provide for an expedited review of juvenile dispositions by the courts. It is the intent to allow such

review only when a court orders the implementation of a plan different than the plan prepared by the Department of Health and Human Services for the care, placement, and services to be provided to such juvenile and the department or any other party believes such court-ordered plan not to be in the best interests of the juvenile.

It is the intent of sections 43-287.01 to 43-287.06 to remove contested dispositional plans from the appellate process for the purpose of expediting review by a juvenile review panel. Nothing in such sections shall otherwise limit the right of any party to appeal other final orders of a juvenile court pursuant to sections 43-2,106 and 43-2,106.01.

Source: Laws 1989, LB 182, § 1; Laws 1994, LB 1106, § 5; Laws 1996, LB 1044, § 136.

This section through section 43-287.06 provide the sole method of reviewing juvenile court dispositional orders falling within the ambit of the expedited appeal process therein specified. In re Interest of Jeffrey R., 251 Neb. 250, 557 N.W.2d 220 (1996).

Expedited review to the juvenile review panel occurs when a court orders the implementation of a plan for the care and placement of a juvenile different than the plan prepared by the Department of Social Services and the department believes that the court-ordered plan is not in the best interests of the juvenile. In re Interest of Alex T. et al., 248 Neb. 899, 540 N.W.2d 310 (1995).

Standing alone, section 43-285(2) appears to entitle the Department of Social Services to obtain an expedited review in any case; however, its reach is limited by the requirements set forth in this section and section 43-287.03, which require the application of a disjunctive test: First, the order must implement a different plan than that proposed by the department. Second, there must exist a belief in the department that the court-ordered plan is not in the best interests of the juvenile. Where this test is met, expedited review is the sole avenue of review available to the department. An order which requires the Department of Social Services to pay for services rendered to the juvenile's father constitutes a dispositional hearing as contemplated by the juvenile code. In re Interest of M.J.B., 242 Neb. 671, 496 N.W.2d 495 (1993).

It is well established in Nebraska jurisprudence that this section through section 43-287.06 provides the exclusive means of review for juvenile court dispositional orders within the ambit of the expedited appeal process defined within those statutes. Pursuant to subsection (3) of section 43-285, although the language of section 43-285 appears to authorize an expedited review in any case, its reach is limited by the requirements set forth in this section and section 43-287.03. In re Interest of Tanisha P. et al., 9 Neb. App. 344, 611 N.W.2d 418 (2000).

A party requesting expedited juvenile review panel consideration must show both that the court-ordered plan implements a different plan than that proposed by the Department of Social Services and that a belief exists that the court-ordered plan is not in the best interests of the juvenile. In re Interest of William H., 3 Neb. App. 869, 533 N.W.2d 670 (1995).

Under this section, an "other" order which is appealable to the district court is one which does not meet the two-part test necessary for juvenile panel review. An expedited review of a juvenile disposition under sections 43-287.01 to 43-287.06 to the juvenile review panel is permitted only when the juvenile court orders the implementation of a plan different than the plan proposed by the Department of Social Services for the care, placement, and services to be provided to the juvenile, and the department or any other party believes such court-ordered plan is not in the best interests of the juvenile. In re Interest of A.K., 2 Neb. App. 662, 513 N.W.2d 42 (1994).

43-287.02 Juvenile review panel; appointment; hearing location.

(1) A juvenile review panel shall consist of three county court or separate juvenile court judges, one of whom shall be designated as the presiding judge. All judges of the county court and separate juvenile court shall be eligible to serve on the juvenile review panel, except that no judge may serve on a panel reviewing a case originally heard by that judge. The Supreme Court shall provide for the appointment of a juvenile review panel after receiving a request for review from a county court or separate juvenile court.

(2) A juvenile review panel may hear a case in the county where the case was originally decided or at some other location that is convenient to the panel.

(3) The juvenile review panel shall use the courtroom, office facilities, and staff of the county court or separate juvenile court where the panel is hearing the case. The presiding judge shall be responsible for arranging the date and place of the hearing, for causing notice of the hearing to be given, and for preparing the disposition of the panel.

Source: Laws 1989, LB 182, § 2.

43-287.03 Juvenile review panel; review disposition; when.

A juvenile review panel shall review a disposition of a court when the court makes an order directing the implementation of a plan different from the plan prepared by the Department of Health and Human Services concerning the care, placement, or services to be provided to the juvenile and the department or any other party believes that the court's order is not in the best interests of the juvenile.

Source: Laws 1989, LB 182, § 3; Laws 1996, LB 1044, § 137.

A two-part, conjunctive test must be applied to determine whether an expedited review under this section is required. First, the order must implement a different plan than that proposed by the Department of Social Services. Second, there must exist a belief in the department that the court-ordered plan is not in the best interests of the juvenile. In re Interest of Jeffrey R., 251 Neb. 250, 557 N.W.2d 220 (1996).

Standing alone, section 43-285(2) appears to entitle the Department of Social Services to obtain an expedited review in any case; however, its reach is limited by the requirements set forth in this section and section 43-287.01, which require the application of a disjunctive test: First, the order must implement a different plan than that proposed by the department. Second, there must exist a belief in the department that the court-ordered plan is not in the best interests of the juvenile. Where this test is met, expedited review is the sole avenue of review available to the department. An order which requires the De-

partment of Social Services to pay for services rendered to the juvenile's father constitutes a dispositional hearing as contemplated by the juvenile code. In re Interest of M.J.B., 242 Neb. 671, 496 N.W.2d 495 (1993).

Pursuant to subsection (3) of section 43-285, although the language of section 43-285 appears to authorize an expedited review in any case, its reach is limited by the requirements set forth in section 43-287.01 and this section. In re Interest of Tanisha P. et al., 9 Neb. App. 344, 611 N.W.2d 418 (2000).

A party requesting expedited juvenile review panel consideration must show both that the court-ordered plan implements a different plan than that proposed by the Department of Social Services and that a belief exists that the court-ordered plan is not in the best interests of the juvenile. In re Interest of William H., 3 Neb. App. 869, 533 N.W.2d 670 (1995).

43-287.04 Request for review; procedures.

If the Department of Health and Human Services or any other party desires to have a disposition described in section 43-287.03 reviewed, the department or other party shall have ten days after disposition by the court to file a request for review by a juvenile review panel. Such request for review shall be filed with the clerk of the county court or separate juvenile court where the action was originally heard. Upon receipt of the request for review, the clerk of the county court or separate juvenile court shall forward a copy of the request to the Clerk of the Supreme Court.

Source: Laws 1989, LB 182, § 4; Laws 1996, LB 1044, § 138.

43-287.05 Juvenile review panel; record; powers; decision, when; effect.

A juvenile review panel shall review the disposition of a court de novo on the record. The record shall consist of a transcript and bill of exceptions which shall be requested and prepared as in appeals from the county court to the district court. A juvenile review panel shall affirm the disposition unless it is shown by a preponderance of the evidence that the disposition was not in the best interests of the juvenile, in which case the panel may modify the court-ordered plan or the plan of the Department of Health and Human Services or may substitute the department's plan for the court-ordered plan and remand the case back to the court with directions to implement such plan. Such review shall stay the enforcement of any order entered by the court.

The review by the juvenile review panel shall be as expeditious as possible, and a decision shall be made within thirty days after receiving the bill of exceptions from the court stenographer. The panel's decision shall be final and binding on the parties, except that the decision may be appealed as provided in section 43-287.06.

Source: Laws 1989, LB 182, § 5; Laws 1996, LB 1044, § 139.

43-287.06 Juvenile review panel; decision; appeal.

The Department of Health and Human Services or any other party may appeal from any final order or judgment entered by the juvenile review panel. Such order or judgment shall be reviewed by the Court of Appeals or the Supreme Court within the same time and in the same manner prescribed by law for review of an order or judgment of the district court. The appellate court shall review the disposition of the juvenile review panel de novo on the record submitted to the panel. Any appeal made pursuant to this section shall not stay any order of a juvenile review panel.

Source: Laws 1989, LB 182, § 6; Laws 1991, LB 732, § 102; Laws 1996, LB 1044, § 140.

43-288 Order allowing juvenile to return or remain at home; conditions and requirements.

If the court’s order of disposition permits the juvenile to remain in his or her own home as provided by section 43-284 or 43-286, the court may, as a condition or conditions to the juvenile’s continuing to remain in his or her own home, or in cases under such sections when the juvenile is placed or detained outside his or her home, as a condition of the court allowing the juvenile to return home, require the parent, guardian, or other custodian to:

- (1) Eliminate the specified conditions constituting or contributing to the problems which led to juvenile court action;
- (2) Provide adequate food, shelter, clothing, and medical care and for other needs of the juvenile;
- (3) Give adequate supervision to the juvenile in the home;
- (4) Take proper steps to insure the juvenile’s regular school attendance;
- (5) Cease and desist from specified conduct and practices which are injurious to the welfare of the juvenile; and
- (6) Resume proper responsibility for the care and supervision of the juvenile.

The terms and conditions imposed in any particular case shall relate to the acts or omissions of the juvenile, the parent, or other person responsible for the care of the juvenile which constituted or contributed to the problems which led to the juvenile court action in such case. The maximum duration of any such term or condition shall be one year unless the court finds that at the conclusion of that period exceptional circumstances require an extension of the period for an additional year.

Source: Laws 1981, LB 346, § 44; Laws 1982, LB 787, § 19.

This section gives the juvenile court explicit statutory authority to require the custodian of the juveniles to eliminate the specified conditions contributing to the problems which led to juvenile court action and to require the custodian to give adequate supervision to the juveniles in the home. In re Interest of Crystal T. et al., 7 Neb. App. 921, 586 N.W.2d 479 (1998).

43-289 Juvenile committed; release from confinement upon reaching age of majority; hospital treatment; custody in state institutions; discharge.

In no case shall a juvenile committed under the terms of the Nebraska Juvenile Code be confined after he or she reaches the age of majority. The court may, when the health or condition of any juvenile adjudged to be within the terms of such code shall require it, cause the juvenile to be placed in a public hospital or institution for treatment or special care or in an accredited and suitable private hospital or institution which will receive the juvenile for like purposes. Whenever any juvenile has been committed to the Department of

Health and Human Services, the department shall follow the court's orders, if any, concerning the juvenile's specific needs for treatment or special care for his or her physical well-being and healthy personality. If the court finds any such juvenile to be a person with mental retardation, it may, upon attaching a physician's certificate and a report as to the mental capacity of such person, commit such juvenile directly to an authorized and appropriate state or local facility or home.

The marriage of any juvenile committed to a state institution under the age of nineteen years shall not make such juvenile of the age of majority.

A juvenile committed to any such institution shall be subject to the control of the superintendent thereof, and the superintendent, with the advice and consent of the Department of Health and Human Services, shall adopt and promulgate rules and regulations for the promotion, paroling, and final discharge of residents such as shall be considered mutually beneficial for the institution and the residents. Upon final discharge of any resident, such department shall file a certified copy of the discharge with the court which committed the resident.

Source: Laws 1981, LB 346, § 45; Laws 1985, LB 447, § 26; Laws 1986, LB 1177, § 18; Laws 1989, LB 182, § 15; Laws 1996, LB 1044, § 141.

43-290 Costs of care and treatment; payment; procedure.

It is the purpose of this section to promote parental responsibility and to provide for the most equitable use and availability of public money.

Pursuant to the petition filed by the county attorney in accordance with section 43-274, whenever the care or custody of a juvenile is given by the court to someone other than his or her parent, which shall include placement with a state agency, or when a juvenile is given medical, psychological, or psychiatric study or treatment under order of the court, the court shall make a determination of support to be paid by a parent for the juvenile at the same proceeding at which placement, study, or treatment is determined or at a separate proceeding. Such proceeding, which may occur prior to, at the same time as, or subsequent to adjudication, shall be in the nature of a disposition hearing.

At such proceeding, after summons to the parent of the time and place of hearing served as provided in sections 43-262 to 43-267, the court may order and decree that the parent shall pay, in such manner as the court may direct, a reasonable sum that will cover in whole or part the support, study, and treatment of the juvenile, which amount ordered paid shall be the extent of the liability of the parent. The court in making such order shall give due regard to the cost of the support, study, and treatment of the juvenile, the ability of the parent to pay, and the availability of money for the support of the juvenile from previous judicial decrees, social security benefits, veterans benefits, or other sources. Support thus received by the court shall be transmitted to the person, agency, or institution having financial responsibility for such support, study, or treatment and, if a state agency or institution, remitted by such state agency or institution quarterly to the Director of Administrative Services for credit to the proper fund.

Whenever medical, psychological, or psychiatric study or treatment is ordered by the court, whether or not the juvenile is placed with someone other than his or her parent, or if such study or treatment is otherwise provided as determined necessary by the custodian of the juvenile, the court shall inquire as

to the availability of insured or uninsured health care coverage or service plans which include the juvenile. The court may order the parent to pay over any plan benefit sums received on coverage for the juvenile. The payment of any deductible under the health care benefit plan covering the juvenile shall be the responsibility of the parent. If the parent willfully fails or refuses to pay the sum ordered or to pay over any health care plan benefit sums received, the court may proceed against him or her as for contempt, either on the court's own motion or on the motion of the county attorney or authorized attorney as provided in section 43-512, or execution shall issue at the request of any person, agency, or institution treating or maintaining such juvenile. The court may afterwards, because of a change in the circumstances of the parties, revise or alter the order of payment for support, study, or treatment.

If the juvenile has been committed to the care and custody of the Department of Health and Human Services, the department shall pay the costs for the support, study, or treatment of the juvenile which are not otherwise paid by the juvenile's parent.

If no provision is otherwise made by law for the support or payment for the study or treatment of the juvenile, compensation for the support, study, or treatment shall be paid, when approved by an order of the court, out of a fund which shall be appropriated by the county in which the petition is filed.

The juvenile court shall retain jurisdiction over a parent ordered to pay support for the purpose of enforcing such support order for so long as such support remains unpaid but not to exceed ten years from the nineteenth birthday of the youngest child for whom support was ordered.

Source: Laws 1981, LB 346, § 46; Laws 1982, LB 787, § 20; Laws 1987, LB 638, § 7; Laws 1989, LB 182, § 16; Laws 1996, LB 1044, § 142; Laws 2003, LB 43, § 15.

The Nebraska Department of Health and Human Services is responsible for the costs of placing and caring for juveniles within its custody, regardless of which subsection of section 43-247 that juvenile is adjudicated under. The Nebraska Department of Health and Human Services is responsible for the costs of caring for a juvenile with which it has been granted custody, but only for those periods during which the juvenile is actually placed, by order of a juvenile court, in the custody of the department. In re Interest of Jeremy T., 257 Neb. 736, 600 N.W.2d 747 (1999).

Court-ordered detention of a juvenile for the partial purpose of placement into a treatment program constitutes "treatment" of the juvenile as the term is used in this section. In re Interest of Aaron K., 250 Neb. 489, 550 N.W.2d 13 (1996).

A separate summons must be served on a parent of the time and place of a support hearing if the support hearing is not conducted at the same proceeding at which placement, study, or treatment is determined. In re Interest of Rondell B., 249 Neb. 928, 546 N.W.2d 801 (1996).

If the child has not been committed to the custody of the Department of Social Services, the court has no authority to order the department to finance the child's custody or treatment. In re Interest of Todd T., 249 Neb. 738, 545 N.W.2d 711 (1996).

When a juvenile is committed to the care and custody of the Department of Social Services, and temporary detention results for the protection of the child, or is found to be in the best interests of the juvenile's physical or mental health needs, that type of detention is "treatment" of the juvenile. In re Interest of Lisa O., 248 Neb. 865, 540 N.W.2d 109 (1995).

An order which requires the Department of Social Services to pay for services rendered to the juvenile's father constitutes a dispositional hearing as contemplated by the juvenile code. In re Interest of M.J.B., 242 Neb. 671, 496 N.W.2d 495 (1993).

The amendment to this section providing that "(i)f the juvenile has been committed to the care and custody of the Department of Social Services, the department shall pay the costs for the support, study, or treatment of the juvenile which are not otherwise paid by the juvenile's parent" applies only where the court orders such services after the effective date of the amendment, August 25, 1989. In re Interest of J.M.N., 237 Neb. 116, 464 N.W.2d 811 (1991).

The Department of Social Services is not a parent within the meaning of this section. In re Interest of J.M.N., 237 Neb. 116, 464 N.W.2d 811 (1991).

Whether a parent is ordered to contribute to the support, study, and treatment of a juvenile under this section is a matter entrusted to the discretion of the juvenile or county court. A subsidized adoption agreement with the Department of Social Services was properly considered as a "source" of money available for a juvenile's support. In re Interest of Crystal T., 4 Neb. App. 503, 546 N.W.2d 77 (1996).

The section allows a court to retain jurisdiction over a parent when the parent is ordered to pay for services rendered to a child, but does not give the court power over the parent when the court never obtained jurisdiction over the parent, or when the court lost jurisdiction over the parent. In re Interest of Lisa V., 3 Neb. App. 559, 529 N.W.2d 805 (1995).

43-291 Termination of parental rights; proceedings.

Facts may also be set forth in the original petition, a supplemental petition, or motion filed with the court alleging that grounds exist for the termination of

parental rights. After a petition, a supplemental petition, or motion has been filed, the court shall cause to be endorsed on the summons and notice that the proceeding is one to terminate parental rights, shall set the time and place for the hearing, and shall cause summons and notice, with a copy of the petition, supplemental petition, or motion attached, to be given in the same manner as required in other cases before the juvenile court.

Source: Laws 1981, LB 346, § 47.

The Nebraska Juvenile Code provides for the filing of an original petition seeking termination of parental rights under this section. Subsection (6) of section 43-247 and this section indicate that the juvenile court may properly acquire jurisdiction over an original action to terminate parental rights as provided in the Nebraska Juvenile Code without prior juvenile court action, including adjudication. The plain and ordinary meaning of this section and section 43-292, taken together, is that parental rights may be terminated in an original proceeding. In re Interest of Joshua M. et al., 256 Neb. 596, 591 N.W.2d 557 (1999).

Notice of action to terminate parental rights is required under this section. In re Interest of D.J. et al., 224 Neb. 226, 397 N.W.2d 616 (1986).

Although there may have been no prior juvenile court action, including adjudication, the juvenile court acquires jurisdiction

to terminate parental rights when a motion to terminate parental rights containing the grounds for Termination is filed under subsections (1) through (5) of section 43-292. In re Interest of Brook P. et al., 10 Neb. App. 577, 634 N.W.2d 290 (2001).

In a hearing on the termination of parental rights without a prior adjudication, where such termination is sought under subsections (1) through (5) of section 43-292, such proceedings must be accompanied by due process safeguards, as statutory provisions cannot abrogate constitutional rights. In re Interest of Brook P. et al., 10 Neb. App. 577, 634 N.W.2d 290 (2001).

Although adjudication and disposition proceedings may be combined, the adjudication proceeding may not be omitted altogether. In re Interest of Joelyann H., 6 Neb. App. 472, 574 N.W.2d 185 (1998).

43-292 Termination of parental rights; grounds.

The court may terminate all parental rights between the parents or the mother of a juvenile born out of wedlock and such juvenile when the court finds such action to be in the best interests of the juvenile and it appears by the evidence that one or more of the following conditions exist:

(1) The parents have abandoned the juvenile for six months or more immediately prior to the filing of the petition;

(2) The parents have substantially and continuously or repeatedly neglected and refused to give the juvenile or a sibling of the juvenile necessary parental care and protection;

(3) The parents, being financially able, have willfully neglected to provide the juvenile with the necessary subsistence, education, or other care necessary for his or her health, morals, or welfare or have neglected to pay for such subsistence, education, or other care when legal custody of the juvenile is lodged with others and such payment ordered by the court;

(4) The parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior, which conduct is found by the court to be seriously detrimental to the health, morals, or well-being of the juvenile;

(5) The parents are unable to discharge parental responsibilities because of mental illness or mental deficiency and there are reasonable grounds to believe that such condition will continue for a prolonged indeterminate period;

(6) Following a determination that the juvenile is one as described in subdivision (3)(a) of section 43-247, reasonable efforts to preserve and reunify the family if required under section 43-283.01, under the direction of the court, have failed to correct the conditions leading to the determination;

(7) The juvenile has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months;

(8) The parent has inflicted upon the juvenile, by other than accidental means, serious bodily injury;

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

(10) The parent has (a) committed murder of another child of the parent, (b) committed voluntary manslaughter of another child of the parent, (c) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or (d) committed a felony assault that resulted in serious bodily injury to the juvenile or another minor child of the parent.

Source: Laws 1981, LB 346, § 48; Laws 1992, LB 1184, § 15; Laws 1996, LB 1044, § 143; Laws 1998, LB 1041, § 27.

- 1. Abandonment
- 2. Neglect
- 3. Mental illness or deficiency
- 4. Rehabilitation or reunification plan
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1. Abandonment

Pursuant to subsection (1) of this section, abandonment requires a finding that a parent intentionally withheld from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and the opportunity for the display of parental affection for the child. In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004).

Pursuant to subsection (1) of this section, evidence of abandonment was insufficient when the mother had been involuntarily removed from the United States and had made efforts to return in order to participate in juvenile proceedings and to inquire about her children, despite her removal and the Department of Health and Human Services' failure to show that it had informed the mother how contact with her children could be accomplished. In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004).

Even though a juvenile court ordered a mother to have no visitation with her children approximately 7 weeks before the State filed a petition to terminate her parental rights based on abandonment, it was determined that the mother did abandon her children within the meaning of subsection (1) of this section where the mother failed to present any evidence which would show a continuing interest in the children or a genuine effort to maintain communication and a meaningful relationship with the children. In re Interest of Dustin H. et al., 259 Neb. 166, 608 N.W.2d 580 (2000).

In the context of subsection (1) of this section, "abandonment" is defined as a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and the opportunity for the display of parental affection for the child. Under subsection (1) of this section, the question of abandonment is largely one of intent, to be determined in each case from all the facts and circumstances. Under subsection (1) of this section, if a parent voluntarily, but unreasonably or unjustifiably, departs from the state of residence of the parent's child or children, such departure may constitute parental abandonment of the child or children. Under subsection (1) of this section, abandonment is not an ambulatory thing, the legal effects of which a parent may dissipate at will by token efforts at reclaiming a discarded child. With respect to cases arising under subsection (1) of this section, parental obligation requires a continuing interest in the child and a genuine effort to maintain communication and association with that child. Under subsection (1) of this section, small tokens of parental affection for a child are an inadequate substitute for parental presence in a child's life. In re Interest of Sunshine A. et al., 258 Neb. 148, 602 N.W.2d 452 (1999).

Mother abandoned her children when she voluntarily left the State of Nebraska temporarily to look for her common-law

husband's children. In re Interest of C.K., L.K., and G.K., 240 Neb. 700, 484 N.W.2d 68 (1992).

Parental incarceration may be considered in reference to abandonment as a basis for termination of parental rights under subsection (1) of this section. "Abandonment," for the purpose of subsection (1) of this section, is a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and opportunity for the display of parental affection for the child. The question of abandonment is largely one of intent, to be determined in each case from all of the facts and circumstances. In re Interest of L.V., 240 Neb. 404, 482 N.W.2d 250 (1992).

A father who makes no effort to secure his parental rights for over 3 years has abandoned his child within the meaning of subsection (1) of this section. In re Interest of K.M.S., 236 Neb. 665, 463 N.W.2d 586 (1990).

"Abandonment," for the purpose of subsection (1) of this section, is a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and the opportunity for the display of parental affection for the child. In re Interest of C.A., 235 Neb. 893, 457 N.W.2d 822 (1990).

Whether a parent has abandoned a child within the meaning of subsection (1) of this section is a question of fact and depends on parental intent, which may be determined by circumstantial evidence. In re Interest of C.A., 235 Neb. 893, 457 N.W.2d 822 (1990).

A parent who has voluntarily chosen to violate the law so as to have been convicted of five separate felonies may have placed himself in a position where he has effectively abandoned the child pursuant to subsection (1) of this section. In re Interest of B.A.G., 235 Neb. 730, 457 N.W.2d 292 (1990).

"Abandonment" under subsection (1) of this section is a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and the opportunity for the display of parental affection for the child. In re Interest of J.L.M. et al., 234 Neb. 381, 451 N.W.2d 377 (1990).

Pursuant to subsection (1) of this section, if a parent voluntarily, but unreasonably or unjustifiably, departs from the state of residence of the parent's child or children, such departure may constitute parental abandonment of the child and cannot be used as an excuse for noncompliance with a court-ordered plan for parental rehabilitation. In re Interest of J.L.M. et al., 234 Neb. 381, 451 N.W.2d 377 (1990).

Under subsection (1) of this section, abandonment is an intentional withholding from the child, without just cause or excuse, by the parent of the parent's presence, care, love, and protection; maintenance; and the opportunity for the display of

filial affection. Abandonment is not an ambulatory thing the legal effects of which a parent may dissipate at will by token efforts at reclaiming a discarded child. In re Interest of J.M.D., 233 Neb. 540, 446 N.W.2d 233 (1989).

A specific condition of termination of parental rights under subsection (1) of this section is that the parent abandon the child for at least six months preceding the filing of the petition. In re Interest of M.B., R.P., and J.P., 222 Neb. 757, 386 N.W.2d 877 (1986).

Pursuant to subsection (1) of this section, a court may terminate parental rights if the parent has abandoned the juvenile for 6 months or more immediately prior to the filing of the petition. In re Interest of Crystal C., 12 Neb. App. 458, 676 N.W.2d 378 (2004).

Pursuant to subsection (1) of this section, abandonment, for purposes of determining whether termination of parental rights is warranted has been described as a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and opportunity for the display of parental affection for the child. In re Interest of Crystal C., 12 Neb. App. 458, 676 N.W.2d 378 (2004).

Pursuant to subsection (1) of this section, the term "immediately prior" regarding abandonment means the time period determined by counting back 6 months from the filing date of the petition. In re Interest of Crystal C., 12 Neb. App. 458, 676 N.W.2d 378 (2004).

Abandonment, for purposes of this section, is a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and opportunity for display of parental affection for the child. In re Interest of Joseph L., 8 Neb. App. 539, 598 N.W.2d 464 (1999).

A parent who has voluntarily chosen to violate the law, who has been imprisoned for the vast majority of his child's life, and who will continue to be imprisoned for several years may have placed himself in a position where he has effectively abandoned the child pursuant to subsection (1) of this section. A juvenile court may consider evidence of a parent's conduct prior to the birth of the child in proceedings to terminate parental rights pursuant to subsection (1) of this section. In re Interest of Theodore W., 4 Neb. App. 428, 545 N.W.2d 119 (1996).

Evidence did not support juvenile court's finding that father abandoned children for 6 months prior to termination hearing, pursuant to subsection (1) of this section, when in fact visitations were discouraged by Department of Social Services until court order denying visitation was granted 2 months prior to termination hearing. In re Interest of B.J.M. et al., 1 Neb. App. 851, 510 N.W.2d 418 (1993).

2. Neglect

One need not have physical possession of a child to demonstrate the existence of neglect contemplated by subsection (2) of this section. In re Interest of Kalie W., 258 Neb. 46, 601 N.W.2d 753 (1999).

Trial court did not err in terminating parental rights where the children were traumatized to an extent that the mere presence of the parents sent them into a panic and the parent-child relationships were effectively destroyed by the neglect and cruelty of the parents. It is only when the State seeks to terminate parental rights pursuant to subsection (6) of this section that the State is required to prove that it has instituted a reasonable plan for rehabilitation of the parents and that they have failed to comply. In the absence of any reasonable alternative and as the last resort to dispose of an action brought pursuant to the Nebraska Juvenile Code, termination of parental rights is permissible when the basis for such termination is provided by clear and convincing evidence. In re Interest of S.B.E. et al., 240 Neb. 748, 484 N.W.2d 97 (1992).

Because of mother's lack of insight and her lack of motivation to place the interests of her children ahead of her own, the trial court did not err in finding there was clear and convincing evidence to establish that the mother had substantially, continuously, and repeatedly neglected her children and had refused to

give them the necessary parental care and protection. In re Interest of B.B. et al., 239 Neb. 952, 479 N.W.2d 787 (1992).

A parent's failure to take proper measures to protect children from abuse by another furnishes sufficient cause to terminate parental rights under subsection (2) of this section. In re Interest of C.P., 235 Neb. 276, 455 N.W.2d 138 (1990).

A parent's fright does not, by itself, excuse his or her failure to extricate children from a dangerous environment. In re Interest of C.P., 235 Neb. 276, 455 N.W.2d 138 (1990).

A parent's failure to take proper measures to protect children from abuse by another furnishes sufficient cause to terminate parental rights under subsection (2) of this section. In re Interest of J.B. and A.P., 235 Neb. 74, 453 N.W.2d 477 (1990).

When a parent fails to protect some but not all children from the physical abuse by another, a court may terminate parental rights in the children not physically abused. In re Interest of J.B. and A.P., 235 Neb. 74, 453 N.W.2d 477 (1990).

Where poor housekeeping degenerates into a continuing health hazard, the best interests of the children require termination of parental rights. In re Interest of E.R., J.R., and A.R., 230 Neb. 646, 432 N.W.2d 834 (1988).

One need not have physical possession of a child to demonstrate the existence of the neglect contemplated by this provision. In re Interest of J.N.V., 224 Neb. 108, 395 N.W.2d 758 (1986).

Under this statute, to justify the termination of parental rights, the state must prove by clear and convincing evidence that a parent has substantially and continuously or repeatedly neglected the child. In re Interest of L.J., J.J., and J.N.J., 220 Neb. 102, 368 N.W.2d 474 (1985).

Pursuant to subsection (2) of this section, termination of parental rights requires a finding that a parent has substantially and continuously or repeatedly neglected and refused to give the juvenile necessary parental care and protection. In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

Pursuant to subsection (2) of this section, lack of proper parental care of one child in a family can be a ground for termination of parental rights with respect to another child of the parents. In re Interest of Jaden H., 10 Neb. App. 87, 625 N.W.2d 218 (2001).

While a decision from the Nebraska Court of Appeals affirming a juvenile court's termination of parental rights may be further reviewed by the Nebraska Supreme Court, under subsection (2) of this section, the Court of Appeals' decision is final for collateral estoppel purposes. In re Interest of Jaden H., 10 Neb. App. 87, 625 N.W.2d 218 (2001).

3. Mental illness or deficiency

Subsection (5) of this section authorizing termination of parental rights for mental illness or mental deficiency means only those mental illnesses or mental deficiencies which render the parents unable to discharge their parental responsibilities. In re Interest of Michael B. et al., 258 Neb. 545, 604 N.W.2d 405 (2000).

Under subsection (5) of this section, when a natural parent suffers from a mental deficiency and cannot be rehabilitated within a reasonable period of time, the best interests of the child require that a final disposition be made without delay. A "mental deficiency", as used in subsection (5) of this section, includes an impairment in capacity such that a parent is unable to profit from instruction and acquire parenting skills. Under subsection (5) of this section, the State must show that termination of parental rights is in the best interests of the children. In re Interest of Natasha H. & Sierra H., 258 Neb. 131, 602 N.W.2d 439 (1999).

When a natural parent suffers from a mental deficiency and cannot be rehabilitated within a reasonable period of time, the best interests of the children require that a final disposition be made without delay. In re Interest of D.A.B. and J.B., 240 Neb. 653, 483 N.W.2d 550 (1992).

A borderline personality disorder is a mental illness or deficiency for purposes of statute. In re Interest of B.M., 239 Neb. 292, 475 N.W.2d 909 (1991).

A guardian ad litem appointed for a parent pursuant to subsection (5) of this section is entitled to participate fully in the proceeding to terminate parental rights. In re Interest of D.S. and T.S., 236 Neb. 413, 461 N.W.2d 415 (1990).

The parental rights of a parent who is unable to discharge parental duties because of a mental illness or deficiency may be terminated under subdivision (5) of this section, while the parental rights of a parent who is unable to discharge parental duties because of a physical illness or deficiency may be terminated under subdivision (2) or (6) of this section; thus, the statutory scheme for termination of parental rights does not unconstitutionally differentiate between a parent with a mental deficiency and one with a physical deficiency. In re Interest of S.L.P., 230 Neb. 635, 432 N.W.2d 826 (1988).

“Mental deficiency”, as used in subdivision (5) of this section, includes an impairment in learning capacity such that one is unable to profit from instruction and acquire parenting skills. In re Interest of D.L.S., 230 Neb. 435, 432 N.W.2d 31 (1988).

Appointment of a guardian ad litem for parents whose parental rights are sought to be terminated under subdivision (5) of this section is mandatory. Failure to appoint a guardian ad litem to protect the interests of such a parent is plain error which requires that the judgment be reversed. In re Interest of M.M., C.M., and D.M., 230 Neb. 388, 431 N.W.2d 611 (1988).

While no absolute definition of the term “mental deficiency” as used in subdivision (5) of this section is adopted, where a personality disorder is manifested by acts of extraordinary violence, the mental condition certainly rises to the level of mental deficiency. In re Interest of J.D.M., 230 Neb. 273, 430 N.W.2d 689 (1988).

Parental rights were properly terminated under subdivision (5) of this section where parents, who were both of limited intellectual ability, were unable to care for their daughter, who was developmentally and physically handicapped and required an extraordinary amount of care. In re Interest of A.M.K., 227 Neb. 888, 420 N.W.2d 718 (1988).

Supreme Court urges appointments of an attorney and of a guardian ad litem under subsection (5) of this section be separated. In re Interest of C.W., 226 Neb. 719, 414 N.W.2d 277 (1987).

Record supported termination of parental rights as in the best interests of the child where the parent was unable due to a mental deficiency to discharge her responsibilities and there existed reasonable grounds to believe that this condition would continue for a prolonged and indefinite period. In re Interest of Fant, 214 Neb. 692, 335 N.W.2d 314 (1983).

A trial court has discretionary authority to appoint a guardian ad litem in Termination proceedings for a parent with a mental deficiency, regardless of whether mental illness or deficiency is pled as a ground for termination. In re Interest of Michael B. et al., 8 Neb. App. 411, 594 N.W.2d 674 (1999).

The presence of a mental deficiency in a parent does not preclude the State from seeking, or the courts from granting, termination of parental rights under subsections (2) and (4) of this section. In re Interest of Michael B. et al., 8 Neb. App. 411, 594 N.W.2d 674 (1999).

4. Rehabilitation or reunification plan

Pursuant to subsection (7) of this section, termination based on the ground that a child has been in out-of-home placement for 15 of the preceding 22 months is not in a child's best interests when the record demonstrates that a parent is making efforts toward reunification and has not been given a sufficient opportunity for compliance with a reunification plan. In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004).

The 15-month condition set forth in subsection (7) of this section serves the purpose of providing a reasonable timetable for parents to rehabilitate themselves. In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004).

The Legislature intended that the issue of reasonable efforts required under section 43-283.01 must be reviewed by the juvenile court (1) when removing from the home a juvenile adjudged to be under subsections (3) or (4) of section 43-247 pursuant to section 43-284, (2) when the court continues a juvenile's out-of-home placement pending adjudication pursuant to section 43-254, (3) when the court reviews a juvenile's status and permanency planning pursuant to section 43-1315, and (4) when termination of parental rights to a juvenile is sought by the State under subsection (6) of this section. In re Interest of DeWayne G., Jr. & Devon G., 263 Neb. 43, 638 N.W.2d 510 (2002).

Pursuant to subsection (2) of this section, termination of parental rights under this subsection does not require proof that a parent has failed to comply with a rehabilitation plan. In re Interest of Clifford M. et al., 261 Neb. 862, 626 N.W.2d 549 (2001).

In order to terminate parental rights under subsection (6) of this section, the State must prove by clear and convincing evidence that (1) the parent has failed to comply, in whole or in part, with a reasonable provision material to the rehabilitative objective of the plan and (2) in addition to the parent's noncompliance with the rehabilitative plan, termination of parental rights is in the best interests of the child. In order to terminate parental rights under subsection (6) of this section, the State is required to prove that the parents have been provided with a reasonable opportunity to rehabilitate themselves according to a court-ordered plan and have failed to do so. The State is not required to show that noncompliance with a court-ordered rehabilitation plan is willful in order to prove that termination of parental rights should be ordered under subsection (6) of this section. In re Interest of Kassara M., 258 Neb. 90, 601 N.W.2d 917 (1999).

Pursuant to subsection (6) of this section, the State need not prove in an action to terminate parental rights, that a parent's failure to comply with a court-ordered rehabilitation plan was willful. The purpose of subsection (6) of this section is to advance the best interests of the child by giving the juvenile court power to terminate parental rights where the grounds for adjudicating the child within section 43-247(3)(a) have not been corrected. Whether a parent is willful or not in his or her noncompliance with a rehabilitation plan is not directly relevant to this purpose. Mother's failure to comply with rehabilitation plan's requirement that she end contact with man who had sexually assaulted one of her children was sufficient evidence for Termination of her parental rights under subsection (7) of this section. In re Interest of Joshua M. et al., 251 Neb. 614, 558 N.W.2d 548 (1997).

In order to terminate parental rights pursuant to subsection (6) of this section, the State is required to prove that the parents have been provided with a reasonable opportunity to rehabilitate themselves according to a court-ordered plan and have failed to do so. Fact that parent partially complied with one provision of a rehabilitative plan does not prevent Termination of his or her parental rights. In re Interest of L.H. et al., 241 Neb. 232, 487 N.W.2d 279 (1992).

A rehabilitation plan is a court-ordered plan, judicially fashioned and judicially determined. The court may not delegate this authority to evaluators, counselors, social workers, child protection workers, or probation officers. In re Interest of D.M.B., 240 Neb. 349, 481 N.W.2d 905 (1992).

In order to terminate parental rights, the requirement is not that all possible alternatives be exhausted, but that reasonable efforts be made to reunite the juvenile and his or her family. In re Interest of S.R., D.R., and B.R., 239 Neb. 871, 479 N.W.2d 126 (1992).

Under subsection (6) of this section, the court is not limited to reviewing the efforts of the parent under the reunification plan last ordered by the court; rather, the court looks at the entire reunification program and the parent's compliance with the various plans involved in the program, as well as any effort not contained within the program which would bring the parent closer to reunification. In re Interest of L.J., M.J., and K.J., 238 Neb. 712, 472 N.W.2d 205 (1991).

A period of 1 year 2 months is a reasonable amount of time for a parent to comply with a plan of rehabilitation. In re Interest of C.E.E., 238 Neb. 260, 469 N.W.2d 782 (1991).

Under subsection (6) of this section, "reasonable efforts, under the direction of the court" means efforts in relation to a court-ordered plan for parental rehabilitation, not an extrajudicial agreement between a parent and an administrative agency. In re Interest of A.H., 237 Neb. 797, 467 N.W.2d 682 (1991).

Under subsection (6) of this section, the fact of participation in certain elements of the court-ordered plan of reunification does not necessarily prevent the court from entering an order of termination where the parent has not made satisfactory progress toward reunification. In re Interest of A.M.Y., F.E.Y., and K.C.Y., 237 Neb. 414, 466 N.W.2d 93 (1991).

Under subsection (6) of this section, there is no requirement that the parent's failure to comply with the plan for rehabilitation be willful. In re Interest of A.B. et al., 236 Neb. 220, 460 N.W.2d 114 (1990).

It is only to terminate parental rights pursuant to subsection (6) of this section that the State is required to prove that the parents have been provided with a reasonable opportunity to rehabilitate themselves according to a court-ordered plan and have failed to do so. In re Interest of L.C., J.C., and E.C., 235 Neb. 703, 457 N.W.2d 274 (1990).

A judgment terminating parental rights pursuant to subsection (6) of this section will be affirmed where the State has proved by clear and convincing evidence that (1) the parent has willfully failed to comply, in whole or in part, with a material provision of the rehabilitative plan, and (2) termination of parental rights is in the best interests of the children. In re Interest of L.K.Y. and A.L.Y., 235 Neb. 545, 455 N.W.2d 828 (1990).

A judgment terminating parental rights pursuant to subsection (6) of this section will be affirmed where the State has proved by clear and convincing evidence that (1) the parent has willfully failed to comply, in whole or in part, with a material provision of the rehabilitative plan, and (2) termination of parental rights is in the best interests of the children. In re Interest of L.B., A.B., and A.T., 235 Neb. 134, 454 N.W.2d 285 (1990).

Under subsection (6) of this section, participation in a court-ordered plan does not necessarily prevent the court from entering an order of termination where parent made no progress toward rehabilitation. In re Interest of M., 235 Neb. 61, 453 N.W.2d 589 (1990).

Pursuant to subsection (6) of this section, a parent's failure to make reasonable efforts to comply with a court-ordered plan of rehabilitation presents an independent reason justifying termination of parental rights. A judgment terminating parental rights will be affirmed when the State has established by clear and convincing evidence that the parent has willfully failed to comply, in whole or in part, with a material provision of a plan, and Termination of parental rights is in the best interests of the children. Where a parent is unable or unwilling to rehabilitate herself within a reasonable time, the best interests of the children require termination of the parental rights. In re Interest of C.C. and E.C., 234 Neb. 218, 450 N.W.2d 392 (1990).

Under subsection (6) of this section, the record supports termination of parental rights where parent willingly failed to comply with reasonable plan of rehabilitation. In re Interest of R.T. and R.T., 233 Neb. 483, 446 N.W.2d 12 (1989).

Regarding parental compliance with a court-ordered rehabilitative plan, under subsection (6) of this section, as a ground for termination of parental rights, the State must prove by clear and convincing evidence that the parent has willfully failed to comply in whole or in part with a reasonable provision material to the rehabilitative objective of the plan and the termination of parental rights is in the best interests of the child. In re Interest of Q.R. and D.R., 231 Neb. 791, 438 N.W.2d 146 (1989).

Under subsection (6) of this section, a juvenile court has the discretionary power to prescribe a reasonable plan for parental rehabilitation to correct the conditions underlying the adjudication that a child is a juvenile within the Nebraska Juvenile Code.

This court has held that to terminate parental rights under subsection (6) of this section, the State must prove by clear and convincing evidence that the parent has willfully failed to comply, in whole or in part, with a reasonable provision material to the rehabilitative objective of the plan and termination of parental rights is in the best interests of the child. In re Interest of P.M.C., 231 Neb. 701, 437 N.W.2d 786 (1989).

A parent's failure to make reasonable efforts to comply with a court-ordered plan of rehabilitation designed to reunite the parent and child presents an independent reason justifying termination of parental rights under subdivision (6) of this section. The state must prove this failure by clear and convincing evidence. In re Interest of P.D., 231 Neb. 608, 437 N.W.2d 156 (1989).

A parent's failure to make reasonable efforts to comply with a court-ordered plan of rehabilitation designed to reunite the parent and child presents an independent reason justifying termination of parental rights under subdivision (6) of this section. In re Interest of D.L.S., 230 Neb. 435, 432 N.W.2d 31 (1988).

Regarding parental noncompliance with a court-ordered rehabilitative plan, under subsection (6) of this section, as a ground for termination of parental rights, the State must prove by clear and convincing evidence that the parent has willfully failed to comply, in whole or in part, with a reasonable provision material to the rehabilitative objective of the plan and, in addition to the parent's noncompliance with the rehabilitative plan, termination of parental rights is in the best interests of the child. In re Interest of A.Z., B.Z., and R.Z., 230 Neb. 291, 430 N.W.2d 901 (1988).

As grounds for termination, the State must prove by clear and convincing evidence that the parent has willfully failed to comply with a reasonable provision material to the rehabilitative objective of the plan, and, in addition to the parent's noncompliance, termination is in the best interests of the child. In re Interest of L.O. and B.O., 229 Neb. 889, 429 N.W.2d 388 (1988).

Regarding parental noncompliance with a court-ordered rehabilitation plan under subsection (6) of this section as a ground for termination of parental rights, the State must prove by clear and convincing evidence that (1) the parent has willfully failed to comply, in whole or in part, with a reasonable provision material to the rehabilitative objective of the plan and (2) Termination of parental rights is in the best interests of the child. In re Interest of J.S., A.C., and C.S., 227 Neb. 251, 417 N.W.2d 147 (1987).

When a rehabilitation plan is implemented, the plan must be reasonable and conducted under the direction of the juvenile court before failure to comply with the plan can be an independent reason for termination. In re Interest of K.L.N. and M.J.N., 225 Neb. 595, 407 N.W.2d 189 (1987).

The primary consideration in termination proceedings is the best interests of the child and, while termination of parental rights should be considered as a last resort, this section requires that the best interests of the child and evidence of fault or neglect be considered together in reaching such a determination. The failure to comply with a court-ordered plan of rehabilitation, where a parent is ordered to make reasonable efforts to rehabilitate, presents an independent reason justifying termination of parental rights. In re Interest of J.W., 224 Neb. 897, 402 N.W.2d 671 (1987).

The failure of a parent to follow a rehabilitation plan which is not conducted under the direction of the court is not sufficient reason to terminate parental rights under this statute. In re Interest of M.L.B., 221 Neb. 396, 377 N.W.2d 521 (1985).

Parental rights terminated of mother who failed to comply with a plan of rehabilitation and who suffered from a personality disorder likely to last for an indefinite period. In re Interest of R.L.T., 221 Neb. 251, 376 N.W.2d 310 (1985).

The state need not show harm to the child in order to terminate parental rights. The failure of the parent to follow a plan of rehabilitation is sufficient grounds for termination. In re Interest of S.P., N.P., and L.P., 221 Neb. 165, 375 N.W.2d 616 (1985).

The trial court did not abuse its discretion by terminating the parental rights of a parent who failed to rehabilitate herself within a reasonable time after the adjudicative hearing. In re Interest of S.W., 220 Neb. 734, 371 N.W.2d 726 (1985).

Pursuant to subsection (6) of this section, termination of parental rights requires a finding that following a determination that the juvenile is one as described in subsection (3)(a) of section 43-247, reasonable efforts to preserve and reunify the family if required under section 43-283.01, under the direction of the court, have failed to correct the conditions leading to the determination. In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

5. Appeal

A parent's failure to appeal from an adjudication order, dispositional order, or other final, appealable order leading to the termination of parental rights does not preclude an appellate court from reviewing the proceedings for a denial of due process in an appeal from a termination order. In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004).

The right to appeal from orders of a county court sitting as a juvenile court, insofar as that right is vested in the child's custodian, is vested only in individuals or entities having legal custody of such a child, and not in those persons having only possession of the child. In re Interest of S.R., 217 Neb. 528, 352 N.W.2d 141 (1984).

6. Miscellaneous

For a juvenile court to terminate parental rights under this section, it must find that termination is in the child's best interests and that one or more of the statutory grounds listed in this section have been satisfied. The State must prove these facts by clear and convincing evidence. In re Interest of Shelby L., 270 Neb. 150, 699 N.W.2d 392 (2005).

In a juvenile proceeding to terminate parental rights, the evidence adduced to prove termination on any statutory ground other than subsection (7) of this section is highly relevant to the best interests of the juvenile, as it would show abandonment, neglect, unfitness, or abuse. In re Interest of Shelby L., 270 Neb. 150, 699 N.W.2d 392 (2005).

Subsection (7) of this section operates mechanically and, unlike the other subsections of this section, does not require the State to adduce evidence of any specific fault on the part of a parent. Thus, it is in the context of analyzing the best interests of the juvenile that courts must respect a parent's commanding interest in the accuracy and justice of the decision to terminate parental rights. Where termination of parental rights is sought solely pursuant to subsection (7), proof that termination is nonetheless in a juvenile's best interests will, necessarily, require clear and convincing evidence of circumstances as compelling and pertinent to a child's best interests as those enumerated in the other subsections of this section. In re Interest of Aaron D., 269 Neb. 249, 691 N.W.2d 164 (2005).

The State cannot prove that termination of parental rights is in a child's best interests by implementing a case plan that precludes a parent's compliance. In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004).

In order to terminate parental rights, the State must prove by clear and convincing evidence that one of the statutory grounds enumerated in this section exists and that termination is in the child's best interests. In re Interest of Joshua R. et al., 265 Neb. 374, 657 N.W.2d 209 (2003).

This section is not unconstitutional; adequate safeguards are provided to ensure that parental rights are not terminated based solely upon the length of time children are in an out-of-home placement. In re Interest of Ty M. & Devon M., 265 Neb. 150, 655 N.W.2d 672 (2003); In re Interest of Phyllisa B., 265 Neb. 53, 654 N.W.2d 738 (2002).

Two requirements must be met before parental rights may be terminated: requisite evidence must establish the existence of one or more of the circumstances described in subsections (1) to (10) of this section, and if a circumstance designated in subsections (1) to (10) is evidentially established, there must be the additional showing that termination of parental rights is in the

best interests of the child. In re Interest of Ty M. & Devon M., 265 Neb. 150, 655 N.W.2d 672 (2003); In re Interest of Phyllisa B., 265 Neb. 53, 654 N.W.2d 738 (2002).

In order to terminate parental rights with respect to a child on the basis of neglect under subsection (2) of this section, as amended, the State must prove by clear and convincing evidence that (1) the parents have substantially and continuously or repeatedly neglected and refused to give the child or a sibling of said child necessary parental care and protection and (2) Termination of parental rights is in the best interests of the child. In re Interest of Lisa W. & Samantha W., 258 Neb. 914, 606 N.W.2d 804 (2000).

In order to terminate parental rights, the State must prove by clear and convincing evidence that one of the statutory grounds enumerated in this section exists and that termination is in the children's best interests. In re Interest of Michael B. et al., 258 Neb. 545, 604 N.W.2d 405 (2000); In re Interest of Kalie W., 258 Neb. 46, 601 N.W.2d 753 (1999).

The fact that children benefit from foster placement after they are removed from the custody of a natural parent does not lend support to an argument that Termination of parental rights is not in their best interests. Where a parent is unable or unwilling to rehabilitate himself or herself within a reasonable time, the best interests of the child require termination of the parental rights. A significant piece of evidence bearing on the issue of whether Termination of parental rights is in the best interests of the child is the fact that while in foster care, the child's "arrested state of development" at the time of removal from custody is being reversed. Children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. The concept of permanency is not simply a "buzzword", but, rather, a recognition that when there is no reasonable expectation that a natural parent will fulfill his or her responsibility to a child, the child should be given an opportunity to live with an adult who has demonstrated a willingness and ability to assume that responsibility and has a permanent legal obligation to do so. In re Interest of Sunshine A. et al., 258 Neb. 148, 602 N.W.2d 452 (1999).

The language of this section imposes two requirements before parental rights may be terminated. First, requisite evidence must establish the existence of one or more of the circumstances described in subsections (1) to (10) of this section. Second, if a circumstance designated in subsections (1) to (10) of this section is evidentially established, there must be the additional showing that termination of parental rights is in the best interests of the child, the primary consideration in any question concerning termination of parental rights. Each of the requirements imposed by this section must be proved by clear and convincing evidence. In re Interest of Sunshine A. et al., 258 Neb. 148, 602 N.W.2d 452 (1999).

Through the plain language of this section, the Legislature has demonstrated its intent that under certain circumstances, prior court action or an adjudication may be required before parental rights can be terminated. The plain and ordinary meaning of this section and section 43-291, taken together, is that parental rights may be terminated in an original proceeding. In re Interest of Joshua M. et al., 256 Neb. 596, 591 N.W.2d 557 (1999).

Pursuant to subsection (3) of this section, a court cannot deny a natural parent custody based on the fact that he or she has limited resources or financial problems, or because the parent's lifestyle is different or unusual. Pursuant to subsection (4) of this section, the children need not be present while the parent commits acts described in the section for this section to apply. Gomez v. Savage, 254 Neb. 836, 580 N.W.2d 523 (1998).

A court may terminate parental rights when such action is in the best interests of the child and one or more of the statutorily specified conditions exist. The special needs of the child in question do not provide a basis for terminating parental rights if the record does not clearly and convincingly establish that the parent is not capable of providing the required special attention. In re Interest of Constance G., 254 Neb. 96, 575 N.W.2d 133 (1998).

Before parental rights may be terminated, requisite evidence must establish existence of one or more of the circumstances described in subsections (1) to (6) of this section, and there must be an additional showing that termination is in the best interests of the child. In re Interest of C.K., L.K., and G.K., 240 Neb. 700, 484 N.W.2d 68 (1992); In re Interest of L.V., 240 Neb. 404, 482 N.W.2d 250 (1992).

In the absence of any reasonable alternative and as the last resort to dispose of an action brought pursuant to the Nebraska Juvenile Code, Termination of parental rights is permissible when the basis for such Termination is proved by clear and convincing evidence. In re Interest of M.P., 238 Neb. 857, 472 N.W.2d 432 (1991); In re Interest of C.C., 226 Neb. 263, 411 N.W.2d 51 (1987); In re Interest of T.C., 226 Neb. 116, 409 N.W.2d 607 (1987).

A juvenile court may terminate parental rights under the various grounds specified in subsections (1) through (5) of this section without providing the parent with a reasonable opportunity to rehabilitate himself or herself. In re Interest of L.C., J.C., and E.C., 235 Neb. 703, 457 N.W.2d 274 (1990).

In order to terminate parental rights, it must be shown that termination of parental rights is in the child's best interests and that at least one of six bases provided in this section exists. In re Interest of J.B. et al., 235 Neb. 530, 455 N.W.2d 817 (1990).

In order to terminate parental rights, the State must prove by clear and convincing evidence that termination of parental rights is in the child's best interests and that at least one of the six bases provided in this section exists. In re Interest of C.D.C., 235 Neb. 496, 455 N.W.2d 801 (1990).

In order to terminate parental rights under this section, there must be clear and convincing evidence of the existence of one or more of the circumstances described in subsections (1) to (6), and if one of the conditions described in subsections (1) to (6) has been evidentially established, there must be an additional showing by clear and convincing evidence that termination of parental rights is in the child's best interests. In re Interest of J.B. and A.P., 235 Neb. 74, 453 N.W.2d 477 (1990).

Subsection (6) of this section does not require the court to proceed under that subsection whenever a determination has been made under section 43-247; the court may terminate parental rights when it appears that any one of the six conditions under this section has been met. In re Interest of J.A. and T.A., 229 Neb. 271, 426 N.W.2d 277 (1988).

Language of this section imposes two requirements before parental rights may be terminated: First, requisite evidence must establish existence of one or more of the circumstances described in subsections (1) to (6); and second, there must be the additional showing that termination of parental rights is in the best interests of the child, the primary consideration in any question concerning termination of parental rights. The standard of proof for each of the two preceding requirements is evidence which is "clear and convincing." In re Interest of J.S., A.C., and C.S., 227 Neb. 251, 417 N.W.2d 147 (1987).

Clear and convincing evidence was before the trial court to show that reasonable efforts, under the court's direction, had failed to correct the conditions which had led to the determination that the child in question was a child as defined in section 43-247(3)(a). In re Interest of J.W., 224 Neb. 897, 402 N.W.2d 671 (1987).

In order to terminate parental rights, the State must prove by clear and convincing evidence that one of the statutory grounds enumerated in this section exists and that termination is in the child's best interests. In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

Only one ground for termination under this section need be proved in order to terminate parental rights. In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

Pursuant to subsection (7) of this section, termination of parental rights requires a finding that the juvenile has been in an out-of-home placement for 15 or more months of the most recent 22 months. In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

The plain language of subsection (10) of this section does not require a criminal conviction or proof beyond a reasonable doubt that a parent has committed voluntary manslaughter or murder of his or her child, but merely clear and convincing evidence that the parent "committed" murder or voluntary manslaughter of his or her child. In re Interest of Anthony V., 12 Neb. App. 567, 680 N.W.2d 221 (2004).

A combination of the best interests of the child and evidence of fault or neglect on the part of the parent is required to terminate a parent's natural right to the custody of his or her own child. In re Interest of Crystal C., 12 Neb. App. 458, 676 N.W.2d 378 (2004).

Whether termination of parental rights is in the best interests of a child involves consideration of two aspects: (1) what the child might gain or lose by a continued relationship with the parent and (2) what the child might gain by the prospects of new relationships which the termination might open for the child. In re Interest of Heather G. et al., 12 Neb. App. 13, 664 N.W.2d 448 (2003).

Although there may have been no prior juvenile court action, including adjudication, the juvenile court acquires jurisdiction to terminate parental rights when a motion to terminate parental rights containing the grounds for Termination is filed under subsections (1) through (5) of this section. In re Interest of Brook P. et al., 10 Neb. App. 577, 634 N.W.2d 290 (2001).

In a hearing on the termination of parental rights without a prior adjudication, where such termination is sought under subsections (1) through (5) of this section, such proceedings must be accompanied by due process safeguards, as statutory provisions cannot abrogate constitutional rights. In re Interest of Brook P. et al., 10 Neb. App. 577, 634 N.W.2d 290 (2001).

The language of this section imposes two requirements before parental rights may be terminated: (1) the existence of one or more conditions listed in this section and (2) the best interests of the child. In re Interest of Azia B., 10 Neb. App. 124, 626 N.W.2d 602 (2001).

The essence of issue preclusion is that once parents have litigated their treatment of their child's sibling in an adjudication proceeding, they are not entitled to another opportunity to litigate the same issue in a subsequent proceeding involving the child under subsection (2) of this section. In re Interest of Jaden H., 10 Neb. App. 87, 625 N.W.2d 218 (2001).

The State may use factual findings from a sibling's case, when proved true by clear and convincing evidence, as a basis for termination of parental rights to a sibling. In re Interest of Jaden H., 10 Neb. App. 87, 625 N.W.2d 218 (2001).

Section 43-1505 provides specific statutory requirements for proving a case for termination of parental rights in a juvenile court action involving an Indian child, and the petition for termination of parental rights must include sufficient allegations of the requirements of section 43-1505 as well as this section to survive a demurrer. In re Interest of Sabrienia B., 9 Neb. App. 888, 621 N.W.2d 836 (2001).

In order to justify termination of parental rights pursuant to subsection (6) of this section, the State must prove by clear and convincing evidence that (1) the parent has failed to comply, in whole or in part, with a reasonable provision material to the rehabilitation objective of the plan and (2) that termination of parental rights is in the best interests of the child. In re Interest of Joseph L., 8 Neb. App. 539, 598 N.W.2d 464 (1999).

Pursuant to this section, a court may terminate parental rights when such action is in the best interests of the child and one or more of the statutorily specified conditions exist. In re Interest of Joseph L., 8 Neb. App. 539, 598 N.W.2d 464 (1999).

Parental incarceration is a factor which may be considered in determining whether parental rights should be terminated. A parent's failure to change a lifestyle of chemical dependency may constitute neglect under subsection (2) of this section. In re Interest of Joshua M. et al., 7 Neb. App. 872, 587 N.W.2d 131 (1998).

A parent's parental rights may not be terminated pursuant to the provisions of this section based solely upon the parent's refusal to waive his or her constitutional and statutory protec-

tions against self-incrimination. In re Interest of Clifford M. et al., 6 Neb. App. 754, 577 N.W.2d 547 (1998).

In the absence of an adjudication petition and hearing in compliance with section 43-247, an order purporting to terminate parental rights pursuant to this section is a nullity. In re Interest of Joelyann H., 6 Neb. App. 472, 574 N.W.2d 185 (1998).

Termination of parental rights is protected by due process under the U.S. and Nebraska Constitutions, and in the absence of a valid waiver by all parties to such proceedings, a verbatim transcript of those proceedings shall be made and preserved in the separate juvenile court. In re Interest of M.W. and R.W., 1 Neb. App. 378, 497 N.W.2d 396 (1992).

43-292.01 Termination of parental rights; appointment of guardian ad litem; when.

When termination of the parent-juvenile relationship is sought under subdivision (5) of section 43-292, the court shall appoint a guardian ad litem for the alleged incompetent parent. The court may, in any other case, appoint a guardian ad litem, as deemed necessary or desirable, for any party. The guardian ad litem shall be paid a reasonable fee set by the court and paid from the general fund of the county.

Source: Laws 1998, LB 1041, § 28.

A guardian ad litem appointed for a parent is entitled to participate fully in the proceeding to terminate parental rights. In re Interest of D.S. and T.S., 236 Neb. 413, 461 N.W.2d 415 (1990).

Appointment of a guardian ad litem for parents whose parental rights are sought to be terminated under subdivision (5) of section 43-292 is mandatory. Failure to appoint a guardian ad

litem to protect the interests of such a parent is plain error which requires that the judgment be reversed. In re Interest of M.M., C.M., and D.M., 230 Neb. 388, 431 N.W.2d 611 (1988).

Supreme Court urges appointments of an attorney and of a guardian ad litem be separated. In re Interest of C.W., 226 Neb. 719, 414 N.W.2d 277 (1987).

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

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

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

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

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

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

- (a) The child is being cared for by a relative;
- (b) The Department of Health and Human Services has documented in the case plan or permanency plan, which shall be available for court review, a compelling reason for determining that filing such a petition would not be in the best interests of the juvenile; or
- (c) The family of the juvenile has not had a reasonable opportunity to avail themselves of the services deemed necessary in the case plan or permanency plan approved by the court if reasonable efforts to preserve and reunify the family are required under section 43-283.01.

Source: Laws 1998, LB 1041, § 29.

Pursuant to subsection (3)(b) of this section, an exception hearing must be conducted after the child has been in foster care for 15 of the most recent 22 months. In re Interest of Sarah K., 258 Neb. 52, 601 N.W.2d 780 (1999).

For termination of parental rights, this section's "identification and approval of an adoptive family" requirement is not a requirement for Termination. In re Interest of Georgina V. & Manuel V., 9 Neb. App. 791, 620 N.W.2d 130 (2000).

43-292.03 Termination of parental rights; state; Department of Health and Human Services; duties.

(1) Within thirty days after the fifteen-month period under subsection (1) of section 43-292.02, the court shall hold a hearing on the record and shall make a determination on the record as to whether there is an exception under subsection (3) of section 43-292.02 in this particular case. If there is no exception, the state shall proceed as provided in subsection (1) of section 43-292.02.

(2) The Department of Health and Human Services shall submit on a timely basis, to the court in which the petition to place the juvenile in an out-of-home placement was filed and to the county attorney who filed the petition, a list of the name of each juvenile who has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months.

Source: Laws 1998, LB 1041, § 30.

An order entered pursuant to this section referring the matter to the State for filing of a petition to terminate parental rights is not a final, appealable order. In re Interest of Anthony R. et al., 264 Neb. 699, 651 N.W.2d 231 (2002).

Failure of the juvenile court to conduct an exception hearing pursuant to this section does not deny a parent due process of law. In re Interest of Clifford M. et al., 261 Neb. 862, 626 N.W.2d 549 (2001).

43-293 Termination of parental rights; effect; adoption; consent.

When the parental rights have been terminated under section 43-292 and the care of the juvenile is awarded to the Department of Health and Human Services, the department shall have authority to consent to the legal adoption of such juvenile and no other consent shall be required to authorize any court having jurisdiction to enter a legal decree of adoption of such juvenile. When the care of such juvenile is awarded to an individual or association and the parental rights have been terminated by the juvenile court, such individual or association may consent, only when authorized by order of such juvenile court, to the legal adoption of such juvenile and no other consent shall be required to authorize any court having jurisdiction to enter a legal decree of adoption of such juvenile. An order terminating the parent-juvenile relationship shall divest the parent and juvenile of all legal rights, privileges, duties, and obligations with respect to each other and the parents shall have no rights of inheritance with respect to such juvenile. The order terminating parental rights shall be final and may be appealed in the same manner as other final judgments of a juvenile court.

Source: Laws 1981, LB 346, § 49; Laws 1996, LB 1044, § 144.

Cross References

Adoption of child, substitute consents, see sections 43-105 and 43-906.

When parental rights of the surviving parent have been terminated under section 43-295, that parent's parents lack standing to request visitation rights. In re Interest of Ditter, 212 Neb. 855, 326 N.W.2d 675 (1982).

legal rights, privileges, duties, and obligations with respect to each other. In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

According to this section, an order terminating the parent-juvenile relationship shall divest the parent and juvenile of all

43-294 Termination of parental rights; custodian; rights; obligations.

The custodian appointed by a juvenile court shall have charge of the person of the juvenile and the right to make decisions affecting the person of the juvenile, including medical, dental, surgical, or psychiatric treatment, except that consent to a juvenile marrying or joining the armed forces of the United States may be given by a custodian, other than the Department of Health and Human Services, with approval of the juvenile court, or by the department, as to juveniles in its custody, without further court authority. The authority of a custodian appointed by a juvenile court shall terminate when the individual under legal custody reaches nineteen years of age, is legally adopted, or the authority is terminated by order of the juvenile court. When an adoption has been granted by a court of competent jurisdiction as to any such juvenile, such fact shall be reported immediately by such custodian to the juvenile court. If the adoption is denied the jurisdiction over the juvenile shall immediately revert to the court which authorized placement of the juvenile for adoption. Any association or individual receiving the care or custody of any such juvenile shall be subject to visitation or inspection by the Department of Health and Human Services, or any probation officer of such court or any person appointed by the court for such purpose, and the court may at any time require from such association or person a report or reports containing such information or statements as the judge shall deem proper or necessary to be fully advised as to the care, maintenance, and moral and physical training of the juvenile, as well as the standing and ability of such association or individual to care for such juvenile. The custodian so appointed by the court shall have standing as a party in that case to file any pleading or motion, to be heard by the court with regard to such filings, and to be granted any review or relief requested in such filings consistent with Chapter 43, article 2.

Source: Laws 1981, LB 346, § 50; Laws 1984, LB 845, § 32; Laws 1996, LB 1044, § 145.

43-295 Juvenile court; continuing jurisdiction; exception.

Except when the juvenile has been legally adopted, the jurisdiction of the court shall continue over any juvenile brought before the court or committed under the Nebraska Juvenile Code and the court shall have power to order a change in the custody or care of any such juvenile if at any time it is made to appear to the court that it would be for the best interests of the juvenile to make such change.

Source: Laws 1981, LB 346, § 51; Laws 1985, LB 447, § 27.

A separate juvenile court retains jurisdiction to order a temporary change in custody if it is in the child's best interests. In re Interest of Jedidiah P., 267 Neb. 258, 673 N.W.2d 553 (2004).

tion would be in the best interests of the juvenile. In re Interest of Jedidiah P., 267 Neb. 258, 673 N.W.2d 553 (2004).

Any order regarding the disposition of a juvenile pending the resolution of an appeal of the adjudication can only be made on a temporary basis upon a finding by the court that such disposi-

The exercise of a separate juvenile court's jurisdiction pending an appeal must be determined by the facts of each case. Pending an appeal from an adjudication, the juvenile court does not have

the power to enter a permanent dispositional order. In re Interest of Jedidiah P., 267 Neb. 258, 673 N.W.2d 553 (2004).

When parental rights of the surviving parent have been terminated under this section, that parent's parents lack standing to request visitation rights. In re Interest of Ditter, 212 Neb. 855, 326 N.W.2d 675 (1982).

A juvenile court's commitment of a juvenile to a youth rehabilitation treatment center does not constitute a discharge with-

in the meaning of section 43-247, and therefore, the juvenile court retains jurisdiction. In re Interest of David C., 6 Neb. App. 198, 572 N.W.2d 392 (1997).

The continuing jurisdiction of a juvenile court under this section does not include the power to terminate parental rights pending an appeal. In re Interest of Joshua M., et al., 4 Neb. App. 659, 548 N.W.2d 348 (1996).

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

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

Source: Laws 1981, LB 346, § 52; Laws 1985, LB 447, § 28; Laws 1996, LB 1044, § 146.

Cross References

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

43-297 Juveniles in need of assistance; placement with association or institution; agreements; effect.

It shall be lawful for the parent, guardian, or other person having the right to dispose of a juvenile defined in subdivision (3)(a) of section 43-247 to enter into an agreement with any association or institution incorporated under any public or private law of this state or any other state, for the purpose of aiding, caring for, or placing such juveniles in homes and, subject to approval as provided in this section, to surrender such juveniles to such association or institution, to be taken and cared for by such association or institution, or put into a family home. Such agreement may contain any and all proper stipulations to that end and may authorize the association or institution by its attorney or agent to appear in any proceeding for the legal adoption of such juvenile, and consent to such juvenile's adoption; and the order of the court, made upon such consent, shall be binding upon the juvenile and his or her parents or guardian, or other person, the same as if such person were personally in court and consented thereto, whether made party to the proceeding or not. All the publication or

notice necessary for the adoption of any such juveniles shall be that the institution or parties having charge of such juveniles by court decree, or to whom a relinquishment of the juvenile was given, shall know that such legal adoption is being made.

Source: Laws 1981, LB 346, § 53.

43-298 Commitment of juvenile; religious preference considered.

The court in committing juveniles under the Nebraska Juvenile Code shall place them as far as practicable in the care and custody of some individual holding the same religious belief as the parents of the juvenile or with some association which is controlled by persons of like religious faith of the parents of the juvenile.

Source: Laws 1981, LB 346, § 54; Laws 1985, LB 447, § 29.

43-299 Code, how construed.

Nothing in the Nebraska Juvenile Code shall be construed to repeal any portion of the act to aid the youth rehabilitation and treatment centers for juveniles.

Source: Laws 1981, LB 346, § 55; Laws 1985, LB 447, § 30; Laws 1994, LB 988, § 23.

Cross References

Youth rehabilitation and treatment centers, see sections 43-407 and 43-416.

43-2,100 Department of Health and Human Services; acceptance of juveniles for observation and treatment; authorized.

The Department of Health and Human Services may receive any juvenile for observation and treatment from any public institution other than a state institution or from any private or charitable institution or person having legal custody thereof upon such terms as such department may deem proper.

Source: Laws 1981, LB 346, § 56; Laws 1996, LB 1044, § 147.

43-2,101 Costs of transporting juvenile to department; payment by county; when.

Unless otherwise ordered by the court pursuant to section 43-290, each county shall bear all the expenses incident to the transportation of each juvenile from such county to the Department of Health and Human Services, together with such fees and costs as are allowed by law in similar cases. The fees, costs, and expenses shall be paid from the county treasury upon itemized vouchers certified by the judge of the juvenile court.

Source: Laws 1981, LB 346, § 57; Laws 1987, LB 638, § 8; Laws 1996, LB 1044, § 148.

(h) POSTDISPOSITIONAL PROCEDURES

43-2,102 Setting aside adjudication; when.

Whenever any juvenile is adjudged to be a juvenile as defined in subdivision (1), (2), (3)(b), or (4) of section 43-247 and has satisfactorily completed his or her probation and supervision, or the treatment program of his or her commit-

ment, any interested party may request the court which entered the adjudication to set aside that adjudication.

Source: Laws 1981, LB 346, § 58.

43-2,103 Setting aside adjudication; factors considered.

In determining whether to set aside the adjudication, the court shall consider:

- (1) The behavior of the juvenile after the adjudication and his or her response to treatment and rehabilitation programs;
- (2) Whether the setting aside of the adjudication will depreciate the seriousness of his or her conduct or promote disrespect for law; and
- (3) Whether the failure to set aside the adjudication may result in disabilities disproportionate to the conduct upon which the adjudication was based.

Source: Laws 1981, LB 346, § 59.

43-2,104 Setting aside adjudication; hearing; order.

After hearing, the court may grant the request and issue an order setting aside the adjudication under section 43-247 when in the opinion of the court the order will be in the best interest of the petitioner and consistent with the public welfare.

Source: Laws 1981, LB 346, § 60; Laws 1995, LB 371, § 17.

43-2,105 Setting aside adjudication; records, sealed; notice of hearing; violation; contempt.

When the court issues an order setting aside the adjudication under section 43-247, the order shall also require that all records relevant to the adjudication be sealed. Such records shall not be available to the public except upon the order of the court for good cause shown. The court order may include all records of the court, law enforcement officers, county attorneys, or any institution, person, or agency which may have such records. Notice of hearing to set aside the adjudication and seal the records shall be given to the county attorney and any person, agency, or institution that may be affected by such order by delivering by hand or by mailing a copy of the request by registered or certified mail, together with the order of the court which states the time for hearing, to the last-known address of such person, agency, or institution at least ten days before the date for hearing. Any person who fails to comply with the order of the court as provided for in section 43-2,104 or knowingly reveals information covered by such order may be held in contempt of court, except that this section does not prohibit law enforcement agencies from maintaining data to assist law enforcement officers, county attorneys, and sentencing judges in the investigation of crimes and the prosecution and sentencing of criminal defendants.

Source: Laws 1981, LB 346, § 61; Laws 1995, LB 371, § 18.

The separate juvenile court does not have statutory authority to order expungement of a juvenile record. In re Interest of P.L.F., 218 Neb. 68, 352 N.W.2d 183 (1984).

43-2,106 Proceeding in county court sitting as juvenile court; jurisdiction; appeals.

When a juvenile court proceeding has been instituted before a county court sitting as a juvenile court, the original jurisdiction of the county court shall continue until the final disposition thereof and no appeal shall stay the enforcement of any order entered in the county court. After appeal has been filed, the appellate court, upon application and hearing, may stay any order, judgment, or decree on appeal if suitable arrangement is made for the care and custody of the juvenile. The county court shall continue to exercise supervision over the juvenile until a hearing is had in the appellate court and the appellate court enters an order making other disposition. If the appellate court adjudges the juvenile to be a juvenile meeting the criteria established in subdivision (1), (2), (3), or (4) of section 43-247, the appellate court shall affirm the disposition made by the county court unless it is shown by clear and convincing evidence that the disposition of the county court is not in the best interest of such juvenile. Upon determination of the appeal, the appellate court shall remand the case to the county court for further proceedings consistent with the determination of the appellate court.

Source: Laws 1981, LB 346, § 63; Laws 1986, LB 529, § 48; Laws 1989, LB 182, § 17; Laws 1991, LB 732, § 103; Laws 1994, LB 1106, § 7.

Disposition order entered while child's adjudication order pending on appeal went beyond exercise of "supervision" and was outside county court's authority. In re Interest of Andrew H. et al., 5 Neb. App. 716, 564 N.W.2d 611 (1997).

43-2,106.01 Judgments or final orders; appeal; parties; cost.

(1) Any final order or judgment entered by a juvenile court may be appealed to the Court of Appeals in the same manner as an appeal from district court to the Court of Appeals. The appellate court shall conduct its review within the same time and in the same manner prescribed by law for review of an order or judgment of the district court, except as provided in sections 43-287.01 to 43-287.06 and except that when appeal is taken from a finding by the juvenile court terminating parental rights, the cause shall be advanced for argument before the appellate court and the appellate court shall, in order to expedite the preferred disposition of the case and the juvenile, render the judgment and write its opinion, if any, as speedily as possible.

(2) An appeal may be taken by:

(a) The juvenile;

(b) The guardian ad litem;

(c) The juvenile's parent, custodian, or guardian. For purposes of this subdivision, custodian or guardian shall include, but not be limited to, the Department of Health and Human Services, an association, or an individual to whose care the juvenile has been awarded pursuant to the Nebraska Juvenile Code; or

(d) The county attorney or petitioner, except that in any case determining delinquency issues in which the juvenile has been placed legally in jeopardy, an appeal of such issues may only be taken by exception proceedings pursuant to sections 29-2317 to 29-2319.

(3) In all appeals from the county court sitting as a juvenile court, the judgment of the appellate court shall be certified without cost to the juvenile

court for further proceedings consistent with the determination of the appellate court.

Source: Laws 1959, c. 189, § 11, p. 686; Laws 1972, LB 1305, § 1; R.S.1943, (1978), § 43-238; Laws 1981, LB 346, § 83; Laws 1989, LB 182, § 18; Laws 1991, LB 732, § 104; Laws 1992, LB 360, § 11; R.S.Supp.,1992, § 43-2,126; Laws 1994, LB 1106, § 6; Laws 1996, LB 1044, § 149.

A public defender appointed to represent a juvenile is not a party to the juvenile proceeding and may not bring an appeal based on error regarding an order unrelated to the disposition of the juvenile's case. In re Interest of William G., 256 Neb. 788, 592 N.W.2d 499 (1999).

an award under the Nebraska Juvenile Code. One empowered by parental authority to care for a child is a "custodian" and has standing to appeal a juvenile court's order. In re Interest of Artharena D., 253 Neb. 613, 571 N.W.2d 608 (1997).

Under subsection (2)(c) of this section, the term "custodian" extends beyond those having the care of a juvenile by means of

43-2,106.02 Power of court to vacate or modify judgments or orders.

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

Source: Laws 2006, LB 1115, § 33.

43-2,106.03 Rehabilitative services; hearing; court order; use.

Any time after the disposition of a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, upon the motion of any party or the court on its own motion, a hearing may be held regarding the amenability of the juvenile to the rehabilitative services that can be provided under the Nebraska Juvenile Code. The court may enter an order, based upon evidence presented at the hearing, finding that a juvenile is not amenable to rehabilitative services that can be provided under the Nebraska Juvenile Code. The reasons for such a finding shall be stated in the order. Such an order shall be considered by the county attorney in making a future determination under section 43-276 regarding such juvenile and by the court when considering a future transfer motion under section 29-1816 or any future charge or petition regarding such juvenile.

Source: Laws 2008, LB1014, § 41.
Operative date July 18, 2008.

(i) MISCELLANEOUS PROVISIONS

43-2,107 Court; control conduct of a person; notice; hearing; temporary order; violation of order; penalty.

On application of a party or on the court's own motion, the court may restrain or otherwise control the conduct of a person if a petition has been filed under the Nebraska Juvenile Code and the court finds that such conduct is or may be detrimental or harmful to the juvenile. Notice of the application or motion and an opportunity to be heard thereon shall be given to the person against whom such application or motion is directed, except that the court may enter a temporary order restraining or otherwise controlling the conduct of a person for the protection of a juvenile without prior notice if it appears to the court that it is necessary to issue such order forthwith. Such temporary order shall be effective not to exceed ten days and shall not be binding against any

person unless he or she has received a copy of such order. Any individual who violates an order restraining or otherwise controlling his or her conduct under this section shall be guilty of a Class II misdemeanor and may be proceeded against as described in sections 42-928 and 42-929.

Source: Laws 1981, LB 346, § 62; Laws 1985, LB 447, § 31; Laws 1992, LB 1184, § 16.

Before an order is issued under this section, the juvenile court must accord the person affected due process. This section requires that the person to be restrained or whose conduct is to be controlled receives (1) notice that such an order is requested or contemplated and (2) an opportunity to be heard on the propri-

ety of issuing such an order. The opportunity to be heard, described in this section, means a meaningful opportunity to be heard. In re Interest of G.G. et al., 237 Neb. 306, 465 N.W.2d 752 (1991).

43-2,108 Juvenile court; files; how kept; certain reports and records not open to inspection without order of court; exception.

(1) The juvenile court judge shall keep a minute book in which he or she shall enter minutes of all proceedings of the court in each case, including appearances, findings, orders, decrees, and judgments, and any evidence which he or she feels it is necessary and proper to record. Juvenile court legal records shall be deposited in files and shall include the petition, summons, notice, certificates or receipts of mailing, minutes of the court, findings, orders, decrees, judgments, and motions.

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

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

the juvenile or such juvenile's immediate family, who are the subject of such investigation; and (c) the court of jurisdiction may disseminate such confidential record information to any court, which has jurisdiction of the juvenile who is the subject of such information upon such court's request.

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

(5)(a) Any records concerning a juvenile court petition filed pursuant to subdivision (3)(c) of section 43-247 shall remain confidential except as may be provided otherwise by law. Such records shall be accessible to (i) the juvenile except as provided in subdivision (b) of this subsection, (ii) the juvenile's counsel, (iii) the juvenile's parent or guardian, and (iv) persons authorized by an order of a judge or court.

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

Source: Laws 1981, LB 346, § 65; Laws 1997, LB 622, § 73.

Statutory provisions do not overcome constitutional rights. Since Star Chamber proceedings were abolished long ago, it may be that a statute which undertakes to secrete from a party information provided to the tribunal which uses that same information in adjudicating that party's parental rights offends due process. In re Interest of J.H., 242 Neb. 906, 497 N.W.2d 346 (1993).

There is no due process of law violation in the juvenile court's refusal to allow inspection of two caseworkers' case files in a termination of parental rights case when counsel had an opportunity to depose the caseworkers at length and good cause was not shown. In re Interest of S.W., 220 Neb. 734, 371 N.W.2d 726 (1985).

43-2,109 County board of visitors; appointment; duties; reports; expenses.

In each county the judge presiding over the juvenile court may appoint a board of four reputable residents, who shall serve without compensation, to constitute a board of visitation whose duty it shall be to visit at least once a year all institutions, societies, and associations within the county receiving juveniles under the Nebraska Juvenile Code. Visits shall be made by not less than two of the members of the board, who shall go together or make a joint report. The board of visitors shall report to the court, from time to time, the condition of juveniles received by or in the charge of such associations and institutions and shall make an annual report to the Department of Health and Human Services in such form as the department may prescribe. The county board may, in its discretion, make appropriations for the payment of the actual and necessary expenses incurred by the visitors in the discharge of their official duties.

Source: Laws 1981, LB 346, § 66; Laws 1985, LB 447, § 32; Laws 1994, LB 988, § 24; Laws 1996, LB 1044, § 150.

43-2,110 Detention homes; power of county boards to provide.

The several county boards of counties of Nebraska shall have the power and authority to appropriate the funds necessary to establish and maintain detention homes in connection with the juvenile courts of this state.

Source: Laws 1981, LB 346, § 67.

(j) SEPARATE JUVENILE COURTS

43-2,111 Establishment; when; court of record.

Each county of this state having a population of seventy-five thousand or more inhabitants shall constitute a separate juvenile court judicial district. There shall be established in each such juvenile court judicial district of this state a separate juvenile court whenever the establishment thereof shall be authorized by a majority of the electors of any such county voting thereon. The court so established shall be a court of record.

Source: Laws 1959, c. 189, § 1, p. 683; Laws 1976, LB 669, § 1; R.S.1943, (1978), § 43-228; Laws 1981, LB 346, § 68; Laws 1984, LB 973, § 1.

If the State wishes to rely on evidence from dispositional proceedings to support a termination based on failed efforts at rehabilitation, it must see that a verbatim record is made so that the testimony and other foundation evidence is preserved; otherwise, there can be no meaningful review by the Supreme Court. In re Interest of R.A., 226 Neb. 160, 410 N.W.2d 110 (1987).

Probation officers are provided to carry out the work of the separate juvenile court. Beck v. Beck, 175 Neb. 108, 120 N.W.2d 585 (1963).

Constitutionality of Separate Juvenile Court Act could only be raised in proceeding brought directly for that purpose. State ex rel. Weiner v. Hans, 174 Neb. 612, 119 N.W.2d 72 (1963).

43-2,112 Establishment; petition; election; transfer of dockets.

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

Shall there be established in County a separate juvenile court?

..... Yes

..... No

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

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

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

Cross References

Election Act, see section 32-101.

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

(1) In counties where a separate juvenile court is established, the county board of the county shall provide suitable rooms and offices for the accommodation of the judge of the separate juvenile court and the officers and employees

appointed by such judge or by the probation administrator pursuant to subsection (4) of section 29-2253. Such separate juvenile court and the judge, officers, and employees of such court shall have the same and exclusive jurisdiction, powers, and duties that are prescribed in the Nebraska Juvenile Code, concurrent jurisdiction under section 83-223, and such other jurisdiction, powers, and duties as specifically provided by law.

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

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

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

Separate juvenile court has exclusive jurisdiction over neglected, dependent, and delinquent children. *Miller v. Department of Public Welfare*, 182 Neb. 155, 153 N.W.2d 737 (1967).

43-2,114 Judge; nomination; appointment; retention; vacancy.

All judges of separate juvenile courts shall be nominated, appointed, and retained in office in accordance with the provisions of Article V, section 21, of the Constitution of Nebraska. Each of such judges shall hold office until his or her successor is selected and qualified. Any vacancy in the office of judge of the separate juvenile courts shall be filled by nomination and appointment as provided by Article V, section 21, of the Constitution of Nebraska.

Source: Laws 1963, c. 244, § 1, p. 737; R.S.1943, (1978), § 43-230.01; Laws 1981, LB 346, § 71.

Cross References

Judges, retirement, discipline, and general powers, see Chapter 24, article 7.

43-2,115 Judge; retention in office; how determined.

After May 6, 1963, the right of any judge of any separate juvenile court to continue in office for another term shall be determined by the electorate in the

manner provided by Article V, section 21, of the Constitution of Nebraska and the laws of this state.

Source: Laws 1963, c. 244, § 3, p. 738; R.S.1943, (1978), § 43-230.03; Laws 1981, LB 346, § 72.

Cross References

For provisions for retention in office, see sections 24-813 to 24-818.

43-2,116 Judge; term of office.

The term of office of judges of any separate juvenile court, who are approved by the electorate, shall be for six years beginning on the first Thursday after the first Tuesday in January following his or her approval by the electorate. Any judge of any separate juvenile court appointed to office after the expiration of the term of incumbent judges shall serve for three full years after his or her appointment and thereafter, if he or she desires to continue in office, shall cause his or her right to continue in office to be submitted to the electorate in the manner provided by law at the first general election held after he or she has served three full years as such judge, and the term of office for which he or she was appointed shall expire on the first Thursday after the first Tuesday of January following the general election at which his or her right to continue in office was subject to approval of the electorate.

Source: Laws 1963, c. 244, § 4, p. 738; R.S.1943, (1978), § 43-230.04; Laws 1981, LB 346, § 73.

43-2,117 Judicial nominating commission; selection; provisions applicable.

Judicial nominating commissions for the office of judge of the separate juvenile court shall be selected in the manner and subject to all of the terms and provisions of law relating to judicial nominating commissions generally, as provided by the Constitution of Nebraska and the laws of this state.

Source: Laws 1963, c. 244, § 5, p. 738; R.S.1943, (1978), § 43-230.05; Laws 1981, LB 346, § 74.

Cross References

For provisions of nominating commission, see sections 24-801 to 24-812.01.

43-2,118 Judge; qualifications.

No person shall be eligible to the office of judge of a separate juvenile court unless he or she (1) is thirty years of age, (2) is a citizen of the United States, (3) has been engaged in the practice of law in the State of Nebraska for at least five years, which may include prior service as a judge, (4) is currently admitted to practice before the Nebraska Supreme Court, and (5) is, on the effective date of appointment, a resident of the district to be served, and remains a resident of such district during the period of service.

Source: Laws 1959, c. 189, § 6, p. 685; Laws 1979, LB 237, § 4; R.S.Supp.,1980, § 43-233; Laws 1981, LB 346, § 75.

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

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

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

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

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

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

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

43-2,120 Judge; salary; source of payment.

The salary of a judge of a separate juvenile court shall be as provided in section 24-301.01 and shall be paid out of the General Fund of the state.

Source: Laws 1959, c. 189, § 7, p. 685; Laws 1965, c. 110, § 2, p. 434; Laws 1974, LB 228, § 2; Laws 1979, LB 373, § 3; R.S.Supp.,1980, § 43-234; Laws 1981, LB 346, § 77.

43-2,121 Judge; salary increase; when effective.

Sections 24-301.01 and 43-2,120 shall be so interpreted as to effectuate their general purpose to provide, in the public interest, adequate compensation for judges of the separate juvenile courts as soon as such change may become operative under the Constitution of Nebraska.

Source: Laws 1965, c. 110, § 3, p. 434; R.S.1943, (1978), § 43-234.01; Laws 1981, LB 346, § 78.

43-2,122 Clerk; no additional compensation; custodian of seal.

The clerk of the district court in a county having a separate juvenile court shall serve ex officio as clerk of the separate juvenile court. Such clerk shall not receive any additional compensation for performing the duties of such office. He or she shall keep the seal of the court.

Source: Laws 1959, c. 189, § 8, p. 685; R.S.1943, (1978), § 43-235; Laws 1981, LB 346, § 79.

43-2,123 Judge; personal staff; appointment; salary.

Each judge of a separate juvenile court shall appoint his or her own court reporter, bailiff, and other necessary personal staff. Each court reporter shall be well-skilled in the art of stenography and capable of reporting verbatim the oral proceedings had in court. The salaries of the bailiff and other necessary personal staff of the separate juvenile court shall be fixed by the presiding judge, subject to the approval of the board of county commissioners or supervisors, and shall be paid out of the general fund of the county.

Source: Laws 1959, c. 189, § 9, p. 685; Laws 1973, LB 446, § 2; R.S.1943, (1978), § 43-236; Laws 1981, LB 346, § 80; Laws 1984, LB 13, § 79.

Where the parents of a minor child are unfit to have its custody, custody may be properly placed in chief juvenile probation officer. *Houghton v. Houghton*, 179 Neb. 275, 137 N.W.2d 861 (1965); *Hall v. Hall*, 178 Neb. 91, 132 N.W.2d 217 (1964).

Separate juvenile court may place child in custody of probation officer where both parents are unfit to have custody. *Beck v. Beck*, 175 Neb. 108, 120 N.W.2d 585 (1963).

43-2,123.01 Probation officers; appointment prohibited.

Separate juvenile courts shall be prohibited from appointing juvenile probation officers after December 31, 1984.

Source: Laws 1984, LB 13, § 67.

Cross References

Definitions applicable, see section 29-2246.

43-2,124 Repealed. Laws 1984, LB 13, § 90.

43-2,125 Designation of alternative judge; when authorized.

Whenever any judge of a separate juvenile court is disabled or disqualified to act in any cause before him or her or is temporarily absent from the county or whenever it would be beneficial to the administration of justice, a judge of the district court may agree to serve as judge of the separate juvenile court during such period or the Chief Justice of the Supreme Court may designate and appoint a judge of the district court, a judge of another separate juvenile court, or a judge of the county court to serve as judge of the separate juvenile court during such period. The Chief Justice may also appoint a judge of a separate juvenile court to hear juvenile matters in a county court.

Source: Laws 1959, c. 189, § 10, p. 686; R.S.1943, (1978), § 43-237; Laws 1981, LB 346, § 82; Laws 1982, LB 787, § 21; Laws 1986, LB 516, § 15; Laws 1993, LB 154, § 1; Laws 2001, LB 23, § 4.

43-2,126 Transferred to section 43-2,106.01.

43-2,127 Abolition; petition; election; transfer of dockets.

After a separate juvenile court has been established, the question of whether it should be abolished shall be submitted to the registered voters of any county having adopted same at the first general state election held not less than four months after the filing with the Secretary of State of a petition requesting the abolishment of such court signed by registered voters of such county in a number not less than five percent of the total vote cast for Governor in such county at the statewide general election next preceding the filing of the petition. The question shall be submitted to the registered voters of the county in the following form:

Shall the separate juvenile court in County be abolished?

..... Yes

..... No

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

If the proposition to abolish a separate juvenile court is carried by a majority of the registered voters voting on the proposition, the jurisdiction, powers, and duties of the separate juvenile court shall cease, and the powers and duties of the county court over juvenile matters shall be reestablished, at the end of the term of the incumbent juvenile judge. After a separate juvenile court has been

abolished, the clerk of the county court shall forthwith transfer to the docket of the county court all pending matters theretofore within the exclusive jurisdiction of the separate juvenile court for consideration and disposition by the county court.

Source: Laws 1959, c. 189, § 12, p. 686; Laws 1979, LB 373, § 4; R.S.Supp.,1980, § 43-239; Laws 1981, LB 346, § 84; Laws 1994, LB 76, § 554.

Cross References

Election Act, see section 32-101.

(k) CITATION AND CONSTRUCTION OF CODE

43-2,128 Code, how construed.

The Nebraska Juvenile Code shall be liberally construed to the end that its purpose may be carried out as provided in section 43-246.

Source: Laws 1981, LB 346, § 64; Laws 1985, LB 447, § 34.

43-2,129 Code, how cited.

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

Source: Laws 1981, LB 346, § 85; Laws 1985, LB 447, § 35; Laws 1989, LB 182, § 19; Laws 1994, LB 1106, § 8; Laws 1997, LB 622, § 74; Laws 1998, LB 1041, § 31; Laws 1998, LB 1073, § 27; Laws 2000, LB 1167, § 23; Laws 2003, LB 43, § 16; Laws 2006, LB 1115, § 32; Laws 2008, LB1014, § 42.
Operative date July 18, 2008.

43-2,130 Repealed. Laws 2000, LB 894, § 1.

ARTICLE 3

BOY SCOUTS AND SIMILAR ORGANIZATIONS

Section

43-301. Patrolling; activities authorized.

43-302. Officials; liability; exemption.

43-301 Patrolling; activities authorized.

It shall be lawful for Boy Scout council, board of directors, scout executive, or others having the management or control of Boy Scouts, and those having charge of juniors in similar organizations not organized for pecuniary gain or profit, to permit boys in such organizations to render service patrolling streets or grounds; and to aid in the maintenance of order at public gatherings, such as state, city, fair association, school, or any other gatherings at which it may be deemed expedient to have the service of such boys.

Source: Laws 1923, c. 127, § 1, p. 314; C.S.1929, § 43-301.

43-302 Officials; liability; exemption.

Boards, council executives, or others having charge of juveniles mentioned in section 43-301 shall not be liable in damages to said juveniles so employed, or to the parent or guardian, or to any other standing in loco parentis.

Source: Laws 1923, c. 127, § 2, p. 314; C.S.1929, § 43-302.

ARTICLE 4
OFFICE OF JUVENILE SERVICES

Cross References

Children committed to the Department of Health and Human Services, see sections 43-903 to 43-908.

Juvenile Services Act, see section 43-2401.

Nebraska Juvenile Code, see section 43-2,129.

Secure youth confinement facility, Department of Correctional Services, see sections 43-404 and 83-905.

Section

- 43-401. Act, how cited.
- 43-402. Legislative intent; juvenile justice system; goal.
- 43-403. Terms, defined.
- 43-404. Office of Juvenile Services; created; powers and duties.
- 43-405. Office of Juvenile Services; administrative duties.
- 43-406. Office of Juvenile Services; treatment programs, services, and systems; requirements.
- 43-407. Office of Juvenile Services; programs and treatment services; treatment plan; case management and coordination process; funding utilization; intent.
- 43-408. Office of Juvenile Services; committing court; determination of placement and treatment services; review status; when.
- 43-409. Office of Juvenile Services; access to records; immunity.
- 43-410. Juvenile absconding; authority to apprehend.
- 43-411. Detainers for apprehension and detention; authorized; detention; limitations.
- 43-412. Commitment to Office of Juvenile Services; discharge of juvenile; effect of discharge.
- 43-413. Evaluations authorized; costs.
- 43-414. Office of Juvenile Services; evaluation powers.
- 43-415. Evaluation; time limitation; extension.
- 43-416. Office of Juvenile Services; parole powers.
- 43-417. Juvenile parole; considerations.
- 43-418. Parole violations; apprehension and detention; when.
- 43-419. Parole violation; preliminary hearing.
- 43-420. Hearing officer; requirements.
- 43-421. Parole violations; rights of juvenile.
- 43-422. Parole violation; waiver and admission.
- 43-423. Parole violation hearing; requirements; appeal.

43-401 Act, how cited.

Sections 43-401 to 43-423 shall be known and may be cited as the Health and Human Services, Office of Juvenile Services Act.

Source: Laws 1998, LB 1073, § 33.

43-402 Legislative intent; juvenile justice system; goal.

It is the intent of the Legislature that the juvenile justice system provide individualized accountability and individualized treatment for juveniles in a manner consistent with public safety to those juveniles who violate the law. The juvenile justice system shall also promote prevention efforts which are community-based and involve all sectors of the community. Prevention efforts shall be provided through the support of programs and services designed to meet the needs of those juveniles who are identified as being at risk of violating the law and those whose behavior is such that they endanger themselves or others. The goal of the juvenile justice system shall be to provide a range of programs and services which:

- (1) Retain and support juveniles within their homes whenever possible and appropriate;

- (2) Provide the least restrictive and most appropriate setting for juveniles while adequately protecting them and the community;
- (3) Are community-based and are provided in as close proximity to the juvenile's community as possible and appropriate;
- (4) Provide humane, secure, and therapeutic confinement to those juveniles who present a danger to the community;
- (5) Provide followup and aftercare services to juveniles when returned to their families or communities to ensure that progress made and behaviors learned are integrated and continued;
- (6) Hold juveniles accountable for their unlawful behavior in a manner consistent with their long-term needs, stressing the offender's responsibility to victims and the community;
- (7) Base treatment planning and service provision upon an individual evaluation of the juvenile's needs recognizing the importance of meeting the educational needs of the juvenile in the juvenile justice system;
- (8) Are family focused and include the juvenile's family in assessment, case planning, treatment, and service provision as appropriate and emphasize parental involvement and accountability in the rehabilitation of their children;
- (9) Provide supervision and service coordination, as appropriate, to implement and monitor treatment plans and to prevent reoffending;
- (10) Provide integrated service delivery through appropriate linkages to other human service agencies; and
- (11) Promote the development and implementation of community-based programs designed to prevent unlawful behavior and to effectively minimize the depth and duration of the juvenile's involvement in the juvenile justice system.

Source: Laws 1994, LB 988, § 9; R.S.1943, (1994), § 83-925.01; Laws 1998, LB 1073, § 34; Laws 1999, LB 594, § 20.

43-403 Terms, defined.

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

- (1) Aftercare means the control, supervision, and care exercised over juveniles who have been paroled;
- (2) Committed means an order by a court committing a juvenile to the care and custody of the Office of Juvenile Services for treatment;
- (3) Community supervision means the control, supervision, and care exercised over juveniles committed to the Office of Juvenile Services when a commitment to the level of treatment of a youth rehabilitation and treatment center has not been ordered by the court;
- (4) Evaluation means assessment of the juvenile's social, physical, psychological, and educational development and needs, including a recommendation as to an appropriate treatment plan;
- (5) Parole means a conditional release of a juvenile from a youth rehabilitation and treatment center to aftercare or transferred to Nebraska for parole supervision by way of interstate compact;

(6) Placed for evaluation means a placement with the Office of Juvenile Services or the Department of Health and Human Services for purposes of an evaluation of the juvenile; and

(7) Treatment means type of supervision, care, confinement, and rehabilitative services for the juvenile.

Source: Laws 1998, LB 1073, § 35.

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

There is created within the Department of Health and Human Services the Office of Juvenile Services. The office shall have oversight and control of state juvenile correctional facilities and programs other than the secure youth confinement facility which is under the control of the Department of Correctional Services. The Administrator of the Office of Juvenile Services shall be appointed by the chief executive officer of the department or his or her designee and shall be responsible for the administration of the facilities and programs of the office. The department may contract with a state agency or private provider to operate any facilities and programs of the Office of Juvenile Services.

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

43-405 Office of Juvenile Services; administrative duties.

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

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

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

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

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

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

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

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

(8) Coordinate educational, vocational, and social counseling;

- (9) Coordinate community-based services for juveniles and their families;
- (10) Supervise and coordinate juvenile parole and aftercare services; and
- (11) Exercise all powers and perform all duties necessary to carry out its responsibilities under the Health and Human Services, Office of Juvenile Services Act.

Source: Laws 1998, LB 1073, § 37.

43-406 Office of Juvenile Services; treatment programs, services, and systems; requirements.

The Office of Juvenile Services shall utilize:

- (1) Risk and needs assessment instruments for use in determining the level of treatment for the juvenile;
- (2) A case classification process to include levels of treatment defined by rules and regulations and case management standards for each level of treatment. The process shall provide for a balance of accountability, public safety, and treatment;
- (3) Case management for all juveniles committed to the office;
- (4) A purchase-of-care system which will facilitate the development of a statewide community-based array of care with the involvement of the private sector and the local public sector. Care services may be purchased from private providers to provide a wider diversity of services. This system shall include accessing existing Title IV-E funds of the federal Social Security Act, as amended, medicaid funds, and other funding sources to support eligible community-based services. Such services developed and purchased shall include, but not be limited to, evaluation services. Services shall be offered and delivered on a regional basis;
- (5) Community-based evaluation programs, supplemented by one or more residential evaluation programs. A residential evaluation program shall be provided in a county containing a city of the metropolitan class. Community-based evaluation services shall replace the residential evaluation services available at the Youth Diagnostic and Rehabilitation Center by December 31, 1999; and
- (6) A management information system. The system shall be a unified, interdepartmental client information system which supports the management function as well as the service function.

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

43-407 Office of Juvenile Services; programs and treatment services; treatment plan; case management and coordination process; funding utilization; intent.

The Office of Juvenile Services shall design and make available programs and treatment services through the Youth Rehabilitation and Treatment Center-Kearney and Youth Rehabilitation and Treatment Center-Geneva. The programs and treatment services shall be based upon the individual or family evaluation process and treatment plan. The treatment plan shall be developed within fourteen days after admission. If a juvenile placed at the Youth Rehabilitation

and Treatment Center-Kearney or Youth Rehabilitation and Treatment Center-Geneva is assessed as needing inpatient or subacute substance abuse or behavioral health residential treatment, the juvenile may be transferred to a program or facility if the treatment and security needs of the juvenile can be met. The assessment process shall include involvement of both private and public sector behavioral health providers. The selection of the treatment venue for each juvenile shall include individualized case planning and incorporate the goals of the juvenile justice system pursuant to section 43-402. Juveniles committed to the Youth Rehabilitation and Treatment Center-Kearney or Youth Rehabilitation and Treatment Center-Geneva who are transferred to alternative settings for treatment remain committed to the Department of Health and Human Services and the Office of Juvenile Services until discharged from such custody. Programs and treatment services shall address:

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

(2) Drug and alcohol addiction;

(3) Health and medical needs;

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

(5) Individual, group, and family counseling services as appropriate with any treatment plan related to subdivisions (1) through (4) of this section. Services shall also be made available for juveniles who have been physically or sexually abused;

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

(7) The design and delivery of treatment programs through the youth rehabilitation and treatment centers as well as any licensing or certification requirements, and the office shall follow the requirements as stated within Title XIX and Title IV-E of the federal Social Security Act, as such act existed on May 25, 2007, the Special Education Act, or other funding guidelines as appropriate. It is the intent of the Legislature that these funding sources shall be utilized to support service needs of eligible juveniles.

Source: Laws 1994, LB 988, § 14; Laws 1997, LB 882, § 11; R.S.Supp.,1997, § 83-925.06; Laws 1998, LB 1073, § 39; Laws 2007, LB542, § 4.

43-408 Office of Juvenile Services; committing court; determination of placement and treatment services; review status; when.

(1) Whenever any juvenile is committed under any provision of law to the Office of Juvenile Services, to any facility operated by the Office of Juvenile Services, or to the custody of the Administrator of the Office of Juvenile Services, a superintendent of a facility, or an administrator of a program, the juvenile is deemed committed to the Office of Juvenile Services. Juveniles committed to the Office of Juvenile Services shall also be considered committed to the care and custody of the Department of Health and Human Services for the purpose of obtaining health care and treatment services.

(2) The committing court shall order the initial level of treatment for a juvenile committed to the Office of Juvenile Services. Prior to determining the initial level of treatment for a juvenile, the court may solicit a recommendation regarding the initial level of treatment from the Office of Juvenile Services. Under this section, the committing court shall not order a specific placement for a juvenile. The court shall continue to maintain jurisdiction over any juvenile committed to the Office of Juvenile Services until such time that the juvenile is discharged from the Office of Juvenile Services. The court shall conduct review hearings every six months, or at the request of the juvenile, for any juvenile committed to the Office of Juvenile Services who is placed outside his or her home, except for a juvenile residing at a youth rehabilitation and treatment center. The court shall determine whether an out-of-home placement made by the Office of Juvenile Services is in the best interests of the juvenile, with due consideration being given by the court to public safety. If the court determines that the out-of-home placement is not in the best interests of the juvenile, the court may order other treatment services for the juvenile.

(3) After the initial level of treatment is ordered by the committing court, the Office of Juvenile Services shall provide treatment services which conform to the court's level of treatment determination. Within thirty days after making an actual placement, the Office of Juvenile Services shall provide the committing court with written notification of where the juvenile has been placed. At least once every six months thereafter, until the juvenile is discharged from the care and custody of the Office of Juvenile Services, the office shall provide the committing court with written notification of the juvenile's actual placement and the level of treatment that the juvenile is receiving.

(4) For transfer hearings, the burden of proof to justify the transfer is on the Office of Juvenile Services, the standard of proof is clear and convincing evidence, and the strict rules of evidence do not apply. Transfers of juveniles from one place of treatment to another are subject to section 43-251.01 and to the following:

(a) Except as provided in subdivision (b) of this subsection, if the Office of Juvenile Services proposes to transfer the juvenile from a less restrictive to a more restrictive place of treatment, a plan outlining the proposed change and the reasons for the proposed change shall be presented to the court which committed the juvenile. Such change shall occur only after a hearing and a finding by the committing court that the change is in the best interests of the juvenile, with due consideration being given by the court to public safety. At the hearing, the juvenile has the right to be represented by counsel;

(b) The Office of Juvenile Services may make an immediate temporary change without prior approval by the committing court only if the juvenile is in a harmful or dangerous situation, is suffering a medical emergency, is exhibiting behavior which warrants temporary removal, or has been placed in a non-

state-owned facility and such facility has requested that the juvenile be removed. Approval of the committing court shall be sought within fifteen days of making an immediate temporary change, at which time a hearing shall occur before the court. The court shall determine whether it is in the best interests of the juvenile to remain in the new place of treatment, with due consideration being given by the court to public safety. At the hearing, the juvenile has the right to be represented by counsel; and

(c) If the proposed change seeks to transfer the juvenile from a more restrictive to a less restrictive place of treatment or to transfer the juvenile from the juvenile's current place of treatment to another which has the same level of restriction as the current place of treatment, the Office of Juvenile Services shall notify the juvenile, the juvenile's parents, custodian, or legal guardian, the committing court, the county attorney, the counsel for the juvenile, and the guardian ad litem of the proposed change. The juvenile has fifteen days after the date of the notice to request an administrative hearing with the Office of Juvenile Services, at which time the Office of Juvenile Services shall determine whether it is in the best interests of the juvenile for the proposed change to occur, with due consideration being given by the office to public safety. The juvenile may be represented by counsel at the juvenile's own expense. If the juvenile is aggrieved by the administrative decision of the Office of Juvenile Services, the juvenile may appeal that decision to the committing court within fifteen days after the Office of Juvenile Services' decision. At the hearing before the committing court, the juvenile has the right to be represented by counsel.

(5) If a juvenile is placed in detention after the initial level of treatment is determined by the committing court, the committing court shall hold a hearing every fourteen days to review the status of the juvenile. Placement of a juvenile in detention shall not be considered as a treatment service.

(6) The committing court's review of a change of place of treatment pursuant to this section does not apply to parole revocation hearings.

Source: Laws 1996, LB 1044, § 962; R.S.Supp.,1996, § 83-925.12; Laws 1998, LB 1073, § 40; Laws 2001, LB 598, § 1; Laws 2006, LB 1113, § 40.

Giving effect to the language of this section, while the Office of Juvenile Services may make an initial determination with regard to the advisability of the discharge of a juvenile committed to that office, the committing court, as a result of its

statutorily imposed continuing jurisdiction, must approve the discharge of the juvenile. In re Interest of Tamartha S., 267 Neb. 78, 672 N.W.2d 24 (2003).

43-409 Office of Juvenile Services; access to records; immunity.

The Office of Juvenile Services shall have access to and may obtain copies of all records pertaining to a juvenile committed to it or placed with it, including, but not limited to, school records, medical records, juvenile court records, probation records, test results, treatment records, evaluations, and examination reports. Any person who, in good faith, furnishes any records or information to the Office of Juvenile Services shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed. The owners, officers, directors, employees, or agents of such medical office, school, court, office, corporation, partnership, or other such entity shall not be liable for furnishing such records or information.

Source: Laws 1998, LB 1073, § 41.

43-410 Juvenile absconding; authority to apprehend.

Any peace officer, juvenile parole officer, or direct care staff member of the Office of Juvenile Services has the authority to apprehend and detain a juvenile who has absconded or is attempting to abscond from a placement for evaluation or commitment to the Office of Juvenile Services and shall cause the juvenile to be returned to the facility or program or an appropriate juvenile detention facility. For purposes of this section, direct care staff member means any staff member charged with the day-to-day care and supervision of juveniles housed at a facility or program operated directly by the office or security staff who has received training in apprehension techniques and procedures.

Source: Laws 1998, LB 1073, § 42.

43-411 Detainers for apprehension and detention; authorized; detention; limitations.

The chief executive officer of the Department of Health and Human Services shall have the authority, and may delegate the authority only to the Administrator of the Office of Juvenile Services and the superintendents of the youth rehabilitation and treatment centers, to issue detainers for the apprehension and detention of juveniles who have absconded from a placement with or commitment to the office. Any peace officer who detains a juvenile on such a detainer shall hold the juvenile in an appropriate facility or program for juveniles until the office can take custody of the juvenile.

Source: Laws 1997, LB 882, § 8; R.S.Supp.,1997, § 83-925.13; Laws 1998, LB 1073, § 43; Laws 1999, LB 522, § 1; Laws 2007, LB296, § 110.

43-412 Commitment to Office of Juvenile Services; discharge of juvenile; effect of discharge.

(1) Every juvenile committed to the Office of Juvenile Services pursuant to the Nebraska Juvenile Code or pursuant to subsection (3) of section 29-2204 shall remain committed until he or she attains the age of nineteen or is legally discharged.

(2) The discharge of any juvenile pursuant to the rules and regulations or upon his or her attainment of the age of nineteen shall be a complete release from all penalties incurred by conviction or adjudication of the offense for which he or she was committed.

Source: Laws 1901, c. 51, § 11, p. 407; Laws 1903, c. 69, § 2, p. 369; R.S.1913, § 7379; C.S.1922, § 7038; C.S.1929, § 83-1109; R.S. 1943, § 83-472; Laws 1969, c. 817, § 80, p. 3111; Laws 1974, LB 992, § 1; Laws 1993, LB 31, § 44; Laws 1994, LB 988, § 35; Laws 1996, LB 1044, § 956; R.S.Supp.,1996, § 83-472; Laws 1998, LB 1073, § 44.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

Under former law a commitment hereunder is not for a definite period. *State v. Pinkerton*, 186 Neb. 225, 182 N.W.2d 198 (1970).

Juvenile court, in committing boy to industrial school, cannot fix definite term of detention. *Cohen v. Clark*, 107 Neb. 849, 187 N.W. 120 (1922).

A juvenile court's commitment of a juvenile to a youth rehabilitation treatment center does not constitute a discharge with-

in the meaning of section 43-247, and therefore, the juvenile court retains jurisdiction. A juvenile court does not have jurisdiction over the Office of Juvenile Services in placing, managing, or discharging a juvenile committed to a youth rehabilitation treatment center, even though the juvenile court retains jurisdiction of the juvenile. *In re Interest of David C.*, 6 Neb. App. 198, 572 N.W.2d 392 (1997).

43-413 Evaluations authorized; costs.

(1) A court may, pursuant to section 43-281, place a juvenile with the Office of Juvenile Services or the Department of Health and Human Services for an evaluation to aid the court in the disposition.

(2) A juvenile convicted as an adult shall be placed with the Office of Juvenile Services for evaluation prior to sentencing as provided by subsection (3) of section 29-2204.

(3) All juveniles shall be evaluated prior to commitment to the Office of Juvenile Services. The court shall not commit such juvenile to the temporary custody of the Office of Juvenile Services prior to disposition. The office may place a juvenile in residential or nonresidential community-based evaluation services for purposes of evaluation to assist the court in determining the initial level of treatment for the juvenile.

(4) During any period of detention or evaluation prior to disposition:

(a) Except as provided in subdivision (4)(b) of this section, the county in which the case is pending is responsible for all detention costs incurred before and after an evaluation period prior to disposition, the cost of delivering the juvenile to the facility or institution for an evaluation, and the cost of returning the juvenile to the court for disposition; and

(b) The state is responsible for (i) the costs incurred during an evaluation unless otherwise ordered by the court pursuant to section 43-290 and (ii) the preevaluation detention costs for any days over the first ten days from the date the evaluation is ordered by the court.

(5) The Office of Juvenile Services and the Department of Health and Human Services are not responsible for predisposition costs except as provided in subdivision (4)(b) of this section.

Source: Laws 1969, c. 814, § 2, p. 3060; Laws 1973, LB 563, § 50; Laws 1993, LB 31, § 49; Laws 1994, LB 988, § 38; R.S.1943, (1994), § 83-4,101; Laws 1998, LB 1073, § 45; Laws 2001, LB 640, § 1.

By its language, the purpose of subsection (4) of this section is to make the State responsible for the costs incurred in evaluating a juvenile under subsection (1) of this section. In the absence of an immediate physical delivery of the juvenile upon

adjudication into an evaluation program, detention is an unavoidable precursor of evaluation and is, therefore, part of the evaluation process under this section. In re Interest of Marie E., 260 Neb. 984, 621 N.W.2d 65 (2000).

43-414 Office of Juvenile Services; evaluation powers.

Each juvenile placed for evaluation with the Office of Juvenile Services shall be subjected to medical examination and evaluation as directed by the office.

Source: Laws 1969, c. 814, § 3, p. 3060; Laws 1973, LB 563, § 51; R.S.1943, (1994), § 83-4,102; Laws 1998, LB 1073, § 46.

43-415 Evaluation; time limitation; extension.

A juvenile placed for evaluation with the Office of Juvenile Services shall be returned to the court upon the completion of the evaluation or at the end of thirty days, whichever comes first. When the office finds that an extension of the thirty-day period is necessary to complete the evaluation, the court may order an extension not to exceed an additional thirty days.

Source: Laws 1969, c. 814, § 5, p. 3060; Laws 1973, LB 563, § 52; Laws 1993, LB 31, § 50; Laws 1994, LB 988, § 39; R.S.1943, (1994), § 83-4,104; Laws 1998, LB 1073, § 47.

43-416 Office of Juvenile Services; parole powers.

The Office of Juvenile Services shall have administrative authority over the parole function for juveniles committed to a youth rehabilitation and treatment center and may (1) determine the time of release on parole of committed juveniles eligible for such release, (2) fix the conditions of parole, revoke parole, issue or authorize the issuance of detainers for the apprehension and detention of parole violators, and impose other sanctions short of revocation for violation of conditions of parole, and (3) determine the time of discharge from parole.

Source: Laws 1998, LB 1073, § 48.

43-417 Juvenile parole; considerations.

In administering juvenile parole, the Office of Juvenile Services shall consider whether (1) the juvenile has completed the goals of his or her individual treatment plan or received maximum benefit from institutional treatment, (2) the juvenile would benefit from continued services under community supervision, (3) the juvenile can function in a community setting, (4) there is reason to believe that the juvenile will not commit further violations of law, and (5) there is reason to believe that the juvenile will comply with the conditions of parole.

Source: Laws 1998, LB 1073, § 49.

43-418 Parole violations; apprehension and detention; when.

(1) Any juvenile parole officer or peace officer may apprehend and detain a juvenile who is on parole if the officer has reasonable cause to believe that a juvenile has violated or is about to violate a condition of his or her parole and that the juvenile will attempt to leave the jurisdiction or will place lives or property in danger unless the juvenile is detained. A juvenile parole officer may call upon a peace officer to assist him or her in apprehending and detaining a juvenile pursuant to this section. Such juvenile may be held in an appropriate juvenile facility pending hearing on the allegations.

(2) Juvenile parole officers may search for and seize contraband and evidence related to possible parole violations by a juvenile.

(3) Whether or not a juvenile is apprehended and detained by a juvenile parole officer or peace officer, if there is reason to believe that a juvenile has violated a condition of his or her parole, the Office of Juvenile Services may issue the juvenile written notice of the alleged parole violations and notice of a hearing on the alleged parole violations.

Source: Laws 1998, LB 1073, § 50.

43-419 Parole violation; preliminary hearing.

(1) When a juvenile is apprehended and detained for an alleged violation of juvenile parole, he or she shall have a preliminary hearing as soon as practicable and no later than within seventy-two hours of being apprehended and detained. An impartial hearing officer shall conduct the preliminary hearing. The impartial hearing officer shall not be the juvenile parole officer alleging the violation of parole or a witness to the alleged violation. The impartial hearing officer may be an employee of the Office of Juvenile Services, including a supervisor or a juvenile parole officer, other than the parole officer filing the allegations.

(2) The juvenile parolee shall receive notice of the preliminary hearing, its purpose, and the alleged violations prior to the commencement of the hearing. The juvenile parolee may present relevant information, question adverse witnesses, and make a statement regarding the alleged parole violations. The rules of evidence shall not apply at such hearings and the hearing officer may rely upon any available information.

(3) The hearing officer shall determine whether there is probable cause to believe that the juvenile has violated a term or condition of his or her parole and shall issue that decision in writing. The decision shall either indicate there is not probable cause to believe that the juvenile parolee has violated the terms of his or her parole and dismiss the allegations and return the juvenile to parole supervision, or it shall indicate there is probable cause to believe that the juvenile has violated a condition of parole and state where the juvenile will be held pending the revocation hearing. The preliminary hearing officer shall consider the seriousness of the alleged violation, the public safety, and the best interests of the juvenile in determining where the juvenile shall be held pending the revocation hearing.

Source: Laws 1998, LB 1073, § 51.

43-420 Hearing officer; requirements.

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

Source: Laws 1998, LB 1073, § 52.

43-421 Parole violations; rights of juvenile.

When a juvenile is charged with being in violation of a condition of his or her parole, the juvenile is entitled to:

(1) Notice of the alleged violations of parole at least twenty-four hours prior to a hearing on the allegations. Such notice shall contain a concise statement of the purpose of the hearing and the factual allegations upon which evidence will be offered;

(2) A prompt hearing, within fourteen days after the preliminary hearing, if the juvenile is being held pending the hearing;

(3) Reasonable continuances granted by the hearing officer for the juvenile to prepare for the hearing;

(4) Have his or her parents notified of the hearing and allegations and have his or her parents attend the hearing;

(5) Be represented by legal counsel at the expense of the Department of Health and Human Services unless retained legal counsel is available to the juvenile. The department may contract with attorneys to provide such representation to juveniles charged with parole violations;

(6) Compel witnesses to attend, testify on his or her own behalf, present evidence, and cross-examine witnesses against him or her; and

(7) Present a statement on his or her own behalf.

Source: Laws 1998, LB 1073, § 53.

43-422 Parole violation; waiver and admission.

After receiving notice of the allegations of a violation of parole, being notified of the possible consequences, being informed of his or her rights pertaining to the hearing, and having an opportunity to confer with his or her parents or precommitment custodian and legal counsel, if desired, the juvenile may waive his or her right to a hearing and admit to the allegations. Such waiver and admission shall be in writing and submitted, together with a recommended disposition by the hearing officer, to the Administrator of the Office of Juvenile Services or his or her designee.

Source: Laws 1998, LB 1073, § 54.

43-423 Parole violation hearing; requirements; appeal.

At the parole violation hearing, the hearing officer shall again advise the juvenile of his or her rights and ensure that the juvenile has received the notice of allegations and the possible consequences. Strict rules of evidence shall not be applied. The hearing officer shall determine whether the detention of the juvenile or other restrictions are necessary for the safety of the juvenile or for the public safety and shall indicate to what extent the juvenile will continue to be detained or restricted pending a final decision and administrative appeal. The hearing officer shall issue a written recommended disposition to the Administrator of the Office of Juvenile Services or his or her designee who shall promptly affirm, modify, or reverse the recommended disposition. The final decision of the administrator or his or her designee may be appealed pursuant to the Administrative Procedure Act. The Department of Health and Human Services shall be deemed to have acted within its jurisdiction if its action is in the best interests of the juvenile with due consideration being given to public safety. The appeal shall in all other respects be governed by the Administrative Procedure Act.

Source: Laws 1998, LB 1073, § 55.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 5

ASSISTANCE FOR CERTAIN CHILDREN

Cross References

Assistance to the aged, blind, or disabled, see sections 68-1001 to 68-1017.02.

Child support order enforcement:

Bank match system, see sections 43-3328 to 43-3339.

Income Withholding for Child Support Act, see section 43-1701.

License Suspension Act, see section 43-3301.

New Hire Reporting Act, see section 48-2301.

Setoff against tax refund or state lottery prize, see sections 77-27,160 to 77-27,173.

Uniform Interstate Family Support Act, see section 42-701.

Disabled Persons and Family Support Act, see section 68-1501.

Emergency assistance, see section 68-128.

Genetically Handicapped Persons Act, see section 68-1401.

Medically handicapped children, reports of births, see section 71-1405.

Reimbursement of county or state for assistance, see section 68-1001.02.

Social services, see sections 68-1202 to 68-1210.

State Assistance Fund, see section 68-301.

ASSISTANCE FOR CERTAIN CHILDREN

Veterans' children, when entitled to aid, see section 80-403.

Welfare Reform Act, see section 68-1708.

- Section
- 43-501. Sections, how construed.
 - 43-502. Repealed. Laws 1953, c. 237, § 11.
 - 43-503. Department of Health and Human Services; duty to cooperate with other agencies.
 - 43-504. Terms, defined; pregnancy; effect.
 - 43-504.01. Conditions of eligibility; partially or totally unemployed parent or needy caretaker.
 - 43-504.02. Repealed. Laws 1967, c. 250, § 1.
 - 43-505. Repealed. Laws 1982, LB 522, § 46.
 - 43-506. Repealed. Laws 1982, LB 522, § 46.
 - 43-507. Mentally and physically handicapped children; Department of Health and Human Services; duties.
 - 43-508. Department of Health and Human Services; cooperation with state institutions.
 - 43-509. Religious faith of children; preservation.
 - 43-510. Children eligible for assistance.
 - 43-511. Benefits extended to children in rural districts.
 - 43-512. Application for assistance; procedure; maximum monthly allowance; payment; transitional benefits; terms, defined.
 - 43-512.01. County attorney or authorized attorney; duty to take action against nonsupporting parent or stepparent; when.
 - 43-512.02. Child, spousal, and medical support collection; paternity determination; services available; application; fees; costs.
 - 43-512.03. County attorney or authorized attorney; duties; enumerated; department; powers; actions; real party in interest; representation; section, how construed.
 - 43-512.04. Child support or medical support; separate action allowed; procedure; presumption; decree; contempt.
 - 43-512.05. Child, spousal, and medical support payments; district court clerks; furnish information; cooperative agreements; reimbursement for costs incurred.
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 - 43-517. Repealed. Laws 1965, c. 394, § 6.
 - 43-518. Repealed. Laws 1965, c. 394, § 6.

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43-519.	Repealed. Laws 1965, c. 394, § 6.
43-520.	Repealed. Laws 1965, c. 394, § 6.
43-521.	Repealed. Laws 1965, c. 394, § 6.
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43-501 Sections, how construed.

Sections 43-501 to 43-526 shall be construed to be new, supplemental, and independent legislation upon the subjects of assistance and services for delinquent, dependent, and medically handicapped children, and all provisions of law in regard thereto shall be and remain in full force and effect.

Source: Laws 1935, Spec. Sess., c. 30, § 1, p. 180; C.S.Supp.,1941, § 43-501; R.S.1943, § 43-501; Laws 1982, LB 522, § 11; Laws 1988, LB 790, § 25.

43-502 Repealed. Laws 1953, c. 237, § 11.

43-503 Department of Health and Human Services; duty to cooperate with other agencies.

The Department of Health and Human Services shall cooperate and coordinate its child and maternal welfare activities with those of state institutions, the vocational rehabilitation division of the State Department of Education, courts, county boards, charities and all other organizations, societies and agencies, state and national, to promote child welfare and health.

Source: Laws 1935, Spec. Sess., c. 30, § 3, p. 180; C.S.Supp.,1941, § 43-503; R.S.1943, § 43-503; Laws 1969, c. 342, § 2, p. 1204; Laws 1996, LB 1044, § 151.

43-504 Terms, defined; pregnancy; effect.

(1) The term dependent child shall mean a child under the age of nineteen years who is living with a relative or with a caretaker who is the child's legal guardian or conservator in a place of residence maintained by one or more of such relatives or caretakers as his, her, or their own home, or which child has been removed from the home of his or her father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first or second cousin, nephew, or niece as a result of judicial determination to the effect that continuation in the home would be contrary to

the safety and welfare of the child and such child has been placed in a foster family home or child care institution as a result of such determination, when the state or any court having jurisdiction of such child is responsible for the care and placement of such child and one of the following conditions exists: (a) Such child received aid from the state in or for the month in which court proceedings leading to such determination were initiated; (b) such child would have received assistance in or for such month if application had been made therefor; or (c) such child had been living with such a relative specified in this subsection at any time within six months prior to the month in which such proceedings were initiated and would have received such aid in or for the month that such proceedings were initiated if in such month the child had been living with, and removed from the home of, such a relative and application had been made therefor.

(2) In awarding aid to dependent children payments, the term dependent child shall include an unborn child but only during the last three months of pregnancy. A pregnant woman may be eligible but only (a) if it has been medically verified that the child is expected to be born in the month such payments are made or expected to be born within the three-month period following such month of payment and (b) if such child had been born and was living with her in the month of payment, she would be eligible for aid to families with dependent children. As soon as it is medically determined that pregnancy exists, a pregnant woman who meets the other requirements for aid to dependent children shall be eligible for medical assistance.

(3) A physically or medically handicapped child shall mean a child who, by reason of a physical defect or infirmity, whether congenital or acquired by accident, injury, or disease, is or may be expected to be totally or partially incapacitated for education or for remunerative occupation.

Source: Laws 1935, Spec. Sess., c. 30, § 4, p. 181; C.S.Supp.,1941, § 43-504; R.S.1943, § 43-504; Laws 1947, c. 157, § 1, p. 433; Laws 1959, c. 190, § 1, p. 692; Laws 1963, c. 254, § 1, p. 773; Laws 1965, c. 241, § 1, p. 687; Laws 1965, c. 242, § 1, p. 689; Laws 1967, c. 409, § 1, p. 1272; Laws 1969, c. 343, § 1, p. 1205; Laws 1969, c. 344, § 1, p. 1209; Laws 1973, LB 159, § 1; Laws 1975, LB 397, § 1; Laws 1981, Spec. Sess., LB 7, § 1; Laws 1988, LB 790, § 26; Laws 1992, Third Spec. Sess., LB 20, § 1; Laws 1995, LB 455, § 1; Laws 1997, LB 864, § 2; Laws 1998, LB 1041, § 32; Laws 2007, LB351, § 1.

43-504.01 Conditions of eligibility; partially or totally unemployed parent or needy caretaker.

As a condition of eligibility for aid for children included in section 43-504, a partially or totally unemployed parent or needy caretaker shall participate in the employment preparation or training program for aid to dependent children, unless considered exempt under rules and regulations adopted and promulgated by the Department of Health and Human Services, and any totally or partially unemployed parent or needy caretaker who fails or refuses without good cause to participate in the employment preparation or training program or who refuses without good cause to accept employment in which he or she is able to engage which will increase his or her ability to maintain himself or herself and his or her family shall be deemed by such refusal to have rendered

his or her children ineligible for further aid until he or she has complied with this section.

The requirements of this section shall also apply to any dependent child unless he or she is under age sixteen or attending, full time, an elementary, secondary, or vocational school.

Source: Laws 1965, c. 242, § 2, p. 692; Laws 1981, Spec. Sess., LB 7, § 2; Laws 1996, LB 1044, § 152; Laws 1997, LB 864, § 3; Laws 2007, LB296, § 111.

43-504.02 Repealed. Laws 1967, c. 250, § 1.

43-505 Repealed. Laws 1982, LB 522, § 46.

43-506 Repealed. Laws 1982, LB 522, § 46.

43-507 Mentally and physically handicapped children; Department of Health and Human Services; duties.

The Department of Health and Human Services, on behalf of mentally and physically handicapped children, shall (1) obtain admission to state and other suitable schools, hospitals, or other institutions or care in their own homes or in family, free, or boarding homes for such children in accordance with the provisions of the existing law, (2) maintain medical supervision over such mentally or physically handicapped children, and (3) provide necessary medical or surgical care in a suitable hospital, sanitarium, preventorium, or other institution or in the child's own home or a home for any medically handicapped child needing such care and pay for such care from public funds, if necessary.

Source: Laws 1935, Spec. Sess., c. 30, § 7, p. 184; C.S.Supp.,1941, § 43-507; R.S.1943, § 43-507; Laws 1965, c. 243, § 1, p. 693; Laws 1967, c. 251, § 2, p. 662; Laws 1988, LB 790, § 27; Laws 1996, LB 1044, § 153; Laws 2007, LB296, § 112.

43-508 Department of Health and Human Services; cooperation with state institutions.

The Department of Health and Human Services shall cooperate with the state institutions for delinquent and mentally and physically handicapped children to ascertain the conditions of the home and the character and habits of the parents of a child, before his or her discharge from a state institution, and make recommendations as to the advisability of returning the child to his or her home. In case the department deems it unwise to have any such child returned to his or her former home, such state institution may, with the consent of the department, place such child into the care of the department.

Source: Laws 1935, Spec. Sess., c. 30, § 8, p. 184; C.S.Supp.,1941, § 43-508; R.S.1943, § 43-508; Laws 1989, LB 22, § 4; Laws 1996, LB 1044, § 154; Laws 2007, LB296, § 113.

43-509 Religious faith of children; preservation.

The religious faith of children coming under the jurisdiction of public welfare officials shall be preserved and protected.

Source: Laws 1935, Spec. Sess., c. 30, § 9, p. 184; C.S.Supp.,1941, § 43-509.

43-510 Children eligible for assistance.

In order to be eligible for assistance, a child must be a bona fide resident of the State of Nebraska.

Source: Laws 1935, Spec. Sess., c. 30, § 10, p. 184; C.S.Supp.,1941, § 43-510; R.S.1943, § 43-510; Laws 1951, c. 129, § 1, p. 548; Laws 1969, c. 343, § 2, p. 1206.

43-511 Benefits extended to children in rural districts.

The Department of Health and Human Services shall extend the assistance and services herein provided for to all children in rural districts throughout this state, in order that the same benefits and facilities shall be available to children in such districts as in urban areas.

Source: Laws 1935, Spec. Sess., c. 30, § 11, p. 184; C.S.Supp.,1941, § 43-511; R.S.1943, § 43-511; Laws 1982, LB 522, § 12; Laws 1996, LB 1044, § 155; Laws 2007, LB296, § 114.

43-512 Application for assistance; procedure; maximum monthly allowance; payment; transitional benefits; terms, defined.

(1) Any dependent child as defined in section 43-504 or any relative or eligible caretaker of such a dependent child may file with the Department of Health and Human Services a written application for financial assistance for such child on forms furnished by the department.

(2) The department, through its agents and employees, shall make such investigation pursuant to the application as it deems necessary or as may be required by the county attorney or authorized attorney. If the investigation or the application for financial assistance discloses that such child has a parent or stepparent who is able to contribute to the support of such child and has failed to do so, a copy of the finding of such investigation and a copy of the application shall immediately be filed with the county attorney or authorized attorney.

(3) The department shall make a finding as to whether the application referred to in subsection (1) of this section should be allowed or denied. If the department finds that the application should be allowed, the department shall further find the amount of monthly assistance which should be paid with reference to such dependent child. Except as may be otherwise provided, payments shall be made by state warrant, and the amount of payments shall not exceed three hundred dollars per month when there is but one dependent child and one eligible caretaker in any home, plus an additional seventy-five dollars per month on behalf of each additional eligible person. No payments shall be made for amounts totaling less than ten dollars per month except in the recovery of overpayments.

(4) The amount which shall be paid as assistance with respect to a dependent child shall be based in each case upon the conditions disclosed by the investigation made by the department. An appeal shall lie from the finding made in each case to the chief executive officer of the department or his or her designated representative. Such appeal may be taken by any taxpayer or by any relative of such child. Proceedings for and upon appeal shall be conducted in the same manner as provided for in section 68-1016.

(5)(a) For the purpose of preventing dependency, the department shall adopt and promulgate rules and regulations providing for services to former and potential recipients of aid to dependent children and medical assistance benefits. The department shall adopt and promulgate rules and regulations establishing programs and cooperating with programs of work incentive, work experience, job training, and education. The provisions of this section with regard to determination of need, amount of payment, maximum payment, and method of payment shall not be applicable to families or children included in such programs.

(b) If a recipient of aid to dependent children becomes ineligible for aid to dependent children as a result of increased hours of employment or increased income from employment after having participated in any of the programs established pursuant to subdivision (a) of this subsection, the recipient may be eligible for the following benefits, as provided in rules and regulations of the department in accordance with sections 402, 417, and 1925 of the federal Social Security Act, as amended, Public Law 100-485, in order to help the family during the transition from public assistance to independence:

(i) An ongoing transitional payment that is intended to meet the family's ongoing basic needs which may include food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses during the five months following the time the family becomes ineligible for assistance under the aid to dependent children program, if the family's earned income is at or below one hundred eighty-five percent of the federal poverty level at the time the family becomes ineligible for the aid to dependent children program. Payments shall be made in five monthly payments, each equal to one-fifth of the aid to dependent children payment standard for the family's size at the time the family becomes ineligible for the aid to dependent children program. If during the five-month period, (A) the family's earnings exceed one hundred eighty-five percent of the federal poverty level, (B) the family members are no longer working, (C) the family ceases to be Nebraska residents, (D) there is no longer a minor child in the family's household, or (E) the family again becomes eligible for the aid to dependent children program, the family shall become ineligible for any remaining transitional benefits under this subdivision;

(ii) Child care as provided in subdivision (1)(c) of section 68-1724; and

(iii) Except as may be provided in accordance with subsection (2) of section 68-1713 and subdivision (1)(c) of section 68-1724, medical assistance for up to twelve months after the month the recipient becomes employed and is no longer eligible for aid to dependent children.

(6) For purposes of sections 43-512 to 43-512.10 and 43-512.12 to 43-512.18:

(a) Authorized attorney shall mean an attorney, employed by the county subject to the approval of the county board, employed by the department, or appointed by the court, who is authorized to investigate and prosecute child, spousal, and medical support cases. An authorized attorney shall represent the state as provided in section 43-512.03;

(b) Child support shall be defined as provided in section 43-1705;

(c) Medical support shall include all expenses associated with the birth of a child and, if required pursuant to section 42-369 or 43-290, medical and hospital insurance coverage or membership in a health maintenance organization or preferred provider organization;

- (d) Spousal support shall be defined as provided in section 43-1715;
- (e) State Disbursement Unit shall be defined as provided in section 43-3341; and
- (f) Support shall be defined as provided in section 43-3313.

Source: Laws 1935, Spec. Sess., c. 30, § 12, p. 185; C.S.Supp., 1941, § 43-512; R.S. 1943, § 43-512; Laws 1945, c. 104, § 1, p. 338; Laws 1947, c. 158, § 1, p. 436; Laws 1951, c. 130, § 1, p. 549; Laws 1951, c. 79, § 5, p. 240; Laws 1953, c. 233, § 1, p. 809; Laws 1959, c. 191, § 1, p. 694; Laws 1967, c. 252, § 1, p. 671; Laws 1971, LB 639, § 1; Laws 1974, LB 834, § 1; Laws 1975, LB 192, § 1; Laws 1977, LB 179, § 1; Laws 1977, LB 425, § 1; Laws 1980, LB 789, § 1; Laws 1982, LB 942, § 3; Laws 1982, LB 522, § 13; Laws 1983, LB 371, § 12; Laws 1985, Second Spec. Sess., LB 7, § 65; Laws 1987, LB 573, § 2; Laws 1988, LB 518, § 1; Laws 1989, LB 362, § 3; Laws 1990, LB 536, § 1; Laws 1991, LB 457, § 5; Laws 1991, LB 715, § 7; Laws 1994, LB 1224, § 50; Laws 1995, LB 455, § 2; Laws 1996, LB 1044, § 156; Laws 1997, LB 864, § 4; Laws 2000, LB 972, § 17; Laws 2007, LB 296, § 115; Laws 2007, LB 351, § 2.

43-512.01 County attorney or authorized attorney; duty to take action against nonsupporting parent or stepparent; when.

It shall be the duty of the county attorney or authorized attorney when a copy of the finding of investigation or the application for financial assistance has been filed with him or her as provided in section 43-512, or when an application has been made pursuant to section 43-512.02, to immediately take action against the nonsupporting parent or stepparent of the dependent child. It shall be the duty of the county attorney or authorized attorney to initiate a child support enforcement action. If the county attorney initiates an action, he or she shall file either a criminal complaint for nonsupport under section 28-706 or a civil complaint against the nonsupporting parent or stepparent under section 43-512.03. If the attorney who initiates a child support enforcement action is an authorized attorney, he or she shall file a civil complaint against the nonsupporting parent or stepparent pursuant to section 43-512.03.

Source: Laws 1947, c. 158, § 2, p. 437; Laws 1951, c. 79, § 6, p. 241; Laws 1969, c. 343, § 4, p. 1207; Laws 1976, LB 926, § 4; Laws 1977, LB 425, § 2; Laws 1978, LB 748, § 28; Laws 1981, LB 345, § 1; Laws 1983, LB 371, § 13; Laws 1984, LB 845, § 33; Laws 1985, Second Spec. Sess., LB 7, § 66; Laws 2004, LB 1207, § 36.

In civil child support action by county attorney, father's counterclaim requesting custody did not create conflict of interest for county attorney and the trial court erred in appointing a special prosecutor to replace the county attorney. State on behalf of Garcia v. Garcia, 238 Neb. 455, 471 N.W.2d 388 (1991).

43-512.02 Child, spousal, and medical support collection; paternity determination; services available; application; fees; costs.

(1) Any child or any relative, lawful custodian, guardian, or next friend of a child may file with the county attorney, authorized attorney, or other office designated by the Department of Health and Human Services an application for the same child, spousal, and medical support collection or paternity determina-

tion services as are provided to dependent children and their relatives under sections 43-512 to 43-512.10 by the department, the county attorney, the authorized attorney, and the clerk of the district court.

(2) If an office other than the office of the county attorney or authorized attorney is authorized by the department to accept such applications and if the application discloses that such child has a parent or stepparent who is able to contribute to the support of such child and has failed to do so, a copy of the application shall immediately be filed with the county attorney or authorized attorney.

(3)(a) The department shall determine an application fee to be charged to each individual who applies for services available in this section which shall not exceed the fee amount allowed by Title IV-D of the federal Social Security Act, as amended. The fee shall be collected from the individual or paid by the department on the individual's behalf. The county attorney or authorized attorney may recover the fee from the parent or stepparent who owes child, spousal, or medical support and reimburse the applicant. The governmental entity which is actually collecting the delinquent support payments shall collect the fee and send it to the department.

(b) The department may establish a schedule of amounts to be charged to recover any costs incurred in excess of any fees collected to cover administrative costs of providing the full scope of services required by state law. The department shall by regulation establish a schedule of amounts to be paid for such services based upon the actual costs incurred in providing such services. The schedule shall be made available to all applicants for such services. Any amount charged to recover costs may be collected from the parent or stepparent who owes child, spousal, or medical support or from the individual who has applied for enforcement services, either directly from such individual or from the child or spousal support collected, but only if the individual has been notified that the county attorney or authorized attorney will recover costs from an individual who receives enforcement services. The department shall not impose an application fee for services in any case in which the department is authorized to continue to collect and distribute support payments after a family ceases to receive aid to dependent children payments.

Source: Laws 1981, LB 345, § 2; Laws 1983, LB 371, § 14; Laws 1984, LB 845, § 34; Laws 1985, Second Spec. Sess., LB 7, § 67; Laws 1991, LB 457, § 6; Laws 1996, LB 1044, § 157; Laws 1997, LB 307, § 59.

43-512.03 County attorney or authorized attorney; duties; enumerated; department; powers; actions; real party in interest; representation; section, how construed.

(1) The county attorney or authorized attorney shall:

(a) On request by the Department of Health and Human Services as described in subsection (2) of this section or when the investigation or application filed under section 43-512 or 43-512.02 justifies, file a complaint against a nonsupporting parent or stepparent in the district, county, or separate juvenile court praying for an order for child or medical support in cases when there is no existing child or medical support order. After notice and hearing, the court shall adjudicate child and medical support liability of the nonsupporting parent or stepparent and enter an order accordingly;

(b) Enforce child, spousal, and medical support orders by an action for income withholding pursuant to the Income Withholding for Child Support Act;

(c) In addition to income withholding, enforce child, spousal, and medical support orders by other civil actions or administrative actions, citing the defendant for contempt, or filing a criminal complaint;

(d) Establish paternity and collect child and medical support on behalf of children born out of wedlock; and

(e) Carry out sections 43-512.12 to 43-512.18.

(2) The department may periodically review cases of individuals receiving enforcement services and make referrals to the county attorney or authorized attorney.

(3) In any action brought by or intervened in by a county attorney or authorized attorney under the Income Withholding for Child Support Act, the License Suspension Act, the Uniform Interstate Family Support Act, or sections 42-347 to 42-381, 43-290, 43-512 to 43-512.10, 43-512.12 to 43-512.18, 43-1401 to 43-1418, and 43-3328 to 43-3339, such attorneys shall represent the State of Nebraska.

(4) The State of Nebraska shall be a real party in interest in any action brought by or intervened in by a county attorney or authorized attorney for the purpose of establishing paternity or securing, modifying, suspending, or terminating child or medical support or in any action brought by or intervened in by a county attorney or authorized attorney to enforce an order for child, spousal, or medical support.

(5) Nothing in this section shall be construed to interpret representation by a county attorney or an authorized attorney as creating an attorney-client relationship between the county attorney or authorized attorney and any party or witness to the action, other than the State of Nebraska, regardless of the name in which the action is brought.

Source: Laws 1976, LB 926, § 5; Laws 1977, LB 425, § 3; Laws 1981, LB 345, § 3; Laws 1982, LB 522, § 14; Laws 1983, LB 371, § 15; Laws 1985, Second Spec. Sess., LB 7, § 68; Laws 1986, LB 600, § 12; Laws 1987, LB 37, § 1; Laws 1991, LB 457, § 7; Laws 1991, LB 715, § 8; Laws 1994, LB 1224, § 51; Laws 1995, LB 3, § 1; Laws 1996, LB 1044, § 158; Laws 1997, LB 229, § 36; Laws 1997, LB 307, § 60; Laws 1997, LB 752, § 98; Laws 2004, LB 1207, § 37.

Cross References

Income Withholding for Child Support Act, see section 43-1701.

License Suspension Act, see section 43-3301.

Uniform Interstate Family Support Act, see section 42-701.

As a prerequisite for an action under this section, there cannot be an existing child support order in Nebraska or any other jurisdiction. *State ex rel. Gaddis v. Gaddis*, 237 Neb. 264, 465 N.W.2d 773 (1991).

The nonexistence of a support order is a prerequisite to an action by the State to establish support under this section, and a

dissolution decree or modification order which addresses the issue of support, even if ordering that no support is due from either party, constitutes a support order which precludes the State from instituting such an action. *State ex rel. Cammarata v. Chambers*, 6 Neb. App. 467, 574 N.W.2d 530 (1998).

43-512.04 Child support or medical support; separate action allowed; procedure; presumption; decree; contempt.

(1) An action for child support or medical support may be brought separate and apart from any action for dissolution of marriage. The complaint initiating

the action shall be filed with the clerk of the district court and may be heard by the county court or the district court as provided in section 25-2740. Such action for support may be filed on behalf of a child:

(a) Whose paternity has been established (i) by prior judicial order in this state, (ii) by a prior determination of paternity made by any other state as described in subsection (1) of section 43-1406, or (iii) by the marriage of his or her parents as described in section 42-377 or subsection (2) of section 43-1406; or

(b) Whose paternity is presumed as described in section 43-1409 or subsection (2) of section 43-1415.

(2) The father, not having entered into a judicially approved settlement or being in default in the performance of the same, may be made a respondent in such action. The mother of the child may also be made a respondent in such action. Such action shall be commenced by a complaint of the mother of the child, the father of the child whose paternity has been established, the guardian or next friend of the child, the county attorney, or an authorized attorney.

(3) The complaint shall set forth the basis on which paternity was previously established or presumed, if the respondent is the father, and the fact of nonsupport and shall ask that the father, the mother, or both parents be ordered to provide for the support of the child. Summons shall issue against the father, the mother, or both parents and be served as in other civil proceedings, except that such summons may be directed to the sheriff of any county in the state and may be served in any county. The method of trial shall be the same as in actions formerly cognizable in equity, and jurisdiction to hear and determine such actions for support is hereby vested in the district court of the district or the county court of the county where the child is domiciled or found or, for cases under the Uniform Interstate Family Support Act if the child is not domiciled or found in Nebraska, where the parent of the child is domiciled.

(4) In such proceeding, if the defendant is the presumed father as described in subdivision (1)(b) of this section, the court shall make a finding whether or not the presumption of paternity has been rebutted. The presumption of paternity created by acknowledgment as described in section 43-1409 may be rebutted as part of an equitable proceeding to establish support by genetic testing results which exclude the alleged father as being the biological father of the child. A court in such a proceeding may order genetic testing as provided in sections 43-1414 to 43-1418.

(5) If the court finds that the father, the mother, or both parents have failed adequately to support the child, the court shall issue a decree directing him, her, or them to do so, specifying the amount of such support, the manner in which it shall be furnished, and the amount, if any, of any court costs and attorney's fees to be paid by the father, the mother, or both parents. Income withholding shall be ordered pursuant to the Income Withholding for Child Support Act. The court may require the furnishing of bond to insure the performance of the decree in the same manner as is provided for in section 42-358.05 or 43-1405. Failure on the part of the defendant to perform the terms of such decree shall constitute contempt of court and may be dealt with in the same manner as other contempts. The court may also order medical support and the payment of expenses as described in section 43-1407.

Source: Laws 1976, LB 926, § 6; Laws 1991, LB 457, § 8; Laws 1994, LB 1224, § 52; Laws 1996, LB 1296, § 22; Laws 1997, LB 229, § 37; Laws 2004, LB 1207, § 38.

Cross References

Income Withholding for Child Support Act, see section 43-1701.
Uniform Interstate Family Support Act, see section 42-701.

Subsection (5) of this section specifically provides that attorney fees and costs are allowed in paternity and child support cases brought by a child's mother, father, or guardian or next friend, the county attorney, or another authorized attorney. To the extent State ex rel. Reitz v. Ringer, 244 Neb. 976, 510 N.W.2d 294 (1994), holds otherwise, it is overruled. Cross v. Perreten, 257 Neb. 776, 600 N.W.2d 780 (1999).

Child support orders entered under sections 42-347 to 42-379 must give effect to child support orders under this section. Robbins v. Robbins, 219 Neb. 151, 361 N.W.2d 519 (1985).

This section provides that attorney fees and costs are recoverable in paternity and child support cases, and an award of such fees and costs will be upheld on appeal absent an abuse of discretion. Morrill County on Behalf of Cahoy v. Darsaklis, 7 Neb. App. 489, 584 N.W.2d 36 (1998).

43-512.05 Child, spousal, and medical support payments; district court clerks; furnish information; cooperative agreements; reimbursement for costs incurred.

(1) It shall be the duty of the clerks of the district courts to furnish the Department of Health and Human Services monthly statistical information and any other information required by the department to properly account for child, spousal, and medical support payments. The clerk of each district court shall negotiate and enter into a written agreement with the department in order to receive reimbursement for the costs incurred in carrying out sections 43-512 to 43-512.10 and 43-512.12 to 43-512.18.

(2) The department and the governing board of the county, county attorney, or authorized attorney may enter into a written agreement regarding the determination of paternity and child, spousal, and medical support enforcement for the purpose of implementing such sections. Paternity shall be established when it can be determined that the collection of child support is feasible.

(3) The department shall adopt and promulgate rules and regulations regarding the rate and manner of reimbursement for costs incurred in carrying out such sections, taking into account relevant federal law, available federal funds, and any appropriations made by the Legislature. Any reimbursement funds shall be added to the budgets of those county officials who have performed the services as called for in the cooperative agreements and carried over from year to year as required by law.

Source: Laws 1976, LB 926, § 7; Laws 1978, LB 960, § 2; Laws 1981, LB 345, § 4; Laws 1983, LB 371, § 16; Laws 1983, LB 417, § 1; Laws 1985, Second Spec. Sess., LB 7, § 69; Laws 1991, LB 457, § 9; Laws 1991, LB 715, § 9; Laws 1996, LB 1044, § 159; Laws 1997, LB 307, § 61.

43-512.06 Locating absent parents; determining income and employer; access to information; assistance; purpose.

(1) Notwithstanding any other provisions of law regarding confidentiality of records, every department and agency of state, county, and city government and every employer or other payor as defined in section 43-1709 shall assist and cooperate with the Department of Health and Human Services in locating absent parents, determining an absent parent's income and health insurance information, and identifying an absent parent's employer only for the purposes of establishing and collecting child, spousal, and medical support and of conducting reviews under sections 43-512.12 to 43-512.18. Such information shall be used for no other purpose. An action may be filed in district court to enforce this subsection.

(2) Notwithstanding any other provision of law regarding confidentiality of records, every public, private, or municipal utility shall, upon request, furnish to any county attorney, authorized attorney, or the Department of Health and Human Services a subscriber's name, social security number, and mailing and residence addresses only for the purposes of establishing and collecting child, spousal, and medical support and of conducting reviews under sections 43-512.12 to 43-512.18. Such information shall be used for no other purpose. An action may be filed in district court to enforce this subsection. For purposes of this subsection, utility shall mean any entity providing electrical, gas, water, telephone, garbage disposal, or waste disposal service, including, but not limited to, any district or corporation organized under Chapter 70.

Source: Laws 1976, LB 926, § 8; Laws 1985, Second Spec. Sess., LB 7, § 70; Laws 1991, LB 457, § 10; Laws 1991, LB 715, § 10; Laws 1994, LB 1224, § 53; Laws 1996, LB 1044, § 160; Laws 1997, LB 307, § 62.

43-512.07 Assignment of child, spousal, or medical support payments; when; duration; notice; unpaid court-ordered support; how treated.

(1) Any action, payment, aid, or assistance listed in subdivisions (a) through (c) of this subsection shall constitute an assignment by operation of law to the Department of Health and Human Services of any right to spousal or medical support when ordered by the court and to child support whether or not ordered by the court which a recipient may have in his or her own behalf or on behalf of any other person for whom an applicant receives such payments, aid, or assistance, including any accrued arrearages as of the time of the assignment:

(a) Application for and acceptance of one or more aid to dependent children payments by a parent, another relative, or a custodian;

(b) Receipt of aid by or on behalf of any dependent child as defined in section 43-504; or

(c) Receipt of aid from child welfare funds.

The department shall be entitled to retain such child, spousal, or other support up to the amount of payments, aid, or assistance provided to a recipient. For purposes of this section, the right to receive current and past-due child support shall belong to the child and the assignment shall be effective as to any such support even if the recipient of the payments, aid, or assistance is not the same as the payee of court-ordered support.

(2) After notification of the State Disbursement Unit receiving the child, spousal, or other support payments made pursuant to a court order that the person for whom such support is ordered is a recipient of payments, aid, or assistance listed in subsection (1) of this section, the department shall also give notice to the payee named in the court order at his or her last-known address.

(3) Upon written or other notification from the department or from another state of such assignment of child, spousal, or other support payments, the State Disbursement Unit shall transmit the support payments received to the department or the other state without the requirement of a subsequent order by the court. The State Disbursement Unit shall continue to transmit the support payments for as long as the payments, aid, or assistance listed in subsection (1) of this section continues.

(4) Any court-ordered child, spousal, or other support remaining unpaid during the period of the assignment shall constitute a debt and a continuing assignment at the termination of payments, aid, or assistance listed in subsection (1) of this section, collectible by the department or other state as reimbursement for such payments, aid, or assistance. However, any assignment pursuant to subdivisions (1)(b) and (1)(c) of this section shall be limited to the amount of child support due for any months during which such payments, aid, or assistance was made. The continuing assignment shall only apply to support payments made during a calendar period which exceed the specific amount of support ordered for that period. When payments, aid, or assistance listed in subsection (1) of this section have ceased and upon notice by the department or the other state, the State Disbursement Unit shall continue to transmit to the department or the other state any support payments received on arrearages in excess of the amount of support ordered for that specific calendar period until notified by the department or the other state that the debt has been paid in full, except that any amount of support arrearages that has accrued or accrues after termination of payments, aid, or assistance listed in subsection (1) of this section shall be paid first by the unit to the person to whom support is due before any reimbursement is made to the department or the other state.

Source: Laws 1976, LB 926, § 9; Laws 1981, LB 345, § 5; Laws 1985, Second Spec. Sess., LB 7, § 71; Laws 1986, LB 600, § 13; Laws 1987, LB 599, § 13; Laws 1991, LB 457, § 11; Laws 1993, LB 435, § 3; Laws 1995, LB 524, § 1; Laws 1996, LB 1044, § 161; Laws 1997, LB 307, § 63; Laws 2000, LB 972, § 18.

43-512.08 Intervention in matters relating to child, spousal, or medical support; when authorized.

The county attorney or authorized attorney, acting for or on behalf of the State of Nebraska, may intervene without leave of the court in any proceeding for dissolution of marriage, paternity, separate maintenance, or child, spousal, or medical support for the purpose of securing an order for child, spousal, or medical support, modifying an order for child or medical support, or modifying an order for child support as the result of a review of such order under sections 43-512.12 to 43-512.18. Such proceedings shall be limited only to the determination of child or medical support. Except in cases in which the intervention is the result of a review under such sections, the county attorney or authorized attorney shall so act only when it appears that the children are not otherwise represented by counsel.

Source: Laws 1976, LB 926, § 10; Laws 1985, Second Spec. Sess., LB 7, § 72; Laws 1991, LB 457, § 12; Laws 1991, LB 715, § 11; Laws 1994, LB 1224, § 54; Laws 2007, LB554, § 41.

43-512.09 Garnishment for collection of child support or medical support; where filed.

A garnishment for the collection of child support or medical support may be filed in any jurisdiction where any property or credits of the defendant may be found irrespective of the residence of the creditors or the place where the debt is payable.

Source: Laws 1976, LB 926, § 11; Laws 1991, LB 457, § 13.

43-512.10 Sections, how construed.

Sections 43-512 to 43-512.10 and 43-512.12 to 43-512.18 shall be interpreted so as to facilitate the determination of paternity, child, spousal, and medical support enforcement, and the conduct of reviews under such sections.

Source: Laws 1976, LB 926, § 12; Laws 1978, LB 960, § 3; Laws 1981, LB 345, § 6; Laws 1985, Second Spec. Sess., LB 7, § 73; Laws 1991, LB 457, § 14; Laws 1991, LB 715, § 12.

43-512.11 Work and education programs; department; report.

The Department of Health and Human Services shall report annually, not later than February 1 of each year, to the Legislature regarding the effectiveness of programs established pursuant to subdivision (5)(a) of section 43-512. The report shall include, but not be limited to:

- (1) The number of program participants;
- (2) The number of program participants who become employed, whether such employment is full time or part time or subsidized or unsubsidized, and whether the employment was retained for at least thirty days;
- (3) Supportive services provided to participants in the program;
- (4) Grant reductions realized; and
- (5) A cost and benefit statement for the program.

Source: Laws 1988, LB 518, § 2; Laws 1996, LB 1044, § 162; Laws 2007, LB296, § 116.

43-512.12 Title IV-D child support order; review by Department of Health and Human Services; when.

Child support orders in cases in which a party has applied for services under Title IV-D of the federal Social Security Act, as amended, shall be reviewed by the Department of Health and Human Services to determine whether to refer such orders to the county attorney or authorized attorney for filing of an application for modification. An order shall be reviewed by the department upon its own initiative or at the request of either parent when such review is required by Title IV-D of the federal Social Security Act, as amended. After review the department shall refer an order to a county attorney or authorized attorney when the verifiable financial information available to the department indicates:

- (1) The present child support obligation varies from the Supreme Court child support guidelines pursuant to section 42-364.16 by more than the percentage, amount, or other criteria established by Supreme Court rule, and the variation is due to financial circumstances which have lasted at least three months and can reasonably be expected to last for an additional six months; or
- (2) Health insurance is available to the obligor as provided in subsection (2) of section 42-369 and the children are not covered by health insurance other than the medical assistance program under the Medical Assistance Act.

An order shall not be reviewed by the department if it has not been three years since the present child support obligation was ordered. An order shall not be reviewed by the department more than once every three years unless the requesting party demonstrates a substantial change in circumstances, and an order may be reviewed after one year if the department's determination after

the previous review was not to refer to the county attorney or authorized attorney for filing of an application for modification because financial circumstances had not lasted or were not expected to last for the time periods established by subdivision (1) of this section.

Source: Laws 1991, LB 715, § 13; Laws 1993, LB 523, § 8; Laws 1996, LB 1044, § 163; Laws 1997, LB 307, § 64; Laws 1997, LB 752, § 99; Laws 2006, LB 1248, § 54.

43-512.13 Title IV-D child support order; review; notice requirements; additional review.

(1) When review of a child support order pursuant to section 43-512.12 has been requested by one of the parents or initiated by the Department of Health and Human Services, the department shall send notice of the pending review to each parent affected by the order at the parent's last-known mailing address thirty days before the review is conducted. Such review shall require the parties to submit financial information as provided in sections 43-512.14 and 43-512.17.

(2) After the department completes the review of the child support order in accordance with section 43-512.12, it shall send notice to each parent of the determination to refer or not refer the order to the county attorney or authorized attorney for filing of an application for modification of the order in the district court. Each parent shall be allowed thirty days to submit to the department a written request for a review of such determination. The parent requesting review shall submit the request in writing to the department, stating the reasons for the request and providing written evidence to support the request. The department shall review the available verifiable financial information and make a final determination whether or not to refer the order to the county attorney or authorized attorney for filing of an application for modification of the child support order. Written notice of such final determination shall be sent to each parent affected by the order at the parent's last-known mailing address. A final determination under this subsection shall not be considered a contested case for purposes of the Administrative Procedure Act.

Source: Laws 1991, LB 715, § 14; Laws 1996, LB 1044, § 164; Laws 1997, LB 307, § 65.

Cross References

Administrative Procedure Act, see section 84-920.

43-512.14 Title IV-D child support order; financial information; duty to provide; failure; effect; referral of order; effect.

Each parent requesting review shall provide the financial information as provided in section 43-512.17 to the Department of Health and Human Services upon request of the department. The parent requesting review shall also provide an affidavit regarding the financial circumstances of the nonrequesting parent upon the request of the department. Failure by a nonrequesting parent to provide adequate financial information shall create a rebuttable presumption that such parent's income has changed for purposes of section 43-512.12.

Referral of an order to a county attorney or authorized attorney under this section shall create a rebuttable presumption that there has been a material change in financial circumstances of one of the parents such that the child

support obligation shall be increased at least ten percent if there is inadequate financial information regarding the noncustodial parent or that the child support obligation shall be decreased at least ten percent if there is inadequate financial information regarding the custodial parent. Such referral shall also be sufficient to rebut the presumption specified in section 42-364.16, and the court, after notice and an opportunity to be heard, may order a decrease or an increase of at least ten percent in the child support obligation as provided in this section.

Source: Laws 1991, LB 715, § 15; Laws 1993, LB 523, § 9; Laws 1996, LB 1044, § 165; Laws 1997, LB 307, § 66.

43-512.15 Title IV-D child support order; modification; when; procedures.

(1) The county attorney or authorized attorney, upon referral from the Department of Health and Human Services, shall file a complaint to modify a child support order unless the attorney determines in the exercise of independent professional judgment that:

(a) The variation from the Supreme Court child support guidelines pursuant to section 42-364.16 is based on material misrepresentation of fact concerning any financial information submitted to the attorney;

(b) The variation from the guidelines is due to a voluntary reduction in net monthly income. For purposes of this section, a person who has been incarcerated for a period of one year or more in a county or city jail or a federal or state correctional facility shall be considered to have an involuntary reduction of income unless (i) the incarceration is a result of a conviction for criminal nonsupport pursuant to section 28-706 or a conviction for a violation of any federal law or law of another state substantially similar to section 28-706 or (ii) the incarcerated individual has a documented record of willfully failing or neglecting to provide proper support which he or she knew or reasonably should have known he or she was legally obligated to provide when he or she had sufficient resources to provide such support; or

(c) When the amount of the order is considered with all the other undisputed facts in the case, no variation from the criteria set forth in subdivisions (1) and (2) of section 43-512.12 exists.

(2) The department, a county attorney, or an authorized attorney shall not in any case be responsible for reviewing or filing an application to modify child support for individuals incarcerated as described in subdivision (1)(b) of this section.

(3) The proceedings to modify a child support order shall comply with section 42-364, and the county attorney or authorized attorney shall represent the state in the proceedings.

(4) After a complaint to modify a child support order is filed, any party may choose to be represented personally by private counsel. Any party who retains private counsel shall so notify the county attorney or authorized attorney in writing.

Source: Laws 1991, LB 715, § 16; Laws 1993, LB 523, § 10; Laws 1996, LB 1044, § 166; Laws 1997, LB 307, § 67; Laws 2004, LB 1207, § 39; Laws 2007, LB554, § 42; Laws 2008, LB1014, § 43. Operative date July 1, 2008.

43-512.16 Title IV-D child support order; review of health insurance provisions.

The county attorney or authorized attorney shall review the health insurance provisions contained in any child support order which is subject to review under section 43-512.12 and shall include in any application for modification a request that the court order health insurance as provided in subsection (2) of section 42-369.

Source: Laws 1991, LB 715, § 17.

43-512.17 Title IV-D child support order; financial information; disclosure; contents.

Any financial information provided to the Department of Health and Human Services, the county attorney, or the authorized attorney by either parent for the purpose of facilitating a modification proceeding under sections 43-512.12 to 43-512.18 may be disclosed to the other parties to the case or to the court. Financial information shall include the following:

- (1) An affidavit of financial status provided by the party requesting review;
- (2) An affidavit of financial status of the nonrequesting party provided by the nonrequesting party or by the requesting party at the request of the county attorney or authorized attorney;
- (3) Supporting documentation such as state and federal income tax returns, paycheck stubs, W-2 forms, 1099 forms, bank statements, and other written evidence of financial status; and
- (4) Information relating to health insurance as provided in subsection (2) of section 42-369.

Source: Laws 1991, LB 715, § 18; Laws 1993, LB 523, § 11; Laws 1996, LB 1044, § 167; Laws 1996, LB 1296, § 23; Laws 1997, LB 307, § 68.

43-512.18 Title IV-D child support order; communication technology; use authorized.

A court may use any available technology that would allow the parties to communicate with each other to conduct a hearing or any proceeding required pursuant to sections 43-512.12 to 43-512.17.

Source: Laws 1991, LB 715, § 19.

43-513 Aid to dependent children; standard of need; adjustment; limitation.

The standard of need for aid to dependent children payments shall be adjusted on July 1 of every second year beginning July 1, 1997. The adjustment shall be made on the basis of the rate of growth of the Consumer Price Index as determined by the United States Department of Labor, Bureau of Labor Statistics, for the two previous calendar years. The aid to dependent children payment made shall not be greater than the amount specified by section 43-512.

Source: Laws 1995, LB 455, § 19.

43-513.01 Judgment for child support; death of judgment debtor.

A judgment for child support shall not abate upon the death of the judgment debtor.

Source: Laws 1984, LB 657, § 1.

43-514 Payments; to whom made.

Payments of assistance with respect to any dependent child shall be made to any person or persons in whose home the residence of such child is maintained.

Source: Laws 1935, Spec. Sess., c. 30, § 14, p. 186; C.S.Supp.,1941, § 43-514; R.S.1943, § 43-514; Laws 1969, c. 344, § 2, p. 1210; Laws 1973, LB 159, § 2; Laws 1982, LB 522, § 15.

43-515 Department of Health and Human Services; investigations; approval or disapproval of application; notice.

In each case the Department of Health and Human Services shall make such investigation and reinvestigations as may be necessary to determine family circumstances and eligibility for assistance payments. Each applicant and recipient shall be notified in writing as to the approval or disapproval of any application, as to the amount of payments awarded, as to any change in the amount of payments awarded, and as to the discontinuance of payments.

Source: Laws 1935, Spec. Sess., c. 30, § 5, p. 186; Laws 1939, c. 114, § 2, p. 491; C.S.Supp.,1941, § 43-515; R.S.1943, § 43-515; Laws 1967, c. 253, § 1, p. 673; Laws 1977, LB 312, § 1; Laws 1982, LB 522, § 16; Laws 1996, LB 1044, § 168; Laws 2007, LB296, § 117.

43-516 Repealed. Laws 1967, c. 253, § 4.

43-517 Repealed. Laws 1965, c. 394, § 6.

43-518 Repealed. Laws 1965, c. 394, § 6.

43-519 Repealed. Laws 1965, c. 394, § 6.

43-520 Repealed. Laws 1965, c. 394, § 6.

43-521 Repealed. Laws 1965, c. 394, § 6.

43-522 State assistance funds; how expended; medical care.

The Department of Health and Human Services shall expend state assistance funds allocated for medically handicapped children to supplement other state, county, and municipal, benevolent, fraternal, and charitable expenditures, to extend and improve, especially in rural areas and in areas suffering from severe economic distress, services for locating physically and medically handicapped children and for providing medical, surgical, correction, and other services and care, and facilities for diagnosis, hospitalization, and aftercare, for children who are physically or medically handicapped or who are suffering from conditions which lead to medical handicaps. Expenditures and services shall be

uniformly distributed so far as possible or practicable under conditions and circumstances which may be found to exist.

Source: Laws 1935, Spec. Sess., c. 30, § 22, p. 188; C.S.Supp.,1941, § 43-522; R.S.1943, § 43-522; Laws 1988, LB 790, § 28; Laws 1996, LB 1044, § 169; Laws 2006, LB 994, § 54; Laws 2007, LB296, § 118.

43-523 Department of Health and Human Services; reports.

The Department of Health and Human Services shall make such reports to the Department of Health and Human Services of the United States in such form and containing such information as such department may from time to time require, and the department shall comply with such provisions as necessary to assure the correctness of such reports.

Source: Laws 1935, Spec. Sess., c. 30, § 23, p. 188; C.S.Supp.,1941, § 43-523; R.S.1943, § 43-523; Laws 1961, c. 204, § 2, p. 612; Laws 1961, c. 415, § 4, p. 1246; Laws 1996, LB 1044, § 170; Laws 2007, LB296, § 119.

43-524 Department of Health and Human Services; duty to cooperate with other welfare agencies.

The Department of Health and Human Services shall cooperate with medical, health, nursing, and welfare groups and organizations and with any agency in the state charged with providing for local rehabilitation of physically handicapped children.

Source: Laws 1935, Spec. Sess., c. 30, § 24, p. 188; C.S.Supp.,1941, § 43-524; R.S.1943, § 43-524; Laws 1996, LB 1044, § 171; Laws 2006, LB 994, § 55; Laws 2007, LB296, § 120.

43-525 Child welfare services; state assistance funds; expenditure.

The Department of Health and Human Services shall expend state assistance funds allocated for child welfare services in establishing, extending, and strengthening, especially in rural areas, child welfare services mentioned in sections 43-501 to 43-526, for which other funds are not specifically or sufficiently made available by such sections or other laws of this state.

Source: Laws 1935, Spec. Sess., c. 30, § 25, p. 189; C.S.Supp.,1941, § 43-525; R.S.1943, § 43-525; Laws 1982, LB 522, § 17; Laws 1996, LB 1044, § 172; Laws 2007, LB296, § 121.

43-526 State agencies; distribution of funds; uniformity; assumption of obligations; limit.

The state agencies provided for herein shall distribute and cause said funds to be used in as uniform and equal a manner as practicable for the benefit of the children to be assisted by such services, taking into consideration the health, moral surroundings, sanitary conditions, parental responsibility, mentality and other circumstances of each case. Obligations assumed shall not exceed income of the fund for child welfare for any given month, plus any balance remaining from a preceding month in such fund.

Source: Laws 1935, Spec. Sess., c. 30, § 26, p. 189; C.S.Supp.,1941, § 43-526.

43-527 Repealed. Laws 1982, LB 522, § 46.

43-528 Repealed. Laws 1982, LB 522, § 46.

43-529 Aid to dependent children; needs of persons with whom child is living; payment; requirements.

(1) Payments with respect to any dependent child, including payments to meet the needs of the relative with whom such child is living, such relative's spouse, and the needs of any other individual living in the same home as such child and relative if such needs are taken into account in making the determination for eligibility of such child to receive aid to families with dependent children, may be made on behalf of such child, relative, and other person to either (a) another individual who, in accordance with standards set by the Department of Health and Human Services, is interested in or concerned with the welfare of such child or relative, or (b) directly to a person or entity furnishing food, living accommodations, or other goods, services, or items to or for such child, relative, or other person, or (c) both such individual and such person or entity.

(2) No such payments shall be made unless all of the following conditions are met: (a) The department has determined that the relative of such child with respect to whom such payments are made has such inability to manage funds that making payments to him or her would be contrary to the welfare of the child and that it is therefor necessary to provide such aid with respect to such child and relative through payments described above to another interested individual, (b) the department has made arrangements for undertaking and continuing special efforts to develop greater ability on the part of the relative to manage funds in such a manner as to protect the welfare of the family, and (c) the department has approved a plan that provides for a periodic review to ascertain whether conditions justifying such payments still exist, with provision for termination of such payments if such conditions no longer exist and for judicial appointment of a guardian or conservator if it appears that the need for such special payments is continuing or is likely to continue beyond a period specified by the department.

Source: Laws 1969, c. 553, § 1, p. 2242; Laws 1982, LB 522, § 18; Laws 1996, LB 1044, § 173; Laws 2007, LB296, § 122.

43-530 Repealed. Laws 1982, LB 522, § 46.

43-531 Repealed. Laws 1991, LB 836, § 36.

43-532 Family policy; declaration; legislative findings.

(1) The Legislature finds and declares that children develop their unique potential in relation to a caring social unit, usually the family, and other nurturing environments, especially the schools and the community. The Legislature further finds that the state shall declare a family policy to guide the actions of state government in dealing with problems and crises involving children and families.

(2) When children and families require assistance from a department, agency, institution, committee, or commission of state government, the health and safety of the child is the paramount concern and reasonable efforts shall be made to provide such assistance in the least intrusive and least restrictive

method consistent with the needs of the child and to deliver such assistance as close to the home community of the child or family requiring assistance as possible. The policy set forth in this subsection shall be (a) interpreted in conjunction with all relevant laws, rules, and regulations of the state and shall apply to all children and families who have need of services or who, by their circumstances or actions, have violated the laws, rules, or regulations of the state and are found to be in need of treatment or rehabilitation and (b) implemented through the cooperative efforts of state, county, and municipal governments, legislative, judicial, and executive branches of government, and other public and private resources.

(3) The family policy objectives prescribed in sections 43-532 to 43-534 shall not be construed to mean that a child shall be left in the home when it is shown that continued residence in the home places the child at risk and does not make the health and safety of the child of paramount concern.

Source: Laws 1987, LB 637, § 1; Laws 1989, LB 330, § 14; Laws 1998, LB 1041, § 33.

43-533 Family policy; guiding principles.

The following principles shall guide the actions of state government and departments, agencies, institutions, committees, courts, and commissions which become involved with families and children in need of assistance or services:

(1) Prevention, early identification of problems, and early intervention shall be guiding philosophies when the state or a department, agency, institution, committee, court, or commission plans or implements services for families or children when such services are in the best interests of the child;

(2) When families or children request assistance, state and local government resources shall be utilized to complement community efforts to help meet the needs of such families or the needs and the safety and best interests of such children. The state shall encourage community involvement in the provision of services to families and children, including as an integral part, local government and public and private group participation, in order to encourage and provide innovative strategies in the development of services for families and children;

(3) To maximize resources the state shall develop methods to coordinate services and resources for families and children. Every child-serving department, agency, institution, committee, court, or commission shall recognize that the jurisdiction of such department, agency, institution, committee, court, or commission in serving multiple-need children is not mutually exclusive;

(4) When children are removed from their home, permanency planning shall be the guiding philosophy. It shall be the policy of the state (a) to make reasonable efforts to reunite the child with his or her family in a timeframe appropriate to the age and developmental needs of the child so long as the best interests of the child, the health and safety of the child being of paramount concern, and the needs of the child have been given primary consideration in making a determination whether or not reunification is possible, (b) when a child cannot remain with parents, to give preference to relatives as a placement resource, and (c) to minimize the number of placement changes for children in out-of-home care so long as the needs, health, safety, and best interests of the child in care are considered; and

(5) When families cannot be reunited and when active parental involvement is absent, adoption shall be aggressively pursued. Absent the possibility of adoption other permanent settings shall be pursued. In either situation, the health, safety, and best interests of the child shall be the overriding concern. Within that context, preference shall be given to relatives for the permanent placement of the child.

Source: Laws 1987, LB 637, § 2; Laws 1995, LB 739, § 1; Laws 1996, LB 1001, § 3; Laws 1998, LB 1041, § 34.

43-534 Family policy; annual statement required.

Every department, agency, institution, committee, and commission of state government which is concerned or responsible for children and families shall submit, as part of the annual budget request of such department, agency, institution, committee, or commission, a comprehensive statement of the efforts such department, agency, institution, committee, or commission has taken to carry out the policy and principles set forth in sections 43-532 and 43-533. The statement shall include, but not be limited to, a listing of programs provided for children and families and the priority of such programs, a summary of the expenses incurred in the provision and administration of services for children and families, the number of clients served by each program, and data being collected to demonstrate the short-term and long-term effectiveness of each program.

Source: Laws 1987, LB 637, § 3.

43-535 Families; training and treatment programs; legislative findings.

The Legislature hereby finds and declares that the family is the backbone of Nebraska and it is in the best interests of Nebraska to solidify, preserve, strengthen, and maintain the family unit. Often when a family member is afflicted with substance abuse or mental health problems all family members are affected and the family unit itself becomes fragmented and begins to deteriorate. It is the intent of the Legislature, through the appropriations prescribed in Laws 1988, LB 846, to use a portion of the funds to implement programs to train qualified personnel and to establish creative programs in the areas of family-centered counseling and the prevention and treatment of substance abuse or mental health problems within such families consistent with the findings and principles of sections 43-532 to 43-534. The personnel training and treatment programs shall be designed to aid each family member and the family unit by using counseling and any other necessary creative treatment programs which are the least intrusive and least restrictive on the family unit yet serve to repair and strengthen such unit.

Source: Laws 1988, LB 846, § 1.

43-536 Child care reimbursement; market rate survey; adjustment of rate.

In determining the rate of reimbursement for child care, the Department of Health and Human Services shall conduct a market rate survey of the child care providers in the state. The department shall adjust the reimbursement rate for child care every odd-numbered year at a rate not less than the sixtieth percentile and not to exceed the seventy-fifth percentile of the current market rate survey, except that (1) nationally accredited child care providers may be reimbursed at higher rates and (2) for the two fiscal years beginning July 1,

2003, such rate may be less than the sixtieth percentile but shall not be less than the rate for the immediately preceding fiscal year.

Source: Laws 1995, LB 455, § 20; Laws 1996, LB 1044, § 174; Laws 1997, LB 307, § 69; Laws 1998, LB 1073, § 28; Laws 2003, LB 414, § 1; Laws 2007, LB296, § 123.

ARTICLE 6

CARE AND EDUCATION OF HANDICAPPED CHILDREN

Section	
43-601.	Repealed. Laws 1987, LB 367, § 76.
43-602.	Repealed. Laws 1987, LB 367, § 76.
43-603.	Repealed. Laws 1959, c. 419, § 13.
43-604.	Repealed. Laws 1987, LB 367, § 76.
43-605.	Transferred to section 79-1137.
43-605.01.	Transferred to section 79-1138.
43-605.02.	Transferred to section 79-1139.
43-605.03.	Transferred to section 79-3319.
43-606.	Transferred to section 79-3336.
43-607.	Transferred to section 79-1129.
43-607.01.	Repealed. Laws 1987, LB 367, § 76.
43-607.02.	Transferred to section 79-1130.
43-608.	Repealed. Laws 1987, LB 367, § 76.
43-609.	Repealed. Laws 1977, LB 443, § 4.
43-610.	Repealed. Laws 1973, LB 403, § 31.
43-610.01.	Repealed. Laws 1987, LB 367, § 76.
43-611.	Transferred to section 79-1144.
43-611.01.	Transferred to section 79-1146.
43-612.	Repealed. Laws 1973, LB 403, § 31.
43-613.	Repealed. Laws 1973, LB 403, § 31.
43-613.01.	Repealed. Laws 1973, LB 403, § 31.
43-614.	Repealed. Laws 1973, LB 403, § 31.
43-615.	Repealed. Laws 1973, LB 403, § 31.
43-615.01.	Repealed. Laws 1973, LB 403, § 31.
43-616.	Repealed. Laws 1972, LB 690, § 16.
43-616.01.	Repealed. Laws 1976, LB 761, § 19.
43-616.02.	Repealed. Laws 1986, LB 1177, § 66.
43-616.03.	Repealed. Laws 1987, LB 367, § 76.
43-616.04.	Repealed. Laws 1974, LB 92, § 4.
43-617.	Transferred to section 79-1148.
43-618.	Transferred to section 79-1149.
43-619.	Transferred to section 79-1150.
43-620.	Repealed. Laws 1987, LB 367, § 76.
43-621.	Repealed. Laws 1987, LB 367, § 76.
43-622.	Repealed. Laws 1987, LB 367, § 76.
43-623.	Repealed. Laws 1987, LB 367, § 76.
43-624.	Repealed. Laws 1987, LB 367, § 76.
43-625.	Transferred to section 79-1154.
43-626.	Transferred to section 79-1152.
43-626.01.	Transferred to section 79-1153.
43-627.	Repealed. Laws 1978, LB 871, § 32.
43-627.01.	Repealed. Laws 1987, LB 367, § 76.
43-628.	Repealed. Laws 1973, LB 403, § 31.
43-629.	Repealed. Laws 1987, LB 367, § 76.
43-630.	Repealed. Laws 1987, LB 367, § 76.
43-631.	Repealed. Laws 1987, LB 367, § 76.
43-632.	Repealed. Laws 1987, LB 367, § 76.
43-633.	Transferred to section 20-126.
43-634.	Transferred to section 20-127.
43-635.	Transferred to section 20-128.

INFANTS AND JUVENILES

Section	
43-636.	Transferred to section 20-129.
43-637.	Transferred to section 20-130.
43-638.	Transferred to section 20-131.
43-639.	Repealed. Laws 1973, LB 102, § 5.
43-640.	Repealed. Laws 1987, LB 367, § 76.
43-641.	Transferred to section 79-1127.
43-642.	Transferred to section 79-1128.
43-643.	Transferred to section 79-1155.
43-644.	Repealed. Laws 1982, LB 651, § 3.
43-645.	Repealed. Laws 1987, LB 367, § 76.
43-646.	Transferred to section 79-1126.
43-646.01.	Transferred to section 79-1131.
43-646.02.	Transferred to section 79-1132.
43-646.03.	Transferred to section 79-1133.
43-646.04.	Repealed. Laws 1987, LB 367, § 76.
43-646.05.	Repealed. Laws 1987, LB 367, § 76.
43-646.06.	Transferred to section 79-1134.
43-646.07.	Repealed. Laws 1987, LB 367, § 76.
43-646.08.	Transferred to section 79-1135.
43-646.09.	Transferred to section 79-1136.
43-646.10.	Repealed. Laws 1987, LB 367, § 76.
43-647.	Transferred to section 79-1140.
43-647.01.	Transferred to section 79-1141.
43-648.	Transferred to section 79-1142.
43-649.	Transferred to section 79-1156.
43-650.	Transferred to section 79-1157.
43-651.	Transferred to section 79-1158.
43-651.01.	Repealed. Laws 1978, LB 871, § 32.
43-651.02.	Repealed. Laws 1978, LB 871, § 32.
43-651.03.	Repealed. Laws 1978, LB 871, § 32.
43-652.	Repealed. Laws 1978, LB 871, § 32.
43-652.01.	Repealed. Laws 1978, LB 871, § 32.
43-652.02.	Repealed. Laws 1978, LB 871, § 32.
43-652.03.	Repealed. Laws 1978, LB 871, § 32.
43-653.	Transferred to section 79-1159.
43-654.	Repealed. Laws 1986, LB 904, § 1.
43-654.01.	Repealed. Laws 1986, LB 904, § 1.
43-654.02.	Repealed. Laws 1986, LB 904, § 1.
43-654.03.	Repealed. Laws 1986, LB 904, § 1.
43-655.	Repealed. Laws 1980, LB 773, § 8.
43-655.01.	Repealed. Laws 1986, LB 904, § 1.
43-656.	Repealed. Laws 1986, LB 904, § 1.
43-657.	Repealed. Laws 1986, LB 904, § 1.
43-658.	Repealed. Laws 1980, LB 773, § 8.
43-659.	Repealed. Laws 1980, LB 773, § 8.
43-660.	Transferred to section 79-1160.
43-661.	Transferred to section 79-1162.
43-662.	Transferred to section 79-1163.
43-662.01.	Transferred to section 79-1164.
43-663.	Repealed. Laws 1980, LB 855, § 4.
43-664.	Transferred to section 79-1165.
43-665.	Transferred to section 79-1166.
43-666.	Transferred to section 79-1167.
43-667.	Repealed. Laws 1987, LB 367, § 76.
43-668.	Repealed. Laws 1987, LB 367, § 76.
43-669.	Transferred to section 79-1168.
43-670.	Transferred to section 79-1169.
43-671.	Transferred to section 79-1170.
43-672.	Transferred to section 79-1171.
43-673.	Transferred to section 79-1172.
43-674.	Transferred to section 79-1173.

Section	
43-675.	Transferred to section 79-1174.
43-676.	Transferred to section 79-1175.
43-677.	Transferred to section 79-1176.
43-678.	Repealed. Laws 1987, LB 367, § 76.
43-679.	Transferred to section 79-1177.
43-680.	Transferred to section 79-1178.

43-601 Repealed. Laws 1987, LB 367, § 76.

43-602 Repealed. Laws 1987, LB 367, § 76.

43-603 Repealed. Laws 1959, c. 419, § 13.

43-604 Repealed. Laws 1987, LB 367, § 76.

43-605 Transferred to section 79-1137.

43-605.01 Transferred to section 79-1138.

43-605.02 Transferred to section 79-1139.

43-605.03 Transferred to section 79-3319.

43-606 Transferred to section 79-3336.

43-607 Transferred to section 79-1129.

43-607.01 Repealed. Laws 1987, LB 367, § 76.

43-607.02 Transferred to section 79-1130.

43-608 Repealed. Laws 1987, LB 367, § 76.

43-609 Repealed. Laws 1977, LB 443, § 4.

43-610 Repealed. Laws 1973, LB 403, § 31.

43-610.01 Repealed. Laws 1987, LB 367, § 76.

43-611 Transferred to section 79-1144.

43-611.01 Transferred to section 79-1146.

43-612 Repealed. Laws 1973, LB 403, § 31.

43-613 Repealed. Laws 1973, LB 403, § 31.

43-613.01 Repealed. Laws 1973, LB 403, § 31.

43-614 Repealed. Laws 1973, LB 403, § 31.

43-615 Repealed. Laws 1973, LB 403, § 31.

43-615.01 Repealed. Laws 1973, LB 403, § 31.

43-616 Repealed. Laws 1972, LB 690, § 16.

43-616.01 Repealed. Laws 1976, LB 761, § 19.

43-616.02 Repealed. Laws 1986, LB 1177, § 66.

- 43-616.03 Repealed. Laws 1987, LB 367, § 76.
- 43-616.04 Repealed. Laws 1974, LB 92, § 4.
- 43-617 Transferred to section 79-1148.
- 43-618 Transferred to section 79-1149.
- 43-619 Transferred to section 79-1150.
- 43-620 Repealed. Laws 1987, LB 367, § 76.
- 43-621 Repealed. Laws 1987, LB 367, § 76.
- 43-622 Repealed. Laws 1987, LB 367, § 76.
- 43-623 Repealed. Laws 1987, LB 367, § 76.
- 43-624 Repealed. Laws 1987, LB 367, § 76.
- 43-625 Transferred to section 79-1154.
- 43-626 Transferred to section 79-1152.
- 43-626.01 Transferred to section 79-1153.
- 43-627 Repealed. Laws 1978, LB 871, § 32.
- 43-627.01 Repealed. Laws 1987, LB 367, § 76.
- 43-628 Repealed. Laws 1973, LB 403, § 31.
- 43-629 Repealed. Laws 1987, LB 367, § 76.
- 43-630 Repealed. Laws 1987, LB 367, § 76.
- 43-631 Repealed. Laws 1987, LB 367, § 76.
- 43-632 Repealed. Laws 1987, LB 367, § 76.
- 43-633 Transferred to section 20-126.
- 43-634 Transferred to section 20-127.
- 43-635 Transferred to section 20-128.
- 43-636 Transferred to section 20-129.
- 43-637 Transferred to section 20-130.
- 43-638 Transferred to section 20-131.
- 43-639 Repealed. Laws 1973, LB 102, § 5.
- 43-640 Repealed. Laws 1987, LB 367, § 76.
- 43-641 Transferred to section 79-1127.
- 43-642 Transferred to section 79-1128.
- 43-643 Transferred to section 79-1155.

- 43-644 Repealed. Laws 1982, LB 651, § 3.
- 43-645 Repealed. Laws 1987, LB 367, § 76.
- 43-646 Transferred to section 79-1126.
- 43-646.01 Transferred to section 79-1131.
- 43-646.02 Transferred to section 79-1132.
- 43-646.03 Transferred to section 79-1133.
- 43-646.04 Repealed. Laws 1987, LB 367, § 76.
- 43-646.05 Repealed. Laws 1987, LB 367, § 76.
- 43-646.06 Transferred to section 79-1134.
- 43-646.07 Repealed. Laws 1987, LB 367, § 76.
- 43-646.08 Transferred to section 79-1135.
- 43-646.09 Transferred to section 79-1136.
- 43-646.10 Repealed. Laws 1987, LB 367, § 76.
- 43-647 Transferred to section 79-1140.
- 43-647.01 Transferred to section 79-1141.
- 43-648 Transferred to section 79-1142.
- 43-649 Transferred to section 79-1156.
- 43-650 Transferred to section 79-1157.
- 43-651 Transferred to section 79-1158.
- 43-651.01 Repealed. Laws 1978, LB 871, § 32.
- 43-651.02 Repealed. Laws 1978, LB 871, § 32.
- 43-651.03 Repealed. Laws 1978, LB 871, § 32.
- 43-652 Repealed. Laws 1978, LB 871, § 32.
- 43-652.01 Repealed. Laws 1978, LB 871, § 32.
- 43-652.02 Repealed. Laws 1978, LB 871, § 32.
- 43-652.03 Repealed. Laws 1978, LB 871, § 32.
- 43-653 Transferred to section 79-1159.
- 43-654 Repealed. Laws 1986, LB 904, § 1.
- 43-654.01 Repealed. Laws 1986, LB 904, § 1.
- 43-654.02 Repealed. Laws 1986, LB 904, § 1.
- 43-654.03 Repealed. Laws 1986, LB 904, § 1.

- 43-655 Repealed. Laws 1980, LB 773, § 8.
- 43-655.01 Repealed. Laws 1986, LB 904, § 1.
- 43-656 Repealed. Laws 1986, LB 904, § 1.
- 43-657 Repealed. Laws 1986, LB 904, § 1.
- 43-658 Repealed. Laws 1980, LB 773, § 8.
- 43-659 Repealed. Laws 1980, LB 773, § 8.
- 43-660 Transferred to section 79-1160.
- 43-661 Transferred to section 79-1162.
- 43-662 Transferred to section 79-1163.
- 43-662.01 Transferred to section 79-1164.
- 43-663 Repealed. Laws 1980, LB 855, § 4.
- 43-664 Transferred to section 79-1165.
- 43-665 Transferred to section 79-1166.
- 43-666 Transferred to section 79-1167.
- 43-667 Repealed. Laws 1987, LB 367, § 76.
- 43-668 Repealed. Laws 1987, LB 367, § 76.
- 43-669 Transferred to section 79-1168.
- 43-670 Transferred to section 79-1169.
- 43-671 Transferred to section 79-1170.
- 43-672 Transferred to section 79-1171.
- 43-673 Transferred to section 79-1172.
- 43-674 Transferred to section 79-1173.
- 43-675 Transferred to section 79-1174.
- 43-676 Transferred to section 79-1175.
- 43-677 Transferred to section 79-1176.
- 43-678 Repealed. Laws 1987, LB 367, § 76.
- 43-679 Transferred to section 79-1177.
- 43-680 Transferred to section 79-1178.

ARTICLE 7
PLACEMENT OF CHILDREN

Cross References

Adoption procedures, see sections 43-101 to 43-165.

Interstate compact, see sections 43-1101 and 43-1102.

Section

- 43-701. License; when required; issuance; revocation.
- 43-702. Custodian of child; records required.
- 43-703. Repealed. Laws 1989, LB 22, § 8.
- 43-704. Repealed. Laws 1980, LB 951, § 1.
- 43-705. Visitation; Department of Health and Human Services; power.
- 43-706. Abuse or neglect by custodian; filing of complaint.
- 43-707. Protection of children; Department of Health and Human Services; powers and duties.
- 43-708. Parent, guardian, or custodian; powers.
- 43-709. Violation; penalty.

43-701 License; when required; issuance; revocation.

Except as otherwise provided in the Nebraska Indian Child Welfare Act, no person, other than a parent, shall (1) place, (2) assist in placing, (3) advertise a child for placement, or (4) give the care and custody of any child to any person or association for adoption or otherwise, except for temporary or casual care, unless such person shall be duly licensed by the Department of Health and Human Services under such rules and regulations as the department shall prescribe. The department may grant or revoke such a license and make all needful rules regarding the issuance or revocation thereof.

Source: Laws 1919, c. 190, tit. VI, art. II, div. XI, § 1, p. 789; C.S.1922, § 8265; C.S.1929, § 71-2601; R.S.1943, § 71-801; Laws 1945, c. 170, § 1, p. 545; Laws 1961, c. 204, § 5, p. 613; Laws 1985, LB 255, § 35; Laws 1996, LB 1044, § 175; Laws 1997, LB 307, § 70.

Cross References

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

43-702 Custodian of child; records required.

Persons or courts charged with the care of dependent and delinquent children who place out or give the care and custody of any child to any person or association shall keep and preserve such records as may be prescribed by the Department of Health and Human Services. The records shall be reported to the department on the first day of each month and shall include the (1) full name and actual or apparent age of such child, (2) names and residence of the child's parents, so far as known, and (3) name and residence of the person or association with whom such child is placed. If such person or court subsequently removes the child from the custody of the person or association with whom the child was placed, the fact of the removal and disposition of the child shall be entered upon such record.

Source: Laws 1919, c. 190, tit. VI, art. II, div. XI, § 2, p. 789; C.S.1922, § 8266; C.S.1929, § 71-2602; R.S.1943, § 71-802; Laws 1945, c. 170, § 2, p. 545; Laws 1961, c. 204, § 6, p. 614; Laws 1989, LB 22, § 5; Laws 1996, LB 1044, § 176; Laws 1997, LB 307, § 71.

43-703 Repealed. Laws 1989, LB 22, § 8.

43-704 Repealed. Laws 1980, LB 951, § 1.**43-705 Visitation; Department of Health and Human Services; power.**

The Department of Health and Human Services, or such person as it may authorize, may visit any child so placed, who has not been legally adopted, with a view of ascertaining whether such child is being properly cared for and living under moral surroundings.

Source: Laws 1919, c. 190, tit. VI, art. II, div. XI, § 5, p. 790; C.S.1922, § 8269; C.S.1929, § 71-2605; R.S.1943, § 71-805; Laws 1945, c. 170, § 5, p. 546; Laws 1961, c. 204, § 9, p. 615; Laws 1996, LB 1044, § 177; Laws 1997, LB 307, § 72.

43-706 Abuse or neglect by custodian; filing of complaint.

Whenever the Department of Health and Human Services has reason to believe that any person having the care or custody of a child placed out, and not legally adopted, is an improper person for such care or custody, or subjects such child to cruel treatment, or neglect, or immoral surroundings, it shall cause a complaint to be filed in the proper juvenile court.

Source: Laws 1919, c. 190, tit. VI, art. II, div. XI, § 6, p. 790; C.S.1922, § 8270; C.S.1929, § 71-2606; R.S.1943, § 71-806; Laws 1945, c. 170, § 6, p. 546; Laws 1961, c. 204, § 10, p. 615; Laws 1996, LB 1044, § 178.

43-707 Protection of children; Department of Health and Human Services; powers and duties.

The Department of Health and Human Services shall have the power and it shall be its duty:

(1) To promote the enforcement of laws for the protection and welfare of children born out of wedlock, mentally and physically handicapped children, and dependent, neglected, and delinquent children, except laws the administration of which is expressly vested in some other state department or division, and to take the initiative in all matters involving such children when adequate provision therefor has not already been made;

(2) To visit and inspect public and private institutions, agencies, societies, or persons caring for, receiving, placing out, or handling children;

(3) To prescribe the form of reports required by law to be made to the department by public officers, agencies, and institutions;

(4) To exercise general supervision over the administration and enforcement of all laws governing the placing out and adoption of children;

(5) To advise with judges and probation officers of courts of domestic relations and juvenile courts of the several counties, with a view to encouraging, standardizing, and coordinating the work of such courts and officers throughout the state; and

(6) To regulate the issuance of certificates or licenses to such institutions, agencies, societies, or persons and to revoke such licenses or certificates for good cause shown. If a license is refused or revoked, the refusal or revocation

may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1933, c. 123, § 2, p. 495; C.S.Supp.,1941, § 81-5715; R.S.1943, § 81-617; Laws 1945, c. 170, § 7, p. 546; Laws 1961, c. 204, § 11, p. 615; Laws 1988, LB 352, § 34; Laws 1989, LB 22, § 6; Laws 1996, LB 1044, § 179; Laws 1997, LB 307, § 73.

Cross References

Administrative Procedure Act, see section 84-920.

Associations receiving juveniles under the Nebraska Juvenile Code, supervision by Department of Health and Human Services, see section 43-296.

43-708 Parent, guardian, or custodian; powers.

No official, agent, or representative of the Department of Health and Human Services shall, by virtue of sections 43-701 to 43-709, have any right to enter any home over the objection of the occupants thereof or to take charge of any child over the objection of the parents, or either of them, or of the person standing in loco parentis or having the custody of such child. Nothing in sections 43-701 to 43-709 shall be construed as limiting the power of a parent or guardian to determine what treatment or correction shall be provided for a child or the agency or agencies to be employed for such purposes.

Source: Laws 1933, c. 123, § 4, p. 496; C.S.Supp.,1941, § 81-5717; R.S.1943, § 81-618; Laws 1945, c. 170, § 8, p. 547; Laws 1961, c. 204, § 12, p. 616; Laws 1996, LB 1044, § 180; Laws 1997, LB 307, § 74.

This section does not provide an agency standing in loco parentis with an affirmative right to inflict corporal punishment upon children residing in licensed child-caring facilities; it simply limits the Department of Social Services' power to forcibly

remove a child from the home of his parents or guardian, or one standing in loco parentis prior to state intervention in the parent-child relationship. *Cornhusker Christian Ch. Home v. Dept. of Soc. Servs.*, 227 Neb. 94, 416 N.W.2d 551 (1987).

43-709 Violation; penalty.

Any person or agency who or which shall violate any of the provisions of sections 43-701 to 43-709 shall be guilty of a Class III misdemeanor, and this penalty shall apply to officers and employees of agencies.

Source: Laws 1919, c. 190, tit. VI, art. II, div. XI, § 7, p. 790; C.S.1922, § 8271; C.S.1929, § 71-2607; R.S.1943, § 71-807; Laws 1945, c. 170, § 9, p. 547; Laws 1977, LB 40, § 229.

ARTICLE 8

PARENTAL LIABILITY

Section

43-801. Destruction of property; infliction of personal injury; limitation.

43-801 Destruction of property; infliction of personal injury; limitation.

The parents shall be jointly and severally liable for the willful and intentional infliction of personal injury to any person or destruction of real and personal property occasioned by their minor or unemancipated children residing with them, or placed by them under the care of other persons; *Provided*, that in the event of personal injuries willfully and intentionally inflicted by such child or children, damages shall be recoverable only to the extent of hospital and medical expenses incurred but not to exceed the sum of one thousand dollars for each occurrence.

Source: Laws 1951, c. 126, § 1, p. 545; Laws 1969, c. 347, § 1, p. 1217.

§ 43-801

INFANTS AND JUVENILES

This section does not impose a fine or penalty within the meaning of U.S. Const. amend. VIII, Neb. Const. art. I, sec. 9, and Neb. Const. art. VII, sec. 5. Distinctive Printing & Packaging Co. v. Cox, 232 Neb. 846, 443 N.W.2d 566 (1989).

This section does not violate either the prohibition against special legislation contained in Neb. Const. art. III, sec. 18, or the equal protection clause of U.S. Const. amend. XIV on the ground that the liability of parents of children who intentionally inflict personal injury is limited and the liability of parents whose children intentionally inflict property damage is not. Distinctive Printing & Packaging Co. v. Cox, 232 Neb. 846, 443 N.W.2d 566 (1989).

This section may not be characterized as imposing punitive damages in contravention of Neb. Const. art. VII, sec. 5, as the damages for which parents may be held liable under this statute

are "measured against," and in fact are limited by, the "actual injury" caused by their errant children. Distinctive Printing & Packaging Co. v. Cox, 232 Neb. 846, 443 N.W.2d 566 (1989).

This section violates neither the due process clause contained in Neb. Const. art. I, sec. 3, nor that contained in U.S. Const. amend. XIV on the ground that it imposes vicarious liability. Distinctive Printing & Packaging Co. v. Cox, 232 Neb. 846, 443 N.W.2d 566 (1989).

Action of trial court in dismissing action as to parents for tort of child upheld. Neill v. McGinn, 175 Neb. 369, 122 N.W.2d 65 (1963).

Four-year-old child is legally incapable of committing offense of willful and intentional destruction of property. Connors v. Pantano, 165 Neb. 515, 86 N.W.2d 367 (1957).

ARTICLE 9

CHILDREN COMMITTED TO THE DEPARTMENT

Cross References

Foster care, see sections 43-1301 to 43-1321.

Section

- 43-901. Repealed. Laws 1996, LB 1155, § 121.
- 43-901.01. Repealed. Laws 1985, LB 26, § 1.
- 43-902. Repealed. Laws 1996, LB 1155, § 121.
- 43-903. Court acting pursuant to Nebraska Juvenile Code; disposition of children.
- 43-904. Repealed. Laws 1996, LB 1155, § 121.
- 43-905. Guardianship; care; placement; contracts; payment for maintenance.
- 43-906. Adoption; consent.
- 43-907. Assets; custody; records; expenditures; investments.
- 43-908. Child reaching age of majority; disposition of assets.
- 43-909. Repealed. Laws 1996, LB 1155, § 121.
- 43-910. Repealed. Laws 1996, LB 1155, § 121.
- 43-911. Repealed. Laws 1984, LB 638, § 1.
- 43-912. Repealed. Laws 1985, LB 13, § 1.
- 43-913. Repealed. Laws 1996, LB 1155, § 121.

43-901 Repealed. Laws 1996, LB 1155, § 121.

43-901.01 Repealed. Laws 1985, LB 26, § 1.

43-902 Repealed. Laws 1996, LB 1155, § 121.

43-903 Court acting pursuant to Nebraska Juvenile Code; disposition of children.

Any court acting pursuant to the Nebraska Juvenile Code shall commit to the care of the Department of Health and Human Services or any regularly organized and incorporated society or institution, for the purpose of caring for and placing in good family homes, all children, except those already committed to the care of responsible persons or institutions, who have been decreed to be children as described in subdivision (3)(a) of section 43-247 and who for that reason must be removed from the care of their parents or legal guardians.

Source: Laws 1911, c. 62, § 9, p. 275; R.S.1913, § 7233; C.S.1922, § 6890; C.S.1929, § 83-508; R.S.1943, § 83-241; Laws 1988, LB 790, § 29; Laws 1996, LB 1044, § 183.

43-904 Repealed. Laws 1996, LB 1155, § 121.

43-905 Guardianship; care; placement; contracts; payment for maintenance.

(1) The Department of Health and Human Services shall be the legal guardian of all children committed to it. The department shall afford temporary care and shall use special diligence to provide suitable homes for such children. The department is authorized to place such children in suitable families for adoption or, in the discretion of the department, on a written contract.

(2) The contract shall provide (a) for the children's education in the public schools or otherwise, (b) for teaching them some useful occupation, and (c) for kind and proper treatment as members of the family in which they are placed.

(3) Whenever any child who has been committed to the department becomes self-supporting, the department shall declare that fact and the guardianship of the department shall cease. Thereafter the child shall be entitled to his or her own earnings. Guardianship of and services by the department shall never extend beyond the age of majority, except that services by the department to a child shall continue until the child reaches the age of twenty-one if the child is a student regularly attending a school, college, or university or regularly attending a course of vocational or technical training designed to prepare such child for gainful employment.

(4) Whenever the parents of any ward, whose parental rights have not been terminated, have become able to support and educate their child, the department shall restore the child to his or her parents if the home of such parents would be a suitable home. The guardianship of the department shall then cease.

(5) Whenever permanent free homes for the children cannot be obtained, the department shall have the authority to provide and pay for the maintenance of the children in private families, boarding homes, or institutions for care of children.

Source: Laws 1911, c. 62, § 5, p. 274; R.S.1913, § 7229; C.S.1922, § 6886; C.S.1929, § 83-504; Laws 1937, c. 202, § 1, p. 826; C.S.Supp.,1941, § 83-504; R.S.1943, § 83-243; Laws 1945, c. 246, § 1, p. 779; Laws 1951, c. 325, § 1, p. 1097; Laws 1953, c. 344, § 1, p. 1118; Laws 1957, c. 387, § 1, p. 1345; Laws 1959, c. 443, § 1, p. 1491; Laws 1961, c. 415, § 32, p. 1261; Laws 1965, c. 245, § 1, p. 695; Laws 1967, c. 248, § 4, p. 657; Laws 1969, c. 349, § 1, p. 1219; Laws 1977, LB 312, § 5; Laws 1978, LB 732, § 1; Laws 1992, LB 169, § 1; Laws 1996, LB 1044, § 185; Laws 1996, LB 1155, § 10; Laws 1998, LB 1073, § 29; Laws 2007, LB296, § 124.

Cross References

Foster Parent Liability and Property Damage Fund, see section 43-1320.

43-906 Adoption; consent.

Except as otherwise provided in the Nebraska Indian Child Welfare Act, the Department of Health and Human Services, or its duly authorized agent, may consent to the adoption of children committed to it upon the order of a juvenile court if the parental rights of the parents or of the mother of a child born out of wedlock have been terminated and if no father of a child born out of wedlock has timely asserted his paternity rights under section 43-104.02, or upon the relinquishment to such department by their parents or the mother and, if required under sections 43-104.08 to 43-104.25, the father of a child born out of

wedlock. The parental rights of parents of a child born out of wedlock shall be determined pursuant to sections 43-104.05 and 43-104.08 to 43-104.25.

Source: Laws 1911, c. 62, § 7, p. 275; R.S.1913, § 7231; C.S.1922, § 6888; C.S.1929, § 83-506; R.S.1943, § 83-245; Laws 1947, c. 333, § 2, p. 1052; Laws 1955, c. 344, § 2, p. 1061; Laws 1967, c. 248, § 5, p. 658; Laws 1985, LB 255, § 36; Laws 1995, LB 712, § 27; Laws 1996, LB 1044, § 186; Laws 2007, LB247, § 21.

Cross References

Adoption, substitute consents, see sections 43-105 and 43-293.
Nebraska Indian Child Welfare Act, see section 43-1501.

43-907 Assets; custody; records; expenditures; investments.

Unless a guardian shall have been appointed by a court of competent jurisdiction, the Department of Health and Human Services shall take custody of and exercise general control over assets owned by children under the charge of the department. Children owning assets shall at all times pay for personal items. Assets over and above a maximum of one thousand dollars and current income shall be available for reimbursement to the state for the cost of care. Assets may be deposited in a checking account, invested in United States bonds, or deposited in a savings account insured by the United States Government. All income received from the investment or deposit of assets shall be credited to the individual child whose assets were invested or deposited. The department shall make and maintain detailed records showing all receipts, investments, and expenditures of assets owned by children under the charge of the department.

Source: Laws 1963, c. 245, § 1, p. 739; Laws 1976, LB 545, § 1; Laws 1977, LB 312, § 6; Laws 1982, LB 828, § 1; Laws 1996, LB 1044, § 187; Laws 2007, LB296, § 125.

The plain meaning of this section is that children in the custody of the Department of Social Services have the right to their personal assets and income up to \$1,000; the State may apply amounts in excess of \$1,000 to the cost of a child's care. In re Interest of Jaycox, 250 Neb. 697, 551 N.W.2d 9 (1996).

43-908 Child reaching age of majority; disposition of assets.

An attempt shall be made by the Department of Health and Human Services to locate children who arrive at the age of majority for the purpose of delivering and transferring to any such child such funds or property as he or she may own. In the event that such child cannot be located within five years after the child arrives at the age of majority, any funds or assets owned by him or her shall be transferred to the state treasury of the State of Nebraska.

Source: Laws 1963, c. 245, § 2, p. 740; Laws 1977, LB 312, § 7; Laws 1996, LB 1044, § 188; Laws 2007, LB296, § 126.

43-909 Repealed. Laws 1996, LB 1155, § 121.

43-910 Repealed. Laws 1996, LB 1155, § 121.

43-911 Repealed. Laws 1984, LB 638, § 1.

43-912 Repealed. Laws 1985, LB 13, § 1.

43-913 Repealed. Laws 1996, LB 1155, § 121.

ARTICLE 10
INTERSTATE COMPACT ON JUVENILES

Cross References

Juvenile absconding, authority to apprehend and detain, see sections 43-410, 43-411, and 43-418.

Section

- 43-1001. Declaration of policy.
- 43-1002. Authorization; form.
- 43-1003. Administrator; designation; powers and duties.
- 43-1004. Supplementary agreements; authorization.
- 43-1005. Expense of returning juvenile to state; how paid.
- 43-1006. Responsibilities of state courts; departments, agencies, officers, and subdivisions.
- 43-1007. Additional procedures not precluded; agreements.
- 43-1008. Out-of-State Confinement Amendment; contents.
- 43-1009. Out-of-State Confinement Amendment; confinement of delinquent juvenile; order.
- 43-1010. Out-of-State Rendition Amendment; contents.

43-1001 Declaration of policy.

It is hereby found and declared: (1) That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others; and (2) that the cooperation of this state with other states is necessary to provide for the welfare and protection of juveniles and of the people of this state.

It shall therefor be the policy of this state, in adopting the Interstate Compact on Juveniles, to cooperate with other states (a) in returning juveniles to such other states whenever their return is sought; and (b) in accepting the return of juveniles whenever a juvenile residing in this state is found or apprehended in another state and in taking all measures to initiate proceedings for the return of such juveniles.

Source: Laws 1963, c. 248, § 1, p. 743.

43-1002 Authorization; form.

The Governor is hereby authorized and directed to execute a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows:

The contracting states solemnly agree:

ARTICLE I — FINDINGS AND PURPOSES

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefor necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of nondelinquent juveniles who have run away from home; and (4) additional measures for the protection

of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, performative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

ARTICLE II — EXISTING RIGHTS AND REMEDIES

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

ARTICLE III — DEFINITIONS

That, for the purposes of this compact, delinquent juvenile means any juvenile who has been adjudged to be within the provisions of subdivision (1), (2), or (4) of section 43-247 and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; probation or parole means any kind of conditional release of juveniles authorized under the laws of the states party hereto; court means any court having jurisdiction over delinquent, neglected or dependent children; state means any state, territory or possessions of the United States, the District of Columbia and the Commonwealth of Puerto Rico; and residence or any variant thereof means a place at which a home or regular place of abode is maintained.

ARTICLE IV — RETURN OF RUNAWAYS

(a) That, the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody. The circumstances of his running away, his location if known at the time application is made and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact, the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is

alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding ninety days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

(c) That juvenile as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

ARTICLE V — RETURN OF ESCAPEES AND ABSCONDERS

(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety days, as will enable his detention under a detention order issued on a requisition pursuant to this article. If, at the time

when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this article shall be responsible for the payment of the transportation costs of such return.

ARTICLE VI — VOLUNTARY RETURN PROCEDURE

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV (a) or of Article V (a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which the juvenile or delinquent juvenile is ordered to return.

ARTICLE VII — COOPERATIVE SUPERVISION OF PROBATIONERS AND PAROLEES

(a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called sending state) may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called receiving state) while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent

juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(d) That the sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

ARTICLE VIII — RESPONSIBILITY FOR COSTS

(a) That the provisions of Article IV (b), V (b) and VII (d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV (b), V (b) or VII (d) of this compact.

ARTICLE IX — DETENTION PRACTICES

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

ARTICLE X — SUPPLEMENTARY AGREEMENTS

That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall (1) provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished; (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody; (3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile; (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state; (5) provide for reasonable inspection of such institutions by the sending state; (6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and (7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

ARTICLE XI — ACCEPTANCE OF FEDERAL AND OTHER AID

That any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

ARTICLE XII — COMPACT ADMINISTRATORS

That the Governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XIII — EXECUTION OF COMPACT

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

ARTICLE XIV — RENUNCIATION

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it by sending six-months' notice in writing

of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six-months' renunciation notice of the present article.

ARTICLE XV — SEVERABILITY

That the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstances shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Source: Laws 1963, c. 248, § 2, p. 743; Laws 1975, LB 288, § 11; Laws 1993, LB 278, § 1.

43-1003 Administrator; designation; powers and duties.

Pursuant to the compact, the Governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator shall serve subject to the pleasure of the Governor. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state hereunder.

Source: Laws 1963, c. 248, § 3, p. 755.

43-1004 Supplementary agreements; authorization.

The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this state or the provision of any service by this state, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction the institution or facility is operated or whose department or agency will be charged with the rendering of such service.

Source: Laws 1963, c. 248, § 4, p. 755.

43-1005 Expense of returning juvenile to state; how paid.

The expense of returning juveniles to this state pursuant to the Interstate Compact on Juveniles shall be paid as follows:

(1) In the case of a runaway under Article IV, the court making the requisition shall inquire summarily regarding the financial ability of the petitioner to bear the expense and if it finds he or she is able to do so shall order that he or she pay all such expenses; otherwise the court shall arrange for the transportation at the expense of the county and order that the county reimburse the person, if any, who returns the juvenile for his or her actual and necessary expenses; and the court may order that the petitioner reimburse the county for so much of said expense as the court finds he or she is able to pay. If the petitioner fails, without good cause, or refuses to pay such sum, he or she may be proceeded against for contempt.

(2) In the case of an escapee or absconder under Article V or Article VI, if the juvenile is in the legal custody of the Department of Health and Human Services it shall bear the expense of his or her return; otherwise the appropriate court shall, on petition of the person entitled to his or her custody or charged with his or her supervision, arrange for the transportation at the expense of the county and order that the county reimburse the person, if any, who returns the juvenile, for his or her actual and necessary expenses. In this subdivision appropriate court means the juvenile court which adjudged the juvenile to be delinquent or, if the juvenile is under supervision for another state under Article VII of the compact, then the juvenile court of the county of the juvenile's residence during such supervision.

(3) In the case of a voluntary return of a runaway without requisition under Article VI, the person entitled to his or her legal custody shall pay the expense of transportation and the actual and necessary expenses of the person, if any, who returns such juvenile; but if he or she is financially unable to pay all the expenses he or she may petition the juvenile court of the county of the petitioner's residence for an order arranging for the transportation as provided in subdivision (1) of this section. The court shall inquire summarily into the financial ability of the petitioner, and, if it finds he or she is unable to bear any or all of the expense, the court shall arrange for such transportation at the expense of the county and shall order the county to reimburse the person, if any, who returns the juvenile, for his or her actual and necessary expenses. The court may order that the petitioner reimburse the county for so much of said expense as the court finds he or she is able to pay. If the petitioner fails, without good cause, or refuses to pay such sum, he or she may be proceeded against for contempt.

Source: Laws 1963, c. 248, § 5, p. 756; Laws 1996, LB 1044, § 192.

43-1006 Responsibilities of state courts; departments, agencies, officers, and subdivisions.

The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions.

Source: Laws 1963, c. 248, § 6, p. 757.

43-1007 Additional procedures not precluded; agreements.

In addition to any procedure provided in Articles IV and VI of the compact for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts, or other legal custodian involved may agree upon and

adopt any other plan or procedure legally authorized under the laws of this state and the other respective party states for the return of any such runaway juvenile.

Source: Laws 1963, c. 248, § 7, p. 757.

43-1008 Out-of-State Confinement Amendment; contents.

The Out-of-State Confinement Amendment to the Interstate Compact on Juveniles, sections 43-1001 to 43-1007, is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

(1) Whenever the duly constituted judicial or administrative authorities in a sending state shall determine that confinement of a probationer or reconfinement of a parolee is necessary or desirable, said officials may direct that the confinement or reconfinement be in an appropriate institution for delinquent juveniles within the territory of the receiving state, such receiving state to act in that regard solely as agent for the sending state.

(2) Escapees and absconders who would otherwise be returned pursuant to Article V of the Compact may be confined or reconfined in the receiving state pursuant to this amendment. In any such case the information and allegations required to be made and furnished in a requisition pursuant to such article shall be made and furnished, but in place of the demand pursuant to Article V, the sending state shall request confinement or reconfinement in the receiving state. Whenever applicable, detention orders as provided in Article V may be employed pursuant to this paragraph preliminary to disposition of the escapee or absconder.

(3) The confinement or reconfinement of a parolee, probationer, escapee, or absconder pursuant to this amendment shall require the concurrence of the appropriate judicial or administrative authorities of the receiving state.

(4) As used in this amendment: (a) Sending state means sending state as that term is used in Article VII of the Compact or the state from which a delinquent juvenile has escaped or absconded within the meaning of Article V of the Compact; (b) receiving state means any state, other than the sending state, in which a parolee, probationer, escapee, or absconder may be found, provided that said state is a party to this amendment.

(5) Every state which adopts this amendment shall designate at least one of its institutions for delinquent juveniles as a Compact Institution and shall confine persons therein as provided in paragraph (1) hereof unless the sending and receiving state in question shall make specific contractual arrangements to the contrary. All states party to this amendment shall have access to Compact Institutions at all reasonable hours for the purpose of inspecting the facilities thereof and for the purpose of visiting such of said state's delinquents as may be confined in the institution.

(6) Persons confined in Compact Institutions pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from said Compact Institution for transfer to an appropriate institution within the sending state, for return to probation or parole, for discharge, or for any purpose permitted by the laws of the sending state.

(7) All persons who may be confined in a Compact Institution pursuant to the provisions of this amendment shall be treated in a reasonable and humane manner. The fact of confinement or reconfinement in a receiving state shall not deprive any person so confined or reconfined of any rights which said person would have had if confined or reconfined in an appropriate institution of the sending state; nor shall any agreement to submit to confinement or reconfinement pursuant to the terms of this amendment be construed as a waiver of any rights which the delinquent would have had if he had been confined or reconfined in any appropriate institution of the sending state except that the hearing or hearings, if any, to which a parolee, probationer, escapee, or absconder may be entitled (prior to confinement or reconfinement) by the laws of the sending state may be had before the appropriate judicial or administrative officers of the receiving state. In this event, said judicial and administrative officers shall act as agents of the sending state after consultation with appropriate officers of the sending state.

(8) Any receiving state incurring costs or other expenses under this amendment shall be reimbursed in the amount of such costs or other expenses by the sending state unless the states concerned shall specifically otherwise agree. Any two or more states party to this amendment may enter into supplementary agreements determining a different allocation of costs as among themselves.

(9) This amendment shall take initial effect when entered into by any two or more states party to the compact and shall be effective as to those states which have specifically enacted this amendment. Rules and regulations necessary to effectuate the terms of this amendment may be promulgated by the appropriate officers of those states which have enacted this amendment.

Source: Laws 1965, c. 232, § 1, p. 675.

43-1009 Out-of-State Confinement Amendment; confinement of delinquent juvenile; order.

In addition to any institution in which the authorities of this state may otherwise confine or order the confinement of a delinquent juvenile, such authorities may, pursuant to the Out-of-State Confinement Amendment to the Interstate Compact on Juveniles, sections 43-1001 to 43-1007, confine or order the confinement of a delinquent juvenile in a compact institution within another party state.

Source: Laws 1965, c. 232, § 2, p. 677.

43-1010 Out-of-State Rendition Amendment; contents.

(1) This Out-of-State Rendition Amendment to the Interstate Compact on Juveniles, sections 43-1001 to 43-1007, shall provide additional remedies and shall be binding only as among and between those party states which specifically execute the same.

(2) All provisions and procedures of Articles V and VI of the Interstate Compact on Juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of

whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article V of the compact shall be forwarded by the judge of the court in which the petition has been filed.

Source: Laws 1993, LB 278, § 2.

**ARTICLE 11
INTERSTATE COMPACT ON PLACEMENT OF CHILDREN**

Cross References

Adoption procedures, see sections 43-101 to 43-165.
Placement of children, see sections 43-701 to 43-709.

Section

- 43-1101. Enactment; form.
- 43-1102. Department of Health and Human Services; successor agency.

43-1101 Enactment; form.

The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I. Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

- (a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.
- (b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.
- (c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.
- (d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II. Definitions

As used in this compact:

- (a) Child means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.
- (b) Sending agency means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.
- (c) Receiving state means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) Placement means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III. Conditions for Placement

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

- (1) The name, date and place of birth of the child.
- (2) The identity and address or addresses of the parents or legal guardian.
- (3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.
- (4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interest of the child.

ARTICLE IV. Penalty for Illegal Placement

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V. Retention of Jurisdiction

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority,

becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI. Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and
2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII. Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII. Limitations

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX. Enactment and Withdrawal

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X. Construction and Severability

(a) The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(b) Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of Article 7 of Chapter 42 or of any other applicable state law fixing responsibility for the support of children also may be invoked.

(c) The appropriate public authorities as used in Article III of the Interstate Compact on the Placement of Children shall, with reference to this state, mean the Department of Social Services, and said Department shall receive and act with reference to notices required by Article III.

(d) As used in paragraph (a) of Article V of the Interstate Compact on the Placement of Children, the phrase appropriate authority in the receiving state with reference to this state shall mean the Department of Social Services.

(e) The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the Director of Administrative Services in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

(f) Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply

under the provisions of this chapter shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph (b) of Article V of the Interstate Compact on the Placement of Children.

(g) The provisions of section 43-704, shall not apply to placements made pursuant to the Interstate Compact on the Placement of Children.

(h) Any court having jurisdiction to place delinquent children may place such a child in an institution or in another state pursuant to Article V of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof.

(i) As used in Article VII of the Interstate Compact on the Placement of Children, the term executive head means the Governor. The Governor is hereby authorized to appoint a compact administrator in accordance with the terms of said Article VII.

Source: Laws 1974, LB 909, § 1.

A "sending agency" within the meaning of the Interstate Compact on Placement of Children is defined to include "a person," which by logical extension would also apply to "a parent." *Cornhusker Christian Ch. Home v. Dept. of Soc. Servs.*, 229 Neb. 837, 429 N.W.2d 359 (1988).

The purpose of the Interstate Compact on the Placement of Children is to ensure that states cooperate with each other in the interstate placement of children. *In re Interest of Eric O. and Shane O.*, 9 Neb. App. 676, 617 N.W.2d 824 (2000).

43-1102 Department of Health and Human Services; successor agency.

The Department of Health and Human Services is the successor to the Department of Social Services for purposes of Article X of the Interstate Compact on the Placement of Children found in section 43-1101.

Source: Laws 1996, LB 1044, § 193.

ARTICLE 12

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

Cross References

Divorce, child custody, see sections 42-364 and 42-381.

Section	
43-1201.	Repealed. Laws 2003, LB 148, § 105.
43-1202.	Repealed. Laws 2003, LB 148, § 105.
43-1203.	Repealed. Laws 2003, LB 148, § 105.
43-1204.	Repealed. Laws 2003, LB 148, § 105.
43-1205.	Repealed. Laws 2003, LB 148, § 105.
43-1206.	Repealed. Laws 2003, LB 148, § 105.
43-1207.	Repealed. Laws 2003, LB 148, § 105.
43-1208.	Repealed. Laws 2003, LB 148, § 105.
43-1209.	Repealed. Laws 2003, LB 148, § 105.
43-1210.	Repealed. Laws 2003, LB 148, § 105.
43-1211.	Repealed. Laws 2003, LB 148, § 105.
43-1212.	Repealed. Laws 2003, LB 148, § 105.
43-1213.	Repealed. Laws 2003, LB 148, § 105.
43-1214.	Repealed. Laws 2003, LB 148, § 105.
43-1214.01.	Repealed. Laws 2003, LB 148, § 105.
43-1215.	Repealed. Laws 2003, LB 148, § 105.
43-1216.	Repealed. Laws 2003, LB 148, § 105.
43-1217.	Repealed. Laws 2003, LB 148, § 105.
43-1218.	Repealed. Laws 2003, LB 148, § 105.
43-1219.	Repealed. Laws 2003, LB 148, § 105.
43-1220.	Repealed. Laws 2003, LB 148, § 105.
43-1221.	Repealed. Laws 2003, LB 148, § 105.

Section	
43-1222.	Repealed. Laws 2003, LB 148, § 105.
43-1223.	Repealed. Laws 2003, LB 148, § 105.
43-1224.	Repealed. Laws 2003, LB 148, § 105.
43-1225.	Repealed. Laws 2003, LB 148, § 105.
43-1226.	Act, how cited.
43-1227.	Terms, defined.
43-1228.	Proceedings governed by other law.
43-1229.	Application to Indian tribes.
43-1230.	International application of act.
43-1231.	Effect of child custody determination.
43-1232.	Priority.
43-1233.	Notice to persons outside state.
43-1234.	Appearance and limited immunity.
43-1235.	Communication between courts.
43-1236.	Taking testimony in another state.
43-1237.	Cooperation between courts; preservation of records.
43-1238.	Initial child custody jurisdiction.
43-1239.	Exclusive, continuing jurisdiction.
43-1240.	Jurisdiction to modify determination.
43-1241.	Temporary emergency jurisdiction.
43-1242.	Notice; opportunity to be heard; joinder.
43-1243.	Simultaneous proceedings.
43-1244.	Inconvenient forum.
43-1245.	Jurisdiction declined by reason of conduct.
43-1246.	Information to be submitted to court.
43-1247.	Appearance of parties and child.
43-1248.	Enforcement provisions; terms, defined.
43-1249.	Enforcement under Hague Convention.
43-1250.	Duty to enforce.
43-1251.	Temporary visitation.
43-1252.	Registration of child custody determination.
43-1253.	Enforcement of registered determination.
43-1254.	Simultaneous proceedings.
43-1255.	Expedited enforcement of child custody determination.
43-1256.	Service of petition and order.
43-1257.	Hearing and order.
43-1258.	Warrant to take physical custody of child.
43-1259.	Costs, fees, and expenses.
43-1260.	Recognition and enforcement.
43-1261.	Appeals.
43-1262.	Role of county attorney or Attorney General.
43-1263.	Role of law enforcement.
43-1264.	Costs and expenses.
43-1265.	Application and construction.
43-1266.	Motion or other request under prior law; how treated.

43-1201 Repealed. Laws 2003, LB 148, § 105.

43-1202 Repealed. Laws 2003, LB 148, § 105.

43-1203 Repealed. Laws 2003, LB 148, § 105.

43-1204 Repealed. Laws 2003, LB 148, § 105.

43-1205 Repealed. Laws 2003, LB 148, § 105.

43-1206 Repealed. Laws 2003, LB 148, § 105.

43-1207 Repealed. Laws 2003, LB 148, § 105.

43-1208 Repealed. Laws 2003, LB 148, § 105.

43-1209 Repealed. Laws 2003, LB 148, § 105.

43-1210 Repealed. Laws 2003, LB 148, § 105.

43-1211 Repealed. Laws 2003, LB 148, § 105.

43-1212 Repealed. Laws 2003, LB 148, § 105.

43-1213 Repealed. Laws 2003, LB 148, § 105.

43-1214 Repealed. Laws 2003, LB 148, § 105.

43-1214.01 Repealed. Laws 2003, LB 148, § 105.

43-1215 Repealed. Laws 2003, LB 148, § 105.

43-1216 Repealed. Laws 2003, LB 148, § 105.

43-1217 Repealed. Laws 2003, LB 148, § 105.

43-1218 Repealed. Laws 2003, LB 148, § 105.

43-1219 Repealed. Laws 2003, LB 148, § 105.

43-1220 Repealed. Laws 2003, LB 148, § 105.

43-1221 Repealed. Laws 2003, LB 148, § 105.

43-1222 Repealed. Laws 2003, LB 148, § 105.

43-1223 Repealed. Laws 2003, LB 148, § 105.

43-1224 Repealed. Laws 2003, LB 148, § 105.

43-1225 Repealed. Laws 2003, LB 148, § 105.

43-1226 Act, how cited.

Sections 43-1226 to 43-1266 shall be known and may be cited as the Uniform Child Custody Jurisdiction and Enforcement Act.

Source: Laws 2003, LB 148, § 1.

43-1227 Terms, defined.

In the Uniform Child Custody Jurisdiction and Enforcement Act:

(1) Abandoned means left without provision for reasonable and necessary care or supervision.

(2) Child means an individual who has not attained eighteen years of age.

(3) Child custody determination means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(4) Child custody proceeding means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency,

guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under sections 43-1248 to 43-1264.

(5) Commencement means the filing of the first pleading in a proceeding.

(6) Court means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.

(7) Home state means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

(8) Initial determination means the first child custody determination concerning a particular child.

(9) Issuing court means the court that makes a child custody determination for which enforcement is sought under the Uniform Child Custody Jurisdiction and Enforcement Act.

(10) Issuing state means the state in which a child custody determination is made.

(11) Modification means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(12) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(13) Person acting as a parent means a person, other than a parent, who:

(A) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and

(B) has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(14) Physical custody means the physical care and supervision of a child.

(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.

(16) Tribe means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state.

(17) Warrant means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

Source: Laws 2003, LB 148, § 2.

A person whose only claim to the custody of a child is that he or she had possession of the child for a short period of time in the recent past does not have a colorable right to the custody of the child and is not a person acting as a parent. *Garcia v. Rubio*, 12 Neb. App. 228, 670 N.W.2d 475 (2003).

43-1228 Proceedings governed by other law.

The Uniform Child Custody Jurisdiction and Enforcement Act does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

Source: Laws 2003, LB 148, § 3.

43-1229 Application to Indian tribes.

(a) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. 1901 et seq., is not subject to the Uniform Child Custody Jurisdiction and Enforcement Act to the extent that it is governed by the Indian Child Welfare Act.

(b) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying sections 43-1226 to 43-1247.

(c) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of the Uniform Child Custody Jurisdiction and Enforcement Act shall be recognized and enforced under sections 43-1248 to 43-1264.

Source: Laws 2003, LB 148, § 4.

43-1230 International application of act.

(a) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying sections 43-1226 to 43-1247.

(b) Except as otherwise provided in subsection (c) or (d) of this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of the Uniform Child Custody Jurisdiction and Enforcement Act shall be recognized and enforced under sections 43-1248 to 43-1264.

(c) A court of this state need not apply the act if the child custody law of a foreign country violates fundamental principles of human rights.

(d) A court of this state need not recognize and enforce an otherwise valid child custody determination of a foreign court under the act if it determines (1) that the child is a habitual resident of Nebraska as defined under the provisions of the Hague Convention on the Civil Aspects of International Child Abduction, as implemented by the International Child Abduction Remedies Act, 42 U.S.C. 11601 et seq., and (2) that the child would be at significant and demonstrable risk of child abuse or neglect as defined in section 28-710 if the foreign child custody determination is recognized and enforced. Such a determination shall create a rebuttable presumption against recognition and enforcement of the foreign child custody determination and, thereafter, a court of this state may exercise child custody jurisdiction pursuant to subdivision (a)(1) of section 43-1238.

(e) The changes made to this section by Laws 2007, LB 341, shall be deemed remedial and shall apply to all cases pending on or before February 2, 2007, and to all cases initiated subsequent thereto.

Source: Laws 2003, LB 148, § 5; Laws 2007, LB341, § 13.

43-1231 Effect of child custody determination.

A child custody determination made by a court of this state that had jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act

binds all persons who have been served in accordance with the laws of this state or notified in accordance with section 43-1233 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

Source: Laws 2003, LB 148, § 6.

43-1232 Priority.

If a question of existence or exercise of jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act is raised in a child custody proceeding, the question, upon request of a party, shall be given priority on the calendar and handled expeditiously.

Source: Laws 2003, LB 148, § 7.

43-1233 Notice to persons outside state.

(a) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

Source: Laws 2003, LB 148, § 8.

43-1234 Appearance and limited immunity.

(a) A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) The immunity granted by subsection (a) of this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under the Uniform Child Custody Jurisdiction and Enforcement Act committed by an individual while present in this state.

Source: Laws 2003, LB 148, § 9.

43-1235 Communication between courts.

(a) A court of this state may communicate with a court in another state concerning a proceeding arising under the Uniform Child Custody Jurisdiction and Enforcement Act.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they shall be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c) of this section, a record shall be made of a communication under this section. The parties shall be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Source: Laws 2003, LB 148, § 10.

43-1236 Taking testimony in another state.

(a) In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

Source: Laws 2003, LB 148, § 11.

43-1237 Cooperation between courts; preservation of records.

(a) A court of this state may request the appropriate court of another state to:

- (1) hold an evidentiary hearing;
- (2) order a person to produce or give evidence pursuant to procedures of that state;
- (3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
- (4) forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and
- (5) order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection (a) of this section.

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) of this section may be assessed against the parties according to the law of this state.

(d) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains eighteen years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

Source: Laws 2003, LB 148, § 12.

43-1238 Initial child custody jurisdiction.

(a) Except as otherwise provided in section 43-1241, a court of this state has jurisdiction to make an initial child custody determination only if:

(1) this state is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(2) a court of another state does not have jurisdiction under subdivision (a)(1) of this section, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 43-1244 or 43-1245, and:

(A) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(B) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(3) all courts having jurisdiction under subdivision (a)(1) or (a)(2) of this section have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under section 43-1244 or 43-1245; or

(4) no court of any other state would have jurisdiction under the criteria specified in subdivision (a)(1), (a)(2), or (a)(3) of this section.

(b) Subsection (a) of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

Source: Laws 2003, LB 148, § 13.

43-1239 Exclusive, continuing jurisdiction.

(a) Except as otherwise provided in section 43-1241, a court of this state which has made a child custody determination consistent with section 43-1238 or 43-1240 has exclusive, continuing jurisdiction over the determination until:

(1) a court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

(2) a court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

(b) A court of this state which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 43-1238.

Source: Laws 2003, LB 148, § 14.

43-1240 Jurisdiction to modify determination.

Except as otherwise provided in section 43-1241, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under subdivision (a)(1) or (a)(2) of section 43-1238 and:

(1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under section 43-1239 or that a court of this state would be a more convenient forum under section 43-1244; or

(2) a court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

Source: Laws 2003, LB 148, § 15.

43-1241 Temporary emergency jurisdiction.

(a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child custody determination that is entitled to be enforced under the Uniform Child Custody Jurisdiction and Enforcement Act and a child custody proceeding has not been commenced in a court of a state having jurisdiction under sections 43-1238 to 43-1240, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under such sections. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under such sections, a child custody determination made under this section becomes a final determination, if it so provides, and this state becomes the home state of the child.

(c) If there is a previous child custody determination that is entitled to be enforced under the act, or a child custody proceeding has been commenced in a court of a state having jurisdiction under sections 43-1238 to 43-1240, any order issued by a court of this state under this section shall specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under such sections. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this state which has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under sections 43-1238 to

43-1240, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to such sections, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

Source: Laws 2003, LB 148, § 16.

43-1242 Notice; opportunity to be heard; joinder.

(a) Before a child custody determination is made under the Uniform Child Custody Jurisdiction and Enforcement Act, notice and an opportunity to be heard in accordance with the standards of section 43-1233 shall be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) The act does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child custody proceeding under the act are governed by the law of this state as in child custody proceedings between residents of this state.

Source: Laws 2003, LB 148, § 17.

43-1243 Simultaneous proceedings.

(a) Except as otherwise provided in section 43-1241, a court of this state may not exercise its jurisdiction under sections 43-1238 to 43-1247 if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with the Uniform Child Custody Jurisdiction and Enforcement Act, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under section 43-1244.

(b) Except as otherwise provided in section 43-1241, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section 43-1246. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with the act, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with the act does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(c) In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

(1) stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

(2) enjoin the parties from continuing with the proceeding for enforcement;
or

(3) proceed with the modification under conditions it considers appropriate.

Source: Laws 2003, LB 148, § 18.

The statutory provision to contact the out-of-state court is not mandatory but merely directory. *Garcia v. Rubio*, 12 Neb. App. 228, 670 N.W.2d 475 (2003).

43-1244 Inconvenient forum.

(a) A court of this state which has jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or the request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(2) the length of time the child has resided outside this state;

(3) the distance between the court in this state and the court in the state that would assume jurisdiction;

(4) the relative financial circumstances of the parties;

(5) any agreement of the parties as to which state should assume jurisdiction;

(6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) the familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this state may decline to exercise its jurisdiction under the act if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

Source: Laws 2003, LB 148, § 19.

43-1245 Jurisdiction declined by reason of conduct.

(a) Except as otherwise provided in section 43-1241 or by other law of this state, if a court of this state has jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act because a person seeking to invoke its

jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) a court of the state otherwise having jurisdiction under sections 43-1238 to 43-1240 determines that this state is a more appropriate forum under section 43-1244; or

(3) no court of any other state would have jurisdiction under the criteria specified in sections 43-1238 to 43-1240.

(b) If a court of this state declines to exercise its jurisdiction pursuant to subsection (a) of this section, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under sections 43-1238 to 43-1240.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a) of this section, it may assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state unless authorized by law other than the act.

Source: Laws 2003, LB 148, § 20.

43-1246 Information to be submitted to court.

(a) Subject to local law providing for the confidentiality of procedures, addresses, and other identifying information, in a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit shall state whether the party:

(1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;

(2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions, and, if so, identify the court, the case number, and the nature of the proceeding; and

(3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subsection (a) of this section is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subdivisions (a)(1) through (a)(3) of this section is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information shall be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

Source: Laws 2003, LB 148, § 21.

43-1247 Appearance of parties and child.

(a) In a child custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to section 43-1233 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child custody proceeding who is outside this state is directed to appear under subsection (b) of this section or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

Source: Laws 2003, LB 148, § 22.

43-1248 Enforcement provisions; terms, defined.

In sections 43-1248 to 43-1264:

(1) Petitioner means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

(2) Respondent means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

Source: Laws 2003, LB 148, § 23.

43-1249 Enforcement under Hague Convention.

Under sections 43-1248 to 43-1264 a court of this state may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

Source: Laws 2003, LB 148, § 24.

43-1250 Duty to enforce.

(a) A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with the Uniform Child Custody Jurisdiction and Enforcement Act or the determination was made under factual circumstances meeting the jurisdictional standards of the act and the determination has not been modified in accordance with the act.

(b) A court of this state may utilize any remedy available under other law of this state to enforce a child custody determination made by a court of another state. The remedies provided in sections 43-1248 to 43-1264 are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

Source: Laws 2003, LB 148, § 25.

43-1251 Temporary visitation.

(a) A court of this state which does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:

- (1) a visitation schedule made by a court of another state; or
- (2) the visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of this state makes an order under subdivision (a)(2) of this section, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in sections 43-1238 to 43-1247. The order remains in effect until an order is obtained from the other court or the period expires.

Source: Laws 2003, LB 148, § 26.

43-1252 Registration of child custody determination.

(a) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the district court in this state:

- (1) a letter or other document requesting registration;
- (2) two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and
- (3) except as otherwise provided in section 43-1246, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a) of this section, the registering court shall:

(1) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) serve notice upon the persons named pursuant to subdivision (a)(3) of this section and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by subdivision (b)(2) of this section shall state that:

(1) a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(2) a hearing to contest the validity of the registered determination shall be requested within twenty days after service of notice; and

(3) failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order shall request a hearing within twenty days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) the issuing court did not have jurisdiction under sections 43-1238 to 43-1247;

(2) the child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under such sections; or

(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of section 43-1233, in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served shall be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

Source: Laws 2003, LB 148, § 27.

43-1253 Enforcement of registered determination.

(a) A court of this state may grant any relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state.

(b) A court of this state shall recognize and enforce, but may not modify, except in accordance with sections 43-1238 to 43-1247, a registered child custody determination of a court of another state.

Source: Laws 2003, LB 148, § 28.

43-1254 Simultaneous proceedings.

If a proceeding for enforcement under sections 43-1248 to 43-1264 is commenced in a court of this state and the court determines that a proceeding to

modify the determination is pending in a court of another state having jurisdiction to modify the determination under sections 43-1238 to 43-1247, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

Source: Laws 2003, LB 148, § 29.

43-1255 Expedited enforcement of child custody determination.

(a) A petition under sections 43-1248 to 43-1264 shall be verified. Certified copies of all orders sought to be enforced and of any order confirming registration shall be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child custody determination shall state:

(1) whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision shall be enforced under the Uniform Child Custody Jurisdiction and Enforcement Act and, if so, identify the court, the case number, and the nature of the proceeding;

(3) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

(4) the present physical address of the child and the respondent, if known;

(5) whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(6) if the child custody determination has been registered and confirmed under section 43-1252, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing shall be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) of this section shall state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under section 43-1259 and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) the child custody determination has not been registered and confirmed under section 43-1252 and that:

(A) the issuing court did not have jurisdiction under sections 43-1238 to 43-1247;

(B) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under such sections;

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of section 43-1233, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child custody determination for which enforcement is sought was registered and confirmed under section 43-1252 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under sections 43-1238 to 43-1247.

Source: Laws 2003, LB 148, § 30.

43-1256 Service of petition and order.

Except as otherwise provided in section 43-1258, the petition and order shall be served, by any method authorized by the law of this state, upon the respondent and any person who has physical custody of the child.

Source: Laws 2003, LB 148, § 31.

43-1257 Hearing and order.

(a) Unless the court issues a temporary emergency order pursuant to section 43-1241, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) the child custody determination has not been registered and confirmed under section 43-1252 and that:

(A) the issuing court did not have jurisdiction under sections 43-1238 to 43-1247;

(B) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under such sections; or

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of section 43-1233, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child custody determination for which enforcement is sought was registered and confirmed under section 43-1252 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under sections 43-1238 to 43-1247.

(b) The court shall award the fees, costs, and expenses authorized under section 43-1259 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent

and child may not be invoked in a proceeding under sections 43-1248 to 43-1264.

Source: Laws 2003, LB 148, § 32.

43-1258 Warrant to take physical custody of child.

(a) Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this state.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition shall be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant shall include the statements required by subsection (b) of section 43-1255.

(c) A warrant to take physical custody of a child shall:

(1) recite the facts upon which a conclusion of imminent serious physical harm or removal from the state is based;

(2) direct law enforcement officers to take physical custody of the child immediately; and

(3) provide for the placement of the child pending final relief.

(d) The respondent shall be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

Source: Laws 2003, LB 148, § 33.

43-1259 Costs, fees, and expenses.

(a) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care, during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs, or expenses against a state unless authorized by law other than the Uniform Child Custody Jurisdiction and Enforcement Act.

Source: Laws 2003, LB 148, § 34.

43-1260 Recognition and enforcement.

A court of this state shall accord full faith and credit to an order issued by another state and consistent with the Uniform Child Custody Jurisdiction and Enforcement Act which enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under sections 43-1238 to 43-1247.

Source: Laws 2003, LB 148, § 35.

43-1261 Appeals.

An appeal may be taken from a final order in a proceeding under sections 43-1248 to 43-1264 in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under section 43-1241, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

Source: Laws 2003, LB 148, § 36.

43-1262 Role of county attorney or Attorney General.

(a) In a case arising under the Uniform Child Custody Jurisdiction and Enforcement Act or involving the Hague Convention on the Civil Aspects of International Child Abduction, a county attorney or the Attorney General may take any lawful action, including resort to a proceeding under sections 43-1248 to 43-1264 or any other available civil proceeding, to locate a child, obtain the return of a child, or enforce a child custody determination if there is:

- (1) an existing child custody determination;
- (2) a request to do so from a court in a pending child custody proceeding;
- (3) a reasonable belief that a criminal statute has been violated; or
- (4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A county attorney or the Attorney General acting under this section acts on behalf of the court and may not represent any party.

Source: Laws 2003, LB 148, § 37.

43-1263 Role of law enforcement.

At the request of a county attorney or the Attorney General acting under section 43-1262, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a county attorney or the Attorney General with responsibilities under such section.

Source: Laws 2003, LB 148, § 38.

43-1264 Costs and expenses.

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by a county attorney or the Attorney General and law enforcement officers under section 43-1262 or 43-1263.

Source: Laws 2003, LB 148, § 39.

43-1265 Application and construction.

In applying and construing the Uniform Child Custody Jurisdiction and Enforcement Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2003, LB 148, § 40.

43-1266 Motion or other request under prior law; how treated.

A motion or other request for relief made in a child custody proceeding or to enforce a child custody determination which was commenced before January 1, 2004, is governed by the law in effect at the time the motion or other request was made.

Source: Laws 2003, LB 148, § 41.

**ARTICLE 13
FOSTER CARE**

Cross References

Children committed to the department, see sections 43-903 to 43-908.

(a) FOSTER CARE REVIEW ACT

- Section
- 43-1301. Terms, defined.
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(b) STATE FINANCIAL SUPPORT

- 43-1319. Funds of Department of Health and Human Services; use.
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(c) FOSTER CARE REVIEW BOARD CASH FUND

- 43-1321. Foster Care Review Board Cash Fund; created; use; investment.

(d) TRANSITION OF EMPLOYEES

- 43-1322. Repealed. Laws 1999, LB 9, § 1.

(a) FOSTER CARE REVIEW ACT

43-1301 Terms, defined.

For purposes of the Foster Care Review Act, unless the context otherwise requires:

(1) Local board shall mean a local foster care review board created pursuant to section 43-1304;

(2) State board shall mean the State Foster Care Review Board created pursuant to section 43-1302;

(3) Foster care facility shall mean any foster home, group home, child care facility, public agency, private agency, or any other person or entity receiving and caring for foster children;

(4) Foster care placements shall mean all placements of juveniles as described in subdivision (3)(b) of section 43-247, placements of neglected, dependent, or delinquent children, including those made directly by parents or by third parties, and placements of children who have been voluntarily relinquished pursuant to section 43-106.01 to the Department of Health and Human Services or any child placement agency licensed by the Department of Health and Human Services;

(5) Person or court in charge of the child shall mean (a) the Department of Health and Human Services, an association, or an individual who has been made the guardian of a neglected, dependent, or delinquent child by the court and has the responsibility of the care of the child and has the authority by and with the assent of the court to place such a child in a suitable family home or institution or has been entrusted with the care of the child by a voluntary placement made by a parent or legal guardian, (b) the court which has jurisdiction over the child, or (c) the entity having jurisdiction over the child pursuant to the Nebraska Indian Child Welfare Act;

(6) Voluntary placement shall mean the placement by a parent or legal guardian who relinquishes the possession and care of a child to a third party, individual, or agency;

(7) Family unit shall mean the social unit consisting of the foster child and the parent or parents or any person in the relationship of a parent, including a grandparent, and any siblings with whom the foster child legally resided prior to placement in foster care;

(8) Child-caring agency shall have the definition found in section 71-1902; and

(9) Child-placing agency shall have the definition found in section 71-1902.

Source: Laws 1982, LB 714, § 1; Laws 1985, LB 255, § 40; Laws 1985, LB 447, § 36; Laws 1987, LB 239, § 1; Laws 1990, LB 1222, § 4; Laws 1996, LB 1044, § 194; Laws 1997, LB 307, § 75.

Cross References

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

43-1301.01 Entering foster care; determination of time.

For the purpose of determining the timing of review hearings, permanency hearings, and other requirements under the Foster Care Review Act, a child is deemed to have entered foster care on the earlier of the date of the first judicial finding that the child has been subjected to child abuse or neglect or the date that is sixty days after the date on which the child is removed from the home.

Source: Laws 1998, LB 1041, § 35.

43-1302 State Foster Care Review Board; established; members; terms; expenses.

(1)(a) Until January 1, 2006, the State Foster Care Review Board shall be comprised of nine members to be appointed by the Governor, subject to confirmation by a majority of the members elected to the Legislature. At least one member shall be an attorney with legal expertise in child welfare. Two members shall be from each of the three congressional districts as they existed on January 1, 1982. In addition to the six members representative of the congressional districts, three members shall be appointed by the Governor from a group consisting of all the chairpersons of the local boards, and one such chairperson shall be appointed from each such congressional district. The appointment of a member of a local board to the state board shall not create a vacancy on the local board. Members other than those appointed from the group consisting of all the chairpersons of the local boards shall be appointed to three-year terms, and those members appointed from the group consisting of all the chairpersons of local boards shall be appointed to two-year terms. No person shall serve on the state board for more than six consecutive years. No person employed by a child-caring agency, a child-placing agency, or a court shall be appointed to the state board.

(b) On and after January 1, 2006, the State Foster Care Review Board shall be comprised of eleven members appointed by the Governor with the approval of a majority of the members elected to the Legislature, consisting of: Three members of local foster care review boards, one from each congressional district; one practitioner of pediatric medicine, licensed under the Uniform Credentialing Act; one practitioner of child clinical psychology, licensed under the Uniform Credentialing Act; one social worker certified under the Uniform Credentialing Act, with expertise in the area of child welfare; one attorney who is or has been a guardian ad litem; one representative of a statewide child advocacy group; one director of a child advocacy center; one director of a court appointed special advocate program; and one member of the public who has a background in business or finance.

The terms of members appointed pursuant to this subdivision shall be three years, except that of the initial members of the state board, one-third shall be appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years, as determined by the Governor. No person appointed by the Governor to the state board shall serve more than two consecutive three-year terms. An appointee to a vacancy occurring from an unexpired term shall serve out the term of his or her predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed and qualified. Members serving on the state board on December 31, 2005, shall continue in office until the members appointed under this subdivision take office. The members of the state board shall, to the extent possible, represent the three congressional districts equally.

(2) The state board shall select a chairperson, vice-chairperson, and such other officers as the state board deems necessary. Members of the state board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The state board shall employ or contract for services from such persons as are necessary to aid it in carrying out its duties.

Source: Laws 1982, LB 714, § 2; Laws 1987, LB 239, § 2; Laws 1990, LB 1222, § 5; Laws 2005, LB 761, § 1; Laws 2007, LB463, § 1133.

Uniform Credentialing Act, see section 38-101.

43-1303 State board; meetings; registry; reports required; rules and regulations; visitation of facilities.

(1) The state board shall meet at least twice per year. The state board shall establish a statewide register of all foster care placements occurring within the state, and there shall be a monthly report made to the state board registry of all foster care placements by the Department of Health and Human Services, any child-placing agency, or any court in a form as developed by the state board in consultation with representatives of entities required to make such reports. For each child entering and leaving foster care, such monthly report shall consist of identifying information, placement information, and the plan or permanency plan developed by the person or court in charge of the child pursuant to section 43-1312. The department and every court and child-placing agency shall report any foster care placement within three working days. The report shall contain the following information:

- (a) Child identification information, including name, social security number, date of birth, gender, race, and religion;
- (b) Identification information for parents and stepparents, including name, social security number, address, and status of parental rights;
- (c) Placement information, including initial placement date, current placement date, and the name and address of the foster care provider;
- (d) Court status information, including which court has jurisdiction, initial custody date, court hearing date, and results of the court hearing;
- (e) Agency or other entity having custody of the child;
- (f) Case worker; and
- (g) Permanency Plan Objective.

(2) The state board shall review the activities of local boards and may adopt and promulgate its own rules and regulations. Such rules and regulations shall provide for the following:

- (a) Establishment of training programs for local board members which shall include an initial training program and periodic inservice training programs;
- (b) Development of procedures for local boards;
- (c) Establishment of a central record-keeping facility for all local board files, including individual case reviews;
- (d) Accumulation of data and the making of annual reports on children in foster care. Such reports shall include (i) personal data on length of time in foster care, (ii) number of placements, (iii) frequency and results of court review, and (iv) number of children supervised by the foster care programs in the state annually;
- (e) To the extent not prohibited by section 43-1310, evaluation of the judicial and administrative data collected on foster care and the dissemination of such data to the judiciary, public and private agencies, the department, and members of the public; and
- (f) Manner in which the state board shall determine the appropriateness of requesting a review hearing as provided for in section 43-1313.

(3) The state board, upon completion of a review of local board activities, shall report and make recommendations to the department and county welfare offices. Such reports and recommendations shall include, but not be limited to, the annual judicial and administrative data collected on foster care pursuant to subsection (2) of this section and the annual evaluation of such data. In addition the state board shall provide copies of such reports and recommendations to each court having the authority to make foster care placements. The state board may visit and observe foster care facilities in order to ascertain whether the individual physical, psychological, and sociological needs of each foster child are being met.

Source: Laws 1982, LB 714, § 3; Laws 1990, LB 1222, § 6; Laws 1996, LB 1044, § 195; Laws 1998, LB 1041, § 36; Laws 1999, LB 240, § 1.

43-1304 Local foster care review boards; established; members.

The state board shall establish local foster care review boards for the review of cases of children in foster care placement. The state board shall select members to serve on local boards from a list of applications submitted to the state board. Each local board shall consist of not less than four and not more than ten members. The members of the board shall reasonably represent the various social, economic, racial, and ethnic groups of the county or counties from which its members may be appointed. A person employed by the state board, the Department of Health and Human Services, a child-caring agency, a child-placing agency, or a court shall not be appointed to a local board. A list of the members of each local board shall be sent to the department.

Source: Laws 1982, LB 714, § 4; Laws 1987, LB 239, § 3; Laws 1996, LB 1044, § 196; Laws 1999, LB 240, § 2.

43-1305 Local board; terms; vacancy.

All local board members shall be appointed for terms of three years. If a vacancy occurs on a local board, the state board shall appoint another person to serve the unexpired portion of the term. Appointments to fill vacancies on the local board shall be made in the same manner and subject to the same conditions as the initial appointments to such board. The term of each member shall expire on the second Monday in July of the appropriate year. Members shall continue to serve until a successor is appointed.

Source: Laws 1982, LB 714, § 5; Laws 1999, LB 240, § 3.

43-1306 State board; assign cases.

The state board shall assign cases of children in foster care placement to a local board.

Source: Laws 1982, LB 714, § 6.

43-1307 Child placed in foster care; court; duties.

Each court which has placed a child in foster care shall send to the state board or designated local board (1) a copy of the plan or permanency plan, prepared by the person or court in charge of the child in accordance with section 43-1312, to effectuate rehabilitation of the foster child and family unit or permanent placement of the child and (2) a copy of the progress reports as

they relate to the plan or permanency plan, including, but not limited to, the court order and the report and recommendations of the guardian ad litem.

Source: Laws 1982, LB 714, § 7; Laws 1998, LB 1041, § 37.

43-1308 State or local board; powers and duties.

(1) Except as otherwise provided in the Nebraska Indian Child Welfare Act, the state board or designated local board shall:

(a) Review at least once every six months the case of each child in a foster care placement to determine what efforts have been made to carry out the plan or permanency plan for rehabilitation of the foster child and family unit or for permanent placement of such child pursuant to section 43-1312;

(b) Submit to the court having jurisdiction over such child for the purposes of foster care placement, within thirty days after the review, its findings and recommendations regarding the efforts and progress made to carry out the plan or permanency plan established pursuant to section 43-1312 together with any other recommendations it chooses to make regarding the child. The findings and recommendations shall include whether there is a need for continued out-of-home placement, whether the current placement is safe and appropriate, the specific reasons for the findings and recommendations, including factors, opinions, and rationale considered in its review, whether the grounds for termination of parental rights under section 43-292 appear to exist, and the date of the next review by the state board or designated local board;

(c) If the return of the child to his or her parents is not likely, recommend referral for adoption and termination of parental rights, guardianship, placement with a relative, or, as a last resort, another planned, permanent living arrangement; and

(d) Promote and encourage stability and continuity in foster care by discouraging unnecessary changes in the placement of foster children and by encouraging the recruitment of foster parents who may be eligible as adoptive parents.

(2) When the state board determines that the interests of a child in a foster care placement would be served thereby, the state board may request a review hearing as provided for in section 43-1313.

Source: Laws 1982, LB 714, § 8; Laws 1985, LB 255, § 41; Laws 1990, LB 1222, § 7; Laws 1998, LB 1041, § 38.

Cross References

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

43-1309 Records; release; when.

Upon the request of the state board or the designated local board, any records pertaining to a case assigned to such board, or upon the request of the Department of Health and Human Services, any records pertaining to a case assigned to the department, shall be furnished to the requesting board or department by the agency charged with the child or any public official or employee of a political subdivision having relevant contact with the child. Upon the request of the state board or designated local board, and if such information is not obtainable elsewhere, the court having jurisdiction of the foster child shall release such information to the state board or designated local board as

the court deems necessary to determine the physical, psychological, and socio-logical circumstances of such foster child.

Source: Laws 1982, LB 714, § 9; Laws 1990, LB 1222, § 8; Laws 1996, LB 1044, § 197.

43-1310 Records and information; confidential; unauthorized disclosure; penalty.

All records and information regarding foster children and their parents or relatives in the possession of the state board or local board shall be deemed confidential. Unauthorized disclosure of such confidential records and information or any violation of the rules and regulations of the Department of Health and Human Services or the state board shall be a Class III misdemeanor.

Source: Laws 1982, LB 714, § 10; Laws 1990, LB 1222, § 9; Laws 1996, LB 1044, § 198.

43-1311 Child removed from home; person or court in charge of child; duties.

Except as otherwise provided in the Nebraska Indian Child Welfare Act, immediately following removal of a child from his or her home pursuant to section 43-284, the person or court in charge of the child shall:

- (1) Conduct or cause to be conducted an investigation of the child's circumstances designed to establish a safe and appropriate plan for the rehabilitation of the foster child and family unit or permanent placement of the child;
- (2) Require that the child receive a medical examination within two weeks of his or her removal from his or her home;
- (3) Subject the child to such further diagnosis and evaluation as is necessary; and
- (4) Require that the child attend the same school as prior to the foster care placement unless the person or court in charge determines that attending such school would not be in the best interests of the child.

Source: Laws 1982, LB 714, § 11; Laws 1985, LB 255, § 42; Laws 1998, LB 1041, § 39; Laws 2008, LB1014, § 44.
Operative date July 18, 2008.

Cross References

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

43-1312 Plan or permanency plan for foster child; contents; investigation; hearing.

(1) Following the investigation conducted pursuant to section 43-1311 and immediately following the initial placement of the child, the person or court in charge of the child shall cause to be established a safe and appropriate plan for the child. The plan shall contain at least the following:

- (a) The purpose for which the child has been placed in foster care;
- (b) The estimated length of time necessary to achieve the purposes of the foster care placement;
- (c) A description of the services which are to be provided in order to accomplish the purposes of the foster care placement;

(d) The person or persons who are directly responsible for the implementation of such plan;

(e) A complete record of the previous placements of the foster child; and

(f) The name of the school the child shall attend as provided in section 43-1311.

(2) If the return of the child to his or her parents is not likely based upon facts developed as a result of the investigation, the Department of Health and Human Services shall recommend termination of parental rights and referral for adoption, guardianship, placement with a relative, or, as a last resort, another planned permanent living arrangement.

(3) Each child in foster care under the supervision of the state shall have a permanency hearing by a court, no later than twelve months after the date the child enters foster care and annually thereafter during the continuation of foster care. The court's order shall include a finding regarding the appropriateness of the permanency plan determined for the child and shall include whether, and if applicable when, the child will be:

(a) Returned to the parent;

(b) Referred to the state for filing of a petition for termination of parental rights;

(c) Placed for adoption;

(d) Referred for guardianship; or

(e) In cases where the state agency has documented to the court a compelling reason for determining that it would not be in the best interests of the child to return home, (i) referred for termination of parental rights, (ii) placed for adoption with a fit and willing relative, or (iii) placed with a guardian.

Source: Laws 1982, LB 714, § 12; Laws 1998, LB 1041, § 40; Laws 2008, LB1014, § 45.

Operative date July 18, 2008.

Under subsection (3) of this section, a permanency hearing considers the appropriateness of a plan for a child in foster care with respect to the plan's likelihood of providing, inter alia, a safe, stable, and nurturing environment. Pursuant to subsection

(3) of this section, a permanency hearing must be conducted no later than twelve months after the child enters foster care. In re Interest of Sarah K., 258 Neb. 52, 601 N.W.2d 780 (1999).

43-1313 Review of dispositional order; when; procedure.

When a child is in foster care, the court having jurisdiction over such child for the purposes of foster care placement shall review the dispositional order for such child at least once every six months. The court may reaffirm the order or direct other disposition of the child. Any review hearing by a court having jurisdiction over such child for purposes of foster care placement shall be conducted on the record as provided in sections 43-283 and 43-284, and any recommendations of the state board or a local board concerning such child shall be included in the record. The court shall review a case on the record more often than every six months and at any time following the original placement of the child if the state board requests a hearing in writing specifying the reasons for the review. Members of the state board or its designated representative may attend and be heard at any hearing conducted under this section and may participate through counsel at the hearing with the right to call and cross-examine witnesses and present arguments to the court.

Source: Laws 1982, LB 714, § 13; Laws 1990, LB 1222, § 10.

43-1314 Review of dispositional order; right to participate; notice.

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

Source: Laws 1982, LB 714, § 14; Laws 1985, LB 255, § 43; Laws 1988, LB 948, § 1; Laws 1990, LB 1222, § 11; Laws 1998, LB 1041, § 41; Laws 2006, LB 1115, § 34.

Cross References

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

A foster parent does not have an interest in the placement of an adjudicated child sufficient to warrant intervention in juvenile proceedings as a matter of right, but is entitled to notice and an opportunity to participate in all court reviews pertaining to a child in foster care placement. *In re Interest of Destiny S.*, 263 Neb. 255, 639 N.W.2d 400 (2002).

Under this section and section 43-285, foster parents have standing to participate in foster care placement review hearings. *In re Interest of Jorius G. & Cheralee G.*, 249 Neb. 892, 546 N.W.2d 796 (1996).

43-1314.01 Six-month case reviews; state board; duties.

(1) The State Foster Care Review Board shall be responsible for the conduct of periodic reviews which shall be identified as reviews which meet the federal requirements for six-month case reviews pursuant to the federal Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272. The state board shall be fiscally responsible for any noncompliance sanctions imposed by the federal government related to the requirements for review outlined in the federal Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272. It is the intent of the Legislature that beginning October 1, 1996, the state board shall be the only state agency with the responsibility to conduct six-month case reviews pursuant to the federal Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272.

(2) It is the intent of the Legislature that any six-month court review of a juvenile pursuant to sections 43-278 and 43-1313 shall be identified as a review which meets the federal requirements for six-month case reviews pursuant to the federal Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272.

(3) The state board may assist the Department of Health and Human Services as to eligibility under Title IV-E for state wards and eligibility for Supplemental Security Income, Supplemental Security Disability Income, Veterans Adminis-

tration, or aid to families with dependent children benefits, for child support orders of the court, and for medical insurance other than medicaid.

Source: Laws 1996, LB 642, § 1; Laws 1997, LB 307, § 76; Laws 1999, LB 240, § 4.

43-1314.02 Caregiver information form; development; provided to caregiver.

(1) The court shall provide a caregiver information form to the foster parent, preadoptive parent, guardian, or relative providing care for the child when giving notice of a court review described in section 43-1314. The form is to be dated and signed by the caregiver and shall, at a minimum, request the following:

- (a) The child's name, age, and date of birth;
- (b) The name of the caregiver, his or her telephone number and address, and whether the caregiver is a foster parent, preadoptive parent, guardian, or relative;
- (c) How long the child has been in the caregiver's care;
- (d) A current picture of the child;
- (e) The current status of the child's medical, dental, and general physical condition;
- (f) The current status of the child's emotional condition;
- (g) The current status of the child's education;
- (h) Whether or not the child is a special education student and the date of the last individualized educational plan;
- (i) A brief description of the child's social skills and peer relationships;
- (j) A brief description of the child's special interests and activities;
- (k) A brief description of the child's reactions before, during, and after visits;
- (l) Whether or not the child is receiving all necessary services;
- (m) The date and place of each visit by the caseworker with the child;
- (n) A description of the method by which the guardian ad litem has acquired information about the child; and
- (o) Whether or not the caregiver can make a permanent commitment to the child if the child does not return home.

(2) A caregiver information form shall be developed by the Supreme Court. Such form shall be made a part of the record in each court that reviews the child's foster care proceedings.

Source: Laws 2007, LB457, § 1.

43-1315 Status and permanency plan review; placement order.

In reviewing the foster care status and permanency plan of a child and in determining its order for disposition, the court shall continue placement outside the home upon a written determination that return of the child to his or her home would be contrary to the welfare of such child and that reasonable efforts to preserve and reunify the family, if required under section 43-283.01, have been made. In making this determination, the court shall consider the

goals of the foster care placement and the safety and appropriateness of the foster care plan or permanency plan established pursuant to section 43-1312.

Source: Laws 1982, LB 714, § 15; Laws 1987, LB 635, § 4; Laws 1998, LB 1041, § 42.

The Legislature intended that the issue of reasonable efforts required under section 43-283.01 must be reviewed by the juvenile court (1) when removing from the home a juvenile adjudged to be under subsections (3) or (4) of section 43-247 pursuant to section 43-284, (2) when the court continues a juvenile's out-of-home placement pending adjudication pursuant to section 43-254, (3) when the court reviews a juvenile's status and permanency planning pursuant to this section, and (4)

when termination of parental rights to a juvenile is sought by the State under subsection (6) of section 43-292. In re Interest of DeWayne G., Jr. & Devon G., 263 Neb. 43, 638 N.W.2d 510 (2002).

This section only applies to situations where the foster care status of a child is being reviewed, not all orders which are dispositional in nature. In re Interest of Gloria F., 254 Neb. 531, 577 N.W.2d 296 (1998).

43-1316 Status review; child's needs; determination.

The court shall, when reviewing the foster care status of a child, determine whether the individual physical, psychological, and sociological needs of the child are being met. The health and safety of the child are of paramount concern in such review.

Source: Laws 1982, LB 714, § 16; Laws 1998, LB 1041, § 43.

43-1317 Training for local board members.

The state board shall establish compulsory training for local board members which shall consist of initial training programs followed by periodic inservice training programs.

Source: Laws 1982, LB 714, § 17.

43-1318 Act, how cited.

Sections 43-1301 to 43-1318 shall be known and may be cited as the Foster Care Review Act.

Source: Laws 1982, LB 714, § 18; Laws 1996, LB 642, § 2; Laws 1998, LB 1041, § 44; Laws 2007, LB457, § 2.

(b) STATE FINANCIAL SUPPORT

43-1319 Funds of Department of Health and Human Services; use.

Funds of the Department of Health and Human Services shall be used to defray the reasonable expenses incurred in the recruitment, training, and recognition of foster care providers and volunteers, including expenses incurred for community forums, public information sessions, and similar administrative functions.

Source: Laws 1990, LB 1222, § 14; Laws 1996, LB 1044, § 199.

43-1320 Foster parents; liability protection; Foster Parent Liability and Property Damage Fund; created; use; investment; unreimbursed liability and damage; claim.

(1) The Legislature finds and declares that foster parents are a valuable resource providing an important service to the citizens of Nebraska. The Legislature recognizes that the current insurance crisis has adversely affected some foster parents in several ways. Foster parents have been unable to obtain liability insurance coverage over and above homeowner's or tenant's coverage for actions filed against them by the foster child, the child's parents, or the

child's legal guardian. In addition, the monthly payment made to foster parents is not sufficient to cover the cost of obtaining extended coverage and there is no mechanism in place by which foster parents can recapture the cost. Foster parents' personal resources are at risk, and therefore the Legislature desires to provide relief to address these problems.

(2) The Department of Health and Human Services shall provide for self-insuring the foster parent program pursuant to section 81-8,239.01 or shall provide and pay for liability and property damage insurance for participants in a family foster parent program who have been licensed or approved to provide care or who have been licensed or approved by a legally established Indian tribal council operating within the state to provide care.

(3) There is hereby created the Foster Parent Liability and Property Damage Fund. The fund shall be administered by the Department of Health and Human Services and shall be used to provide funding for self-insuring the foster parent program pursuant to section 81-8,239.01 or to purchase any liability and property damage insurance policy provided pursuant to subsection (2) of this section and reimburse foster parents for unreimbursed liability and property damage incurred or caused by a foster child as the result of acts covered by the insurance policy. Claims for unreimbursed liability and property damage incurred or caused by a foster child may be submitted in the manner provided in the State Miscellaneous Claims Act. Each claim shall be limited to the amount of any deductible applicable to the insurance policy provided pursuant to subsection (2) of this section, and there may be a fifty-dollar deductible payable by the foster parent per claim. The department shall adopt and promulgate rules and regulations to carry out this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1992, LB 169, § 2; Laws 1994, LB 1066, § 27; Laws 1996, LB 1044, § 200; Laws 1998, LB 1073, § 30; Laws 2007, LB296, § 127.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

State Miscellaneous Claims Act, see section 81-8,294.

(c) FOSTER CARE REVIEW BOARD CASH FUND

43-1321 Foster Care Review Board Cash Fund; created; use; investment.

There is hereby created the Foster Care Review Board Cash Fund. The fund shall be administered by the State Foster Care Review Board. The board shall remit revenue from the following sources to the State Treasurer for credit to the fund:

- (1) Registration and other fees received for training, seminars, or conferences fully or partially sponsored or hosted by the board;
- (2) Payments to offset printing, postage, and other expenses for books, documents, or other materials printed or published by the board; and
- (3) Money received by the board as gifts, grants, reimbursements, or appropriations from any source intended for the purposes of the fund.

The fund shall be used for the administration of the Foster Care Review Act.

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

Source: Laws 1994, LB 1194, § 9; Laws 1995, LB 7, § 38.

Cross References

Foster Care Review Act, see section 43-1318.

Nebraska Capital Expansion Act, see section 72-1269.

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

(d) TRANSITION OF EMPLOYEES

43-1322 Repealed. Laws 1999, LB 9, § 1.

ARTICLE 14

PARENTAL SUPPORT AND PATERNITY

Cross References

Child born out of wedlock:

Birth certificate, see sections 71-628 and 71-640.01.

County attorney, duties, see section 43-512.03 et seq.

Parenting Act, not applicable, see section 43-2919.

Notice of intent to claim paternity, see section 43-104.02.

Section

- 43-1401. Terms, defined.
- 43-1402. Child support; liability of parents.
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- 43-1408.01. Notarized acknowledgment of paternity; execution by alleged father; form; filing with Department of Health and Human Services; payment.
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- 43-1417. Additional genetic testing; when.
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43-1401 Terms, defined.

For purposes of sections 43-1401 to 43-1418:

(1) Child shall mean a child under the age of eighteen years born out of wedlock;

(2) Child born out of wedlock shall mean a child whose parents were not married to each other at the time of its birth, except that a child shall not be

considered as born out of wedlock if its parents were married at the time of its conception but divorced at the time of its birth. The definition of legitimacy or illegitimacy for other purposes shall not be affected by the provisions of such sections; and

(3) Support shall include reasonable education.

Source: Laws 1941, c. 81, § 1, p. 322; C.S.Supp.,1941, § 43-701; R.S. 1943, (1983), § 13-101; Laws 1994, LB 1224, § 55.

Since the child was conceived while the parties were still married, it was improper to bring a paternity action rather than an action to amend the dissolution decree in order to secure support from the father. State ex rel. Storz v. Storz, 235 Neb. 368, 455 N.W.2d 182 (1990).

In a proceeding under Chapter 13 (transferred to Chapter 43, article 14), the district court can modify the amount of a child support award if there is a change of circumstances. In a filiation proceeding under Chapter 13 (transferred to Chapter 43, article 14), an award of attorney fees is not allowed. State ex rel. Toledo v. Bockmann, 218 Neb. 428, 355 N.W.2d 521 (1984).

Married woman may be mother of child born out of wedlock. Gomez v. State ex rel. Larez, 157 Neb. 738, 61 N.W.2d 345 (1953).

1941 act sustained as constitutional. In re Application of Rozgall, 147 Neb. 260, 23 N.W.2d 85 (1946).

In the absence of a statute, a cause of action for the support of a child born out of wedlock does not survive against the personal representative of the alleged father. Carlson v. Bartels, 143 Neb. 680, 10 N.W.2d 671 (1941).

43-1402 Child support; liability of parents.

The father of a child whose paternity is established either by judicial proceedings or by acknowledgment as hereinafter provided shall be liable for its support to the same extent and in the same manner as the father of a child born in lawful wedlock is liable for its support. The mother of a child shall also be liable for its support. The liability of each parent may be determined, enforced, and discharged in accordance with the methods hereinafter provided.

Source: Laws 1941, c. 81, § 2, p. 322; C.S.Supp.,1941, § 43-702; R.S. 1943, (1983), § 13-102.

A child born out of wedlock is entitled to child support retroactively to the date of birth because it is upon the child's birth that the parental duty of support commences. The same is true for a child born in wedlock, and such duty toward a minor child does not terminate upon divorce. At divorce, the duty of support is merely quantified. Willers ex rel. Powell v. Willers, 255 Neb. 769, 587 N.W.2d 390 (1998).

A parent has the duty to support a child, and a child born out of wedlock is entitled to support from the father to the same extent and in the same manner as a child born in wedlock. The duty to support one's child begins at birth, and there is no rational basis to distinguish support obligations to a child based upon whether the parents married. In a paternity action, a child who was not supported by a parent is ordinarily entitled to an award of retroactive child support. Retroactive child support is ordinarily determined in accordance with the Nebraska Child Support Guidelines, and the \$50 minimum monthly support is presumptively correct absent contrary evidence. Sylvis v. Walling, 248 Neb. 168, 532 N.W.2d 312 (1995).

Child support obligations which are determined in a paternity action are to be reached in the same manner as cases of children born in lawful wedlock. Such determinations will not be reversed absent an abuse of discretion. State on behalf of S.M. v. Oglesby, 244 Neb. 880, 510 N.W.2d 53 (1994).

When paternity is legally established, there is no rational basis to distinguish the support obligations of a father to a child born out of wedlock from the support obligations of a father to a child born in wedlock, and an out-of-wedlock child should be entitled to support from its father from the time of birth. State on behalf of Matchett v. Dunkle, 244 Neb. 639, 508 N.W.2d 580 (1993).

Chapter 13 which provides for "Children Born Out of Wedlock" (transferred to Chapter 43, article 14) conflicts with the common law rule and must be strictly construed. Riederer v. Siciunas, 193 Neb. 580, 228 N.W.2d 283 (1975).

This section construed with section 42-364, authorizes court to modify amount of child support in paternity action in interests of children. Riederer v. Siciunas, 193 Neb. 580, 228 N.W.2d 283 (1975).

Liability of father of child born out of wedlock to support the child is the same as that of the father of a child born in lawful wedlock. State ex rel. Stobel v. Stanek, 176 Neb. 100, 125 N.W.2d 107 (1963).

Child support determinations made concomitantly in a filiation proceeding are characterized as "equitable" proceedings. Dworak v. Fugit, 1 Neb. App. 332, 495 N.W.2d 47 (1992).

43-1403 Support by county; conditions.

In case of the neglect or inability of the parents, or either of them, to support a child, it shall be supported by the county chargeable therewith under the provisions of Chapter 68. Nothing in this section shall be construed to make a child ineligible to receive relief to which it might otherwise be entitled under any law enacted for the relief of children.

Source: Laws 1941, c. 81, § 3, p. 323; C.S.Supp.,1941, § 43-703; R.S. 1943, (1983), § 13-103.

43-1404 Child support; liability of parents; discharge.

The liability of the father or mother of a child for its support shall be discharged by compliance with the terms of a judicial decree for support or the terms of a judicially approved settlement or by the adoption of the child by some other person or persons.

Source: Laws 1941, c. 81, § 4, p. 323; C.S.Supp.,1941, § 43-704; R.S. 1943, (1983), § 13-104.

43-1405 Child support; liability of father; discharge by settlement; requirements.

A settlement provided for in section 43-1404 means a voluntary agreement between the father of the child and the mother or some person authorized to act in her behalf, or between the father and the next friend or guardian of the child, whereby the father promises to make adequate provision for the support of the child. In the event that such a settlement is made it shall be binding on all parties and shall bar all other remedies of the mother and child and the legal representatives of the child so long as it shall be performed by the father, if said settlement is approved by the court having jurisdiction to compel the support of the child. The court shall approve such settlement only if it shall find and determine that adequate provision is made for the support of the child and that the father shall have offered clear evidence of his willingness and ability to perform the agreement. The court, in its discretion, may require the father to furnish bond with proper sureties conditioned upon the performance of the settlement.

Source: Laws 1941, c. 81, § 5, p. 323; C.S.Supp.,1941, § 43-705; R.S. 1943, (1983), § 13-105.

43-1406 Determination of paternity by other state; full faith and credit; legitimacy of child.

(1) A determination of paternity made by any other state, whether established through voluntary acknowledgment, genetic testing, or administrative or judicial processes, shall be given full faith and credit by this state.

(2) A child whose parents marry is legitimate.

Source: Laws 1941, c. 81, § 6, p. 323; C.S.Supp.,1941, § 43-706; R.S. 1943, (1983), § 13-106; Laws 1985, Second Spec. Sess., LB 7, § 74; Laws 1986, LB 79, § 1; Laws 1991, LB 457, § 15; Laws 1993, LB 500, § 53; Laws 1994, LB 1224, § 57.

A mother's authority to compel payment of retroactive child support in a paternity action rests upon the child's right to be supported by the father. *Sylvis v. Walling*, 248 Neb. 168, 532 N.W.2d 312 (1995).

While the cost of caring for a child is an important consideration in determining child support, the father's ability to make the payments is equally important. *Hanson v. Rockwell*, 206 Neb. 299, 292 N.W.2d 786 (1980).

Action by father seeking legitimation is not authorized. *Paltani v. Creel*, 169 Neb. 591, 100 N.W.2d 736 (1960).

Paternity of a child born out of wedlock may be established by acknowledgment or by a judicial proceeding. *Timmerman v. Timmerman*, 163 Neb. 704, 81 N.W.2d 135 (1957).

On appeal, award will not be disturbed in absence of abuse of discretion. *Race v. Mrsny*, 155 Neb. 679, 53 N.W.2d 88 (1952).

Attorney fees and costs are recoverable in paternity and child support cases, and an award of such fees and costs will be upheld on appeal absent an abuse of discretion. Both parents of a minor child born out of wedlock have a duty to financially support the child, including payment of costs for health care which are unreimbursed by insurance or other sources. *Morrill County on Behalf of Cahoy v. Darsaklis*, 7 Neb. App. 489, 584 N.W.2d 36 (1998).

Child support determinations made concomitantly in a filiation proceeding are characterized as "equitable" proceedings. *Dworak v. Fugit*, 1 Neb. App. 332, 495 N.W.2d 47 (1992).

43-1407 Expenses of mother; liability of father; enforcement; payment by medical assistance program; recovery; procedure.

(1) The father of a child shall also be liable for the reasonable expenses of (a) the child that are associated with the birth of the child and (b) the mother of such child during the period of her pregnancy, confinement, and recovery. Such liability shall be determined and enforced in the same manner as the liability of the father for the support of the child.

(2) In cases in which any medical expenses associated with the birth of the child and the mother of such child during the period of her pregnancy, confinement, and recovery are paid by the medical assistance program, the county attorney or authorized attorney, as defined in section 43-1704, may petition the court for a judgment for all or a portion of the reasonable medical expenses paid by the medical assistance program. Any medical expenses associated with the birth of such child and the mother of such child during the period of her pregnancy, confinement, and recovery that are approved and paid by the medical assistance program shall be presumed to be medically reasonable. If the father challenges any such expenses as not medically reasonable, he has the burden of proving that such expenses were not medically reasonable.

(3) A civil proceeding to recover medical expenses pursuant to this section may be instituted within four years after the child's birth. Summons shall issue and be served as in other civil proceedings, except that such summons may be directed to the sheriff of any county in the state and may be served in any county.

Source: Laws 1941, c. 81, § 7, p. 324; C.S.Supp.,1941, § 43-707; R.S. 1943, (1983), § 13-107; Laws 2007, LB554, § 43.

43-1408 Repealed. Laws 1991, LB 457, § 47.

43-1408.01 Notarized acknowledgment of paternity; execution by alleged father; form; filing with Department of Health and Human Services; payment.

(1) During the period immediately before or after the in-hospital birth of a child whose mother was not married at the time of either conception or birth of the child or at any time between conception and birth of the child, the person in charge of such hospital or his or her designated representative shall provide to the child's mother and alleged father, if the alleged father is readily identifiable and available, the documents and written instructions for such mother and father to complete a notarized acknowledgment of paternity. Such acknowledgment, if signed by both parties and notarized, shall be filed with the Department of Health and Human Services at the same time at which the certificate of live birth is filed.

Nothing in this section shall be deemed to require the person in charge of such hospital or his or her designee to seek out or otherwise locate an alleged father who is not readily identifiable or available.

(2) The acknowledgment shall be executed on a form prepared by the department. Such form shall be in essentially the same form provided by the department and used for obtaining signatures required by section 71-640.02. The acknowledgment shall include, but not be limited to, (a) a statement by the mother consenting to the acknowledgment of paternity and a statement that the alleged father is the biological father of the child, (b) a statement by the alleged father that he is the biological father of the child, (c) written information

regarding parental rights and responsibilities, and (d) the social security numbers of the parents.

(3) The form provided for in subsection (2) of this section shall also contain instructions for completion and filing with the department if it is not completed and filed with a birth certificate as provided in subsection (1) of this section.

(4) The department shall accept completed acknowledgment forms and make available to county attorneys or authorized attorneys a record of acknowledgments it has received, as provided in subsection (1) of section 71-612. The department may prepare photographic, electronic, or other reproductions of acknowledgments. Such reproductions, when certified and approved by the department, shall be accepted as the original records, and the documents from which permanent reproductions have been made may be disposed of as provided by rules and regulations of the department.

(5) The department may by regulation establish a nominal payment and procedure for payment by the department for each acknowledgment filed with the department. The amount of such payments and the entities receiving such payments shall be within the limits allowed by Title IV-D of the federal Social Security Act, as amended.

Source: Laws 1994, LB 1224, § 56; Laws 1996, LB 1044, § 201; Laws 1997, LB 307, § 77; Laws 1997, LB 752, § 100; Laws 2007, LB296, § 128.

43-1409 Notarized acknowledgment of paternity; rebuttable presumption; admissibility; rescission.

The signing of a notarized acknowledgment, whether under section 43-1408.01 or otherwise, by the alleged father shall create a rebuttable presumption of paternity as against the alleged father. The signed, notarized acknowledgment is subject to the right of any signatory to rescind the acknowledgment within the earlier of (1) sixty days or (2) the date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a support order in which the signatory is a party. After the rescission period a signed, notarized acknowledgment is considered a legal finding which may be challenged only on the basis of fraud, duress, or material mistake of fact with the burden of proof upon the challenger, and the legal responsibilities, including the child support obligation, of any signatory arising from the acknowledgment shall not be suspended during the challenge, except for good cause shown. Such a signed and notarized acknowledgment or a certified copy or certified reproduction thereof shall be admissible in evidence in any proceeding to establish support.

Source: Laws 1941, c. 81, § 9, p. 324; C.S.Supp.,1941, § 43-709; R.S. 1943, § 43-1409; R.S.1943, (1983), § 13-109; Laws 1994, LB 1224, § 58; Laws 1997, LB 752, § 101; Laws 1999, LB 594, § 21.

In a filiation proceeding for support of a child born out of wedlock, evidence of the performance of acts described in this statute is not conclusive on the trier of fact, but constitutes relevant evidence of a biological relationship. State on behalf of J.R. v. Mendoza, 240 Neb. 149, 481 N.W.2d 165 (1992).

This section provides that one's conduct may indicate or be evidence of paternity. Stratman v. Hagen, 221 Neb. 157, 376 N.W.2d 3 (1985).

Where parents of a child born out of wedlock subsequently marry, that child is legitimate. Farmer v. Farmer, 200 Neb. 308, 263 N.W.2d 664 (1978).

Furnishing of support was an acknowledgment of paternity. Morimoto v. Nebraska Children's Home Society, 175 Neb. 174, 121 N.W.2d 26 (1963).

A child born out of wedlock living with deceased workman at time of his death was entitled to benefits under Workmen's

Compensation Act. *Copple v. Bowlin*, 172 Neb. 467, 110 N.W.2d 117 (1961).

This section defines what may be regarded as satisfactory proof in a paternity action. *Timmerman v. Timmerman*, 163 Neb. 704, 81 N.W.2d 135 (1957).

43-1410 Child support; decree or approved settlement; effect after death of parent.

Any judicially approved settlement or order of support made by a court having jurisdiction in the premises shall be binding on the legal representatives of the father or mother in the event of his or her death, to the same extent as other contractual obligations and judicial judgments or decrees.

Source: Laws 1941, c. 81, § 10, p. 325; C.S.Supp., 1941, § 43-710; R.S. 1943, (1983), § 13-110.

43-1411 Paternity; action to establish; venue; limitation; summons.

A civil proceeding to establish the paternity of a child may be instituted, in the court of the district where the child is domiciled or found or, for cases under the Uniform Interstate Family Support Act, where the alleged father is domiciled, by (1) the mother or the alleged father of such child, either during pregnancy or within four years after the child's birth, unless (a) a valid consent or relinquishment has been made pursuant to sections 43-104.08 to 43-104.25 or section 43-105 for purposes of adoption or (b) a county court or separate juvenile court has jurisdiction over the custody of the child or jurisdiction over an adoption matter with respect to such child pursuant to sections 43-101 to 43-116 or (2) the guardian or next friend of such child or the state, either during pregnancy or within eighteen years after the child's birth. Summons shall issue and be served as in other civil proceedings, except that such summons may be directed to the sheriff of any county in the state and may be served in any county.

Source: Laws 1941, c. 81, § 11, p. 325; C.S.Supp., 1941, § 43-711; R.S. 1943, § 43-1411; R.S. 1943, (1983), § 13-111; Laws 1985, Second Spec. Sess., LB 7, § 75; Laws 1986, LB 813, § 1; Laws 1991, LB 457, § 16; Laws 1993, LB 500, § 54; Laws 1994, LB 1224, § 59; Laws 1995, LB 712, § 29; Laws 1998, LB 1041, § 45; Laws 2007, LB 247, § 22.

Cross References

Uniform Interstate Family Support Act, see section 42-701.

In the context of a paternity action, "next friend" is defined as "one who, in the absence of a guardian, acts for the benefit of an infant". Where a minor child lived with his mother and natural guardian, the court determined there was no legal basis, reason, or cause for a "next friend" to institute a paternity action on the minor child's behalf. *Zoucha v. Henn*, 258 Neb. 611, 604 N.W.2d 828 (2000).

A next friend is one who, in the absence of a guardian, acts for the benefit of an infant. *State on behalf of B.A.T. v. S.K.D.*, 246 Neb. 616, 522 N.W.2d 393 (1994).

Actions brought by a guardian or next friend on behalf of children born out of wedlock may be brought within 18 years after the child's birth. Moreover, this preservation of a minor child's right to establish paternity does not violate either the

U.S. or Nebraska constitutions. *State on behalf of S.M. v. Oglesby*, 244 Neb. 880, 510 N.W.2d 53 (1994).

Father of child born out of wedlock may bring suit to determine paternity. *White v. Mertens*, 225 Neb. 241, 404 N.W.2d 410 (1987).

This section contains no limitation on a cause of action brought on behalf of a child to establish paternity and secure its rights. *Doak v. Milbauer*, 216 Neb. 331, 343 N.W.2d 751 (1984).

Determination of paternity not barred by statute of limitations in action to modify divorce decree. *Farmer v. Farmer*, 200 Neb. 308, 263 N.W.2d 664 (1978).

Filiation proceeding is considered as civil in character. *Lockman v. Fulton*, 162 Neb. 439, 76 N.W.2d 452 (1956).

43-1411.01 Paternity or parental support; jurisdiction; termination of parental rights; provisions applicable.

(1) An action for paternity or parental support under sections 43-1401 to 43-1418 may be initiated by filing a complaint with the clerk of the district

court as provided in section 25-2740. Such proceeding may be heard by the county court or the district court as provided in section 25-2740. A paternity determination under sections 43-1411 to 43-1418 may also be decided in a county court or separate juvenile court if the county court or separate juvenile court already has jurisdiction over the child whose paternity is to be determined.

(2) Whenever termination of parental rights is placed in issue in any case arising under sections 43-1401 to 43-1418, subsection (5) of section 42-364 and the Parenting Act shall apply to such proceedings.

Source: Laws 1997, LB 229, § 38; Laws 1998, LB 1041, § 46; Laws 2004, LB 1207, § 40; Laws 2008, LB1014, § 46.
Operative date April 17, 2008.

Cross References

Parenting Act, see section 43-2920.

43-1412 Paternity; action to establish; procedure; public hearings prohibited; evidence; default judgment; decree; payment of costs and fees.

(1) The method of trial shall be the same as that in other civil proceedings, except that the trial shall be by the court without a jury unless a jury is requested (a) by the alleged father, in a proceeding instituted by the mother or the guardian or next friend, or (b) by the mother, in a proceeding instituted by the alleged father. It being contrary to public policy that such proceedings should be open to the general public, no one but the parties, their counsel, and others having a legitimate interest in the controversy shall be admitted to the courtroom during the trial of the case. The alleged father and the mother shall be competent to testify. The uncorroborated testimony (i) of the mother, in a proceeding instituted by the mother or the guardian or next friend, or (ii) of the alleged father, in a proceeding instituted by the alleged father, shall not alone be sufficient to support a verdict or finding that the alleged father is actually the father. Refusal by the alleged father to comply with an order of the court for genetic testing shall be deemed corroboration of the allegation of paternity. A signed and notarized acknowledgment of paternity or a certified copy or certified reproduction thereof shall be admissible in evidence in any proceeding to establish paternity without the need for foundation testimony or other proof of authenticity or accuracy.

If it is determined in this proceeding that the alleged father is actually the father of the child, a judgment shall be entered declaring the alleged father to be the father of the child.

(2) A default judgment shall be entered upon a showing of service and failure of the defendant to answer or otherwise appear.

(3) If a judgment is entered under this section declaring the alleged father to be the father of the child, the court shall retain jurisdiction of the cause and enter such order of support, including the amount, if any, of any court costs and attorney's fees which the court in its discretion deems appropriate to be paid by the father, as may be proper under the procedure and in the manner specified in section 43-512.04. If it is not determined in the proceeding that the alleged father is actually the father of the child, the court shall, if it finds that the action was frivolous, award court costs and attorney's fees incurred by the alleged father, with such costs and fees to be paid by the plaintiff.

(4) All judgments under this section declaring the alleged father to be the father of the child shall include the father's social security number. The social

security number of the declared father of the child shall be furnished to the clerk of the district court in a document accompanying the judgment.

Source: Laws 1941, c. 81, § 11, p. 325; C.S.Supp., 1941, § 43-711; R.S. 1943, § 43-1412; R.S. 1943, (1983), § 13-112; Laws 1986, LB 79, § 2; Laws 1986, LB 813, § 2; Laws 1994, LB 1224, § 60; Laws 1997, LB 752, § 102; Laws 2004, LB 1207, § 41; Laws 2006, LB 1113, § 41.

Subsection (3) of this section specifically provides that attorney fees and costs are allowed in paternity and child support cases brought by a child's mother, father, or guardian or next friend, the county attorney, or another authorized attorney. To the extent State ex rel. Reitz v. Ringer, 244 Neb. 976, 510 N.W.2d 294 (1994), holds otherwise, it is overruled. Cross v. Perreten, 257 Neb. 776, 600 N.W.2d 780 (1999).

A district court retains jurisdiction for orders regarding child support notwithstanding the fact that a paternity determination is on appeal. State on Behalf of Joseph F. v. Rial, 251 Neb. 1, 554 N.W.2d 769 (1996).

In a civil action, only a preponderance of the evidence is necessary to sustain the establishment of paternity. State v. Yelli, 247 Neb. 785, 530 N.W.2d 250 (1995).

This section authorizes a plaintiff claiming to be the father of a child born out of wedlock to request a jury trial if he so desires. Stratman v. Hagen, 221 Neb. 157, 376 N.W.2d 3 (1985).

In filiation proceedings, only a preponderance of the evidence is necessary to sustain establishment of paternity. In filiation proceedings tried to the trial court without a jury, findings of the trial court have the same effect as a jury verdict, and such findings will not be disturbed unless clearly wrong. The corroboration of testimony required in filiation proceedings may consist of circumstantial evidence. Gregory v. Davis, 214 Neb. 408, 334 N.W.2d 1 (1983).

In a proceeding to determine paternity of a child under the provisions of sections 13-101 to 13-112 (transferred to Chapter 43, article 14) the mother is a competent witness on the issue of the child's paternity. Roebuck v. Fraedrich, 201 Neb. 413, 267 N.W.2d 759 (1978).

In a paternity proceeding, only a preponderance of evidence is necessary to sustain a verdict. Snay v. Snarr, 195 Neb. 375, 238 N.W.2d 234 (1976).

Corroboration of the mother's testimony that defendant is the father is sufficient, if she be corroborated as to material facts and circumstances which tend to support her testimony and from which, together with her testimony as to the principal act, the inference of guilt may be drawn. Wade v. Hicks, 191 Neb. 847, 218 N.W.2d 222 (1974).

Corroboration of complainant is required. Lockman v. Fulton, 162 Neb. 439, 76 N.W.2d 452 (1956).

Corroboration of mother is required. State ex rel. Klostermeier v. Klostermeier, 161 Neb. 247, 72 N.W.2d 848 (1955).

Jury trial may be obtained if requested by any putative father who is made defendant in any proceedings under 1941 act. In re Application of Rozgall, 147 Neb. 260, 23 N.W.2d 85 (1946).

This section provides that attorney fees and costs are recoverable in paternity and child support cases, and an award of such fees and costs will be upheld on appeal absent an abuse of discretion. Morrill County on Behalf of Cahoy v. Darsaklis, 7 Neb. App. 489, 584 N.W.2d 36 (1998).

Relevant evidence of paternity includes evidence of sexual intercourse between the mother and alleged father at any possible time of conception and the results of blood testing. Corroboration means independent evidence which tends to strengthen or otherwise to confirm the testimony of the mother of the child whose paternity is in issue. State on behalf of Cooper v. Harmon, 2 Neb. App. 612, 512 N.W.2d 656 (1994).

A "frivolous paternity proceeding" means a paternity suit brought for an improper motive or premised upon a legal position so wholly without merit as to be without rational argument in the law or evidence. State ex rel. Mooney v. Duer, 1 Neb. App. 84, 487 N.W.2d 575 (1992).

43-1412.01 Legal determination of paternity set aside; when; guardian ad litem; court orders.

An individual may file a complaint for relief and the court may set aside a final judgment, court order, administrative order, obligation to pay child support, or any other legal determination of paternity if a scientifically reliable genetic test performed in accordance with sections 43-1401 to 43-1418 establishes the exclusion of the individual named as a father in the legal determination. The court shall appoint a guardian ad litem to represent the interest of the child. The filing party shall pay the costs of such test. A court that sets aside a determination of paternity in accordance with this section shall order completion of a new birth record and may order any other appropriate relief, including setting aside an obligation to pay child support. No support order may be retroactively modified, but may be modified with respect to any period during which there is a pending complaint for relief from a determination of paternity under this section, but only from the date that notice of the complaint was served on the nonfiling party. A court shall not grant relief from determination of paternity if the individual named as father (1) completed a notarized acknowledgment of paternity pursuant to section 43-1408.01, (2) adopted the child, or (3) knew that the child was conceived through artificial insemination.

Source: Laws 2008, LB1014, § 47.

Operative date April 17, 2008.

43-1413 Child born out of wedlock; term substituted for other terms.

In any local law, ordinance or resolution, or in any public or judicial proceeding, or in any process, notice, order, decree, judgment, record or other public document or paper, the terms bastard or illegitimate child shall not be used but the term child born out of wedlock shall be used in substitution therefor and with the same force and effect.

Source: Laws 1941, c. 81, § 14, p. 326; C.S.Supp.,1941, § 43-714; R.S.1943, (1983), § 13-115.

43-1414 Genetic testing; procedure; confidentiality; violation; penalty.

(1) In any proceeding to establish paternity, the court may, on its own motion, or shall, on a timely request of a party, after notice and hearing, require the child, the mother, and the alleged father to submit to genetic testing to be performed on blood or any other appropriate genetic testing material. Failure to comply with such requirement for genetic testing shall constitute contempt and may be dealt with in the same manner as other contempts. If genetic testing is required, the court shall direct that inherited characteristics be determined by appropriate testing procedures and shall appoint an expert in genetic testing and qualified as an examiner of genetic markers to analyze and interpret the results and to report to the court. The court shall determine the number of experts required.

(2) In any proceeding to establish paternity, the Department of Health and Human Services, county attorneys, and authorized attorneys have the authority to require the child, the mother, and the alleged father to submit to genetic testing to be performed on blood or any other appropriate genetic testing material. All genetic testing shall be performed by a laboratory accredited by the College of American Pathologists or any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the college.

(3) Except as authorized under sections 43-1414 to 43-1418, a person shall not disclose information obtained from genetic paternity testing that is done pursuant to such sections.

(4) If an alleged father who is tested as part of an action under such sections is found to be the child's father, the testing laboratory shall retain the genetic testing material of the alleged father, mother, and child for no longer than the period of years prescribed by the national standards under which the laboratory is accredited. If a man is found not to be the child's father, the testing laboratory shall destroy the man's genetic testing material in the presence of a witness after such material is used in the paternity action. The witness may be an individual who is a party to the destruction of the genetic testing material. After the man's genetic testing material is destroyed, the testing laboratory shall make and keep a written record of the destruction and have the individual who witnessed the destruction sign the record. The testing laboratory shall also expunge its records regarding the genetic paternity testing performed on the genetic testing material in accordance with the national standards under which the laboratory is accredited. The testing laboratory shall retain the genetic testing material of the mother and child for no longer than the period of years prescribed by the national standards under which the laboratory is accredited. After a testing laboratory destroys an individual's genetic testing material as provided in this subsection, it shall notify the adult individual, or the parent or

legal guardian of a minor individual, by certified mail that the genetic testing material was destroyed.

(5) A testing laboratory is required to protect the confidentiality of genetic testing material, except as required for a paternity determination. The court and its officers shall not use or disclose genetic testing material for a purpose other than the paternity determination.

(6) A person shall not buy, sell, transfer, or offer genetic testing material obtained under sections 43-1414 to 43-1418.

(7) A testing laboratory shall annually have an independent audit verifying the contracting laboratory's compliance with this section. The audit shall not disclose the names of, or otherwise identify, the test subjects required to submit to testing during the previous year. The testing laboratory shall forward the audit to the department.

(8) Any person convicted of violating this section shall be guilty of a Class IV misdemeanor for the first offense and a Class III misdemeanor for the second or subsequent offense.

(9) For purposes of sections 43-1414 to 43-1418, an expert in genetic testing means a person who has formal doctoral training or postdoctoral training in human genetics.

Source: Laws 1984, LB 845, § 1; Laws 1994, LB 1224, § 61; Laws 1997, LB 752, § 103; Laws 2001, LB 432, § 9; Laws 2007, LB296, § 129.

Cross References

Genetic testing, access to information, see section 43-3327.

The Legislature's approval of genetic analysis is clearly aimed at diagnostic, rather than forensic, uses of DNA profiling. *State v. Houser*, 241 Neb. 525, 490 N.W.2d 168 (1992).

The purpose of this section is to make evidence from genetic testing available for use at trial. *State v. Smith*, 231 Neb. 740, 437 N.W.2d 803 (1989).

43-1415 Results of genetic tests; admissible evidence; rebuttable presumption.

(1) The results of the tests, including the statistical probability of paternity, shall be admissible evidence and, except as provided in subsection (2) of this section, shall be weighed along with other evidence of paternity.

(2) When the results of tests, whether or not such tests were ordered pursuant to section 43-1414, show a probability of paternity of ninety-nine percent or more, there shall exist a rebuttable presumption of paternity.

(3) Such evidence may be introduced by verified written report without the need for foundation testimony or other proof of authenticity or accuracy unless there is a timely written request for personal testimony of the expert at least thirty days prior to trial.

Source: Laws 1984, LB 845, § 2; Laws 1993, LB 500, § 55; Laws 1994, LB 1224, § 62.

When genetic tests show a probability of paternity of 99 percent or more, a rebuttable presumption is created without

the need for any other evidence. *State on behalf of Dady v. Snelling*, 10 Neb. App. 740, 637 N.W.2d 906 (2001).

43-1416 Genetic tests; chain of custody; competent evidence.

The chain of custody of blood or tissue specimens shall be competent evidence and admissible by stipulation or by a verified written report, without the need for foundation testimony or other proof of authenticity, unless a timely written request for testimony is made at least thirty days prior to trial.

Source: Laws 1984, LB 845, § 3; Laws 1994, LB 1224, § 63.

43-1417 Additional genetic testing; when.

If the result of genetic testing or the expert's analysis of inherited characteristics is disputed, the court, upon reasonable request of a party, shall order that additional testing be done by the same laboratory or an independent laboratory at the expense of the party requesting additional testing.

Source: Laws 1984, LB 845, § 4.

43-1418 Genetic testing; costs.

In cases where the court orders genetic testing at the request of a party, the requesting party shall initially pay such expense. In cases where the court orders genetic testing in the absence of a request of any party, the assessment of the cost of such testing shall be determined by the court. Whenever the disputing party prevails, the costs shall be borne by the other party.

Source: Laws 1984, LB 845, § 5.

ARTICLE 15**NEBRASKA INDIAN CHILD WELFARE ACT****Cross References**

Native American foster homes, see sections 71-1906 and 71-1906.01.

Section

- 43-1501. Act, how cited.
- 43-1502. Purpose of act.
- 43-1503. Terms, defined.
- 43-1504. Custody proceeding; jurisdiction of tribe; transfer of proceedings; rights of tribe; tribal proceedings; effect.
- 43-1505. Foster care placement; termination of parental rights; procedures; rights.
- 43-1506. Voluntary proceeding; consent; when valid; withdrawal of consent.
- 43-1507. Petition to invalidate actions in violation of law.
- 43-1508. Placement guidelines; records.
- 43-1509. Return of custody; removal from foster care; procedures.
- 43-1510. Adopted individual; access to information.
- 43-1511. Agreements with state agencies; authorized.
- 43-1512. Improper removal from custody; effect.
- 43-1513. Higher federal standard of protection; when applicable.
- 43-1514. Emergency removal or placement of child; appropriate action.
- 43-1515. Applicability of act; exceptions.
- 43-1516. Adoptive placement; information made available.

43-1501 Act, how cited.

Sections 43-1501 to 43-1516 shall be known and may be cited as the Nebraska Indian Child Welfare Act.

Source: Laws 1985, LB 255, § 1.

The lower standard of proof under subsection (3) of section 43-279.01 for the termination of parental rights to non-Indian children, as opposed to the higher standard of proof under the Nebraska Indian Child Welfare Act does not violate the equal protection rights of parents of non-Indian children. In re Interest of Phoenix L. et al., 270 Neb. 870, 708 N.W.2d 786 (2006).

A party to a proceeding who seeks to invoke a provision of the Nebraska Indian Child Welfare Act has the burden to show that the act applies in the proceedings. In re Interest of A.M., C.M., and L.M., 235 Neb. 506, 455 N.W.2d 572 (1990).

43-1502 Purpose of act.

The purpose of the Nebraska Indian Child Welfare Act is to clarify state policies and procedures regarding the implementation by the State of Nebraska of the federal Indian Child Welfare Act, 25 U.S.C. 1901 et seq. It shall be the

policy of the state to cooperate fully with Indian tribes in Nebraska in order to ensure that the intent and provisions of the federal Indian Child Welfare Act are enforced.

Source: Laws 1985, LB 255, § 2.

The lower standard of proof under subsection (3) of section 43-279.01 for the termination of parental rights to non-Indian children, as opposed to the higher standard of proof under the

Nebraska Indian Child Welfare Act does not violate the equal protection rights of parents of non-Indian children. In re Interest of Phoenix L. et al., 270 Neb. 870, 708 N.W.2d 786 (2006).

43-1503 Terms, defined.

For the purposes of the Nebraska Indian Child Welfare Act, except as may be specifically provided otherwise, the term:

(1) Child custody proceeding shall mean and include:

(a) Foster care placement which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(b) Termination of parental rights which shall mean any action resulting in the termination of the parent-child relationship;

(c) Preadoptive placement which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(d) Adoptive placement which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents;

(2) Extended family member shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) Indian means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a regional corporation defined in section 7 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1606;

(4) Indian child means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) Indian child's tribe means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) Indian custodian means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) Indian organization means any group, association, partnership, limited liability company, corporation, or other legal entity owned or controlled by Indians or a majority of whose members are Indians;

(8) Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. 1602(c);

(9) Parent means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father when paternity has not been acknowledged or established;

(10) Reservation means Indian country as defined in 18 U.S.C. 1151 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) Secretary means the Secretary of the Interior;

(12) Tribal court means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings; and

(13) Tribal service area means a geographic area in which tribal services and programs are provided to Native American people.

Source: Laws 1985, LB 255, § 3; Laws 1993, LB 121, § 216; Laws 1999, LB 475, § 3.

The lower standard of proof under subsection (3) of section 43-279.01 for the termination of parental rights to non-Indian children, as opposed to the higher standard of proof under the Nebraska Indian Child Welfare Act does not violate the equal protection rights of parents of non-Indian children. In re Interest of Phoenix L. et al., 270 Neb. 870, 708 N.W.2d 786 (2006).

Pursuant to subsection (4) of this section, a party to a proceeding who seeks to invoke a provision of the Indian Child

Welfare Act has the burden to show that the act applies in the proceedings; for application of the act to proceedings for the termination of parental rights, the proceedings must involve an Indian child within the purview of the act. In re Interest of J.L.M. et al., 234 Neb. 381, 451 N.W.2d 377 (1990).

43-1504 Custody proceeding; jurisdiction of tribe; transfer of proceedings; rights of tribe; tribal proceedings; effect.

(1) An Indian tribe shall have jurisdiction exclusive as to this state over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the state by existing federal law. When an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(2) In any state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe, except that such transfer shall be subject to declination by the tribal court of such tribe.

(3) In any state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(4) The State of Nebraska shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that the state gives full faith and credit to the public acts, records, and judicial proceedings of any other entity.

Source: Laws 1985, LB 255, § 4.

The lower standard of proof under subsection (3) of section 43-279.01 for the termination of parental rights to non-Indian children, as opposed to the higher standard of proof under the

Nebraska Indian Child Welfare Act does not violate the equal protection rights of parents of non-Indian children. In re Interest of Phoenix L. et al., 270 Neb. 870, 708 N.W.2d 786 (2006).

43-1505 Foster care placement; termination of parental rights; procedures; rights.

(1) In any involuntary proceeding in a state court, when the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by certified or registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the secretary in like manner, who may provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceedings shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the secretary. The parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(2) In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. When state law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the secretary upon appointment of counsel and request from the secretary, upon certification of the presiding judge, payment of reasonable fees and expenses out of funds which may be appropriated.

(3) Each party to a foster care placement or termination of parental rights proceeding under state law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(4) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(5) No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of

the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(6) No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Source: Laws 1985, LB 255, § 5; Laws 1987, LB 93, § 11.

The lower standard of proof under subsection (3) of section 43-279.01 for the termination of parental rights to non-Indian children, as opposed to the higher standard of proof under the Nebraska Indian Child Welfare Act does not violate the equal protection rights of parents of non-Indian children. In re Interest of Phoenix L. et al., 270 Neb. 870, 708 N.W.2d 786 (2006).

Under this section, a determination to terminate parental rights must be supported by evidence beyond a reasonable doubt, which is proof so convincing that one would rely and act upon it without hesitation in the more serious and important transactions of life. In re Interest of Phoebe S. and Rebekah S., 11 Neb. App. 919, 664 N.W.2d 470 (2003).

Under this section, qualified expert testimony is required in a parental rights termination case on the issue of whether serious harm to the Indian child is likely to occur if the child is not

removed from the home. In re Interest of Phoebe S. and Rebekah S., 11 Neb. App. 919, 664 N.W.2d 470 (2003).

Under this section, the State shall provide evidence that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. In re Interest of Phoebe S. and Rebekah S., 11 Neb. App. 919, 664 N.W.2d 470 (2003).

This section provides specific statutory requirements for proving a case for termination of parental rights in a juvenile court action involving an Indian child, and the petition for termination of parental rights must include sufficient allegations of the requirements of section 43-292 as well as this section to survive a demurrer. In re Interest of Sabrienia B., 9 Neb. App. 888, 621 N.W.2d 836 (2001).

43-1506 Voluntary proceeding; consent; when valid; withdrawal of consent.

(1) When any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(2) Any parent or Indian custodian may withdraw consent to a foster care placement under state law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(3) In any voluntary proceedings for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(4) After the entry of a final decree of adoption of an Indian child in any state court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under state law.

Source: Laws 1985, LB 255, § 6.

The lower standard of proof under subsection (3) of section 43-279.01 for the termination of parental rights to non-Indian children, as opposed to the higher standard of proof under the

Nebraska Indian Child Welfare Act does not violate the equal protection rights of parents of non-Indian children. In re Interest of Phoenix L. et al., 270 Neb. 870, 708 N.W.2d 786 (2006).

43-1507 Petition to invalidate actions in violation of law.

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under state law, any parent or Indian custodian from whose custody such child was removed, and the Indian child’s tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 43-1504 to 43-1506.

Source: Laws 1985, LB 255, § 7.

The lower standard of proof under subsection (3) of section 43-279.01 for the termination of parental rights to non-Indian children, as opposed to the higher standard of proof under the

Nebraska Indian Child Welfare Act does not violate the equal protection rights of parents of non-Indian children. In re Interest of Phoenix L. et al., 270 Neb. 870, 708 N.W.2d 786 (2006).

43-1508 Placement guidelines; records.

(1) In any adoptive placement of an Indian child under state law, a preference shall be given, in the absence of good cause to the contrary, to a placement with:

- (a) A member of the child’s extended family;
- (b) Other members of the Indian child’s tribe; or
- (c) Other Indian families.

(2) Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his or her special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with:

- (a) A member of the Indian child’s extended family;
- (b) A foster home licensed, approved, or specified by the Indian child’s tribe;
- (c) An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (d) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child’s needs.

(3) In the case of a placement under subsection (1) or (2) of this section, if the Indian child’s tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (2) of this section. When appropriate, the preference of the Indian child or parent shall be considered, except that, when a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(4) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(5) A record of each such placement, under state law, of an Indian child shall be maintained by the state, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the secretary or the Indian child's tribe.

Source: Laws 1985, LB 255, § 8.

The lower standard of proof under subsection (3) of section 43-279.01 for the termination of parental rights to non-Indian children, as opposed to the higher standard of proof under the Nebraska Indian Child Welfare Act does not violate the equal protection rights of parents of non-Indian children. In re Interest of Phoenix L. et al., 270 Neb. 870, 708 N.W.2d 786 (2006).

The placement preferences delineated in this section may yield to the wishes of the parent or for other good causes shown. In re Interest of C.W. et al., 239 Neb. 817, 479 N.W.2d 105 (1992).

43-1509 Return of custody; removal from foster care; procedures.

(1) Notwithstanding any other state law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 43-1505, that such return of custody is not in the best interests of the child.

(2) Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the Nebraska Indian Child Welfare Act, except in the case in which an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

Source: Laws 1985, LB 255, § 9.

The lower standard of proof under subsection (3) of section 43-279.01 for the termination of parental rights to non-Indian children, as opposed to the higher standard of proof under the

Nebraska Indian Child Welfare Act does not violate the equal protection rights of parents of non-Indian children. In re Interest of Phoenix L. et al., 270 Neb. 870, 708 N.W.2d 786 (2006).

43-1510 Adopted individual; access to information.

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

Source: Laws 1985, LB 255, § 10.

The lower standard of proof under subsection (3) of section 43-279.01 for the termination of parental rights to non-Indian children, as opposed to the higher standard of proof under the

Nebraska Indian Child Welfare Act does not violate the equal protection rights of parents of non-Indian children. In re Interest of Phoenix L. et al., 270 Neb. 870, 708 N.W.2d 786 (2006).

43-1511 Agreements with state agencies; authorized.

(1) The appropriate departments and agencies of this state are authorized to enter into agreements with Indian tribes respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between the state and Indian tribes.

(2) Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect

any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

Source: Laws 1985, LB 255, § 11.

The lower standard of proof under subsection (3) of section 43-279.01 for the termination of parental rights to non-Indian children, as opposed to the higher standard of proof under the Nebraska Indian Child Welfare Act does not violate the equal protection rights of parents of non-Indian children. In re Interest of Phoenix L. et al., 270 Neb. 870, 708 N.W.2d 786 (2006).

43-1512 Improper removal from custody; effect.

When any petitioner in an Indian child custody proceeding before a state court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his or her parent or Indian custodian unless returning the child to his or her parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

Source: Laws 1985, LB 255, § 12.

The lower standard of proof under subsection (3) of section 43-279.01 for the termination of parental rights to non-Indian children, as opposed to the higher standard of proof under the Nebraska Indian Child Welfare Act does not violate the equal protection rights of parents of non-Indian children. In re Interest of Phoenix L. et al., 270 Neb. 870, 708 N.W.2d 786 (2006).

43-1513 Higher federal standard of protection; when applicable.

In any case when federal law applicable to a child custody proceeding provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under the Nebraska Indian Child Welfare Act, the state court shall apply the federal standard.

Source: Laws 1985, LB 255, § 13.

The lower standard of proof under subsection (3) of section 43-279.01 for the termination of parental rights to non-Indian children, as opposed to the higher standard of proof under the Nebraska Indian Child Welfare Act does not violate the equal protection rights of parents of non-Indian children. In re Interest of Phoenix L. et al., 270 Neb. 870, 708 N.W.2d 786 (2006).

43-1514 Emergency removal or placement of child; appropriate action.

Nothing in the Nebraska Indian Child Welfare Act shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his or her parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable state law, in order to prevent imminent physical damage or harm to the child. The state authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of the Nebraska Indian Child Welfare Act, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

Source: Laws 1985, LB 255, § 14.

The lower standard of proof under subsection (3) of section 43-279.01 for the termination of parental rights to non-Indian children, as opposed to the higher standard of proof under the Nebraska Indian Child Welfare Act does not violate the equal protection rights of parents of non-Indian children. In re Interest of Phoenix L. et al., 270 Neb. 870, 708 N.W.2d 786 (2006).

43-1515 Applicability of act; exceptions.

None of the provisions of the Nebraska Indian Child Welfare Act, except subsection (1) of section 43-1504 and section 43-1511, shall affect a proceeding

under state law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after November 8, 1978, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

Source: Laws 1985, LB 255, § 15.

The lower standard of proof under subsection (3) of section 43-279.01 for the termination of parental rights to non-Indian children, as opposed to the higher standard of proof under the Nebraska Indian Child Welfare Act does not violate the equal protection rights of parents of non-Indian children. In re Interest of Phoenix L. et al., 270 Neb. 870, 708 N.W.2d 786 (2006).

43-1516 Adoptive placement; information made available.

Any state court entering a final decree or order in any Indian child adoptive placement after September 6, 1985, shall provide the secretary with a copy of such decree or order together with such other information as may be necessary to show:

- (1) The name and tribal affiliation of the child;
- (2) The names and addresses of the biological parents;
- (3) The names and addresses of the adoptive parents; and
- (4) The identity of any agency having files or information relating to such adoptive placement.

When the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information.

Source: Laws 1985, LB 255, § 16.

The lower standard of proof under subsection (3) of section 43-279.01 for the termination of parental rights to non-Indian children, as opposed to the higher standard of proof under the Nebraska Indian Child Welfare Act does not violate the equal protection rights of parents of non-Indian children. In re Interest of Phoenix L. et al., 270 Neb. 870, 708 N.W.2d 786 (2006).

ARTICLE 16

CHILD SUPPORT REFEREES

Section

- 43-1601. Repealed. Laws 1989, LB 265, § 7.
- 43-1602. Repealed. Laws 1989, LB 265, § 7.
- 43-1603. Repealed. Laws 1989, LB 265, § 7.
- 43-1604. Repealed. Laws 1989, LB 265, § 7.
- 43-1605. Repealed. Laws 1989, LB 265, § 7.
- 43-1606. Repealed. Laws 1989, LB 265, § 7.
- 43-1607. Repealed. Laws 1989, LB 265, § 7.
- 43-1608. Legislative findings.
- 43-1609. Child support referee; appointment; when; qualifications; oath or affirmation; removal; contracts authorized.
- 43-1610. Salaries, offices, staff, equipment.
- 43-1611. Support and paternity matters; protection orders; referral or assignment.
- 43-1612. Hearing; procedure.
- 43-1613. Findings and recommendations; exceptions; review by court.

43-1601 Repealed. Laws 1989, LB 265, § 7.

43-1602 Repealed. Laws 1989, LB 265, § 7.

43-1603 Repealed. Laws 1989, LB 265, § 7.

43-1604 Repealed. Laws 1989, LB 265, § 7.

43-1605 Repealed. Laws 1989, LB 265, § 7.

43-1606 Repealed. Laws 1989, LB 265, § 7.

43-1607 Repealed. Laws 1989, LB 265, § 7.

43-1608 Legislative findings.

The Legislature finds that matters relating to the establishment, modification, and enforcement of child, spousal, or medical support should be handled by the district courts, separate juvenile courts, and county courts in an expeditious manner so that parties may obtain needed orders and other action as quickly as possible.

Source: Laws 1989, LB 265, § 1; Laws 1991, LB 715, § 20; Laws 2008, LB1014, § 48.

Operative date January 1, 2009.

43-1609 Child support referee; appointment; when; qualifications; oath or affirmation; removal; contracts authorized.

(1) Child support referees shall be appointed when necessary by the district courts, separate juvenile courts, and county courts to meet the requirements of federal law relating to expediting the establishment, modification, enforcement, and collection of child, spousal, or medical support and orders issued under subsection (1) of section 42-924.

(2) Child support referees shall be appointed by order of the district court, separate juvenile court, or county court. The Supreme Court shall appoint child support referees to serve more than one judicial district if the Supreme Court determines it is necessary.

(3) To be qualified for appointment as a child support referee, a person shall be an attorney in good standing admitted to the practice of law in the State of Nebraska and shall meet any other requirements imposed by the Supreme Court. A child support referee shall be sworn or affirmed to well and faithfully hear and examine the cause and to make a just and true report according to the best of his or her understanding. The oath or affirmation may be administered by a district, county, or separate juvenile court judge. A child support referee may be removed at any time by the appointing court.

(4) The Supreme Court may contract with an attorney to perform the duties of a referee for a specific case or for a specific amount of time or may direct a judge of the county court to perform such duties.

Source: Laws 1989, LB 265, § 2; Laws 1991, LB 715, § 21; Laws 2008, LB1014, § 49.

Operative date January 1, 2009.

43-1610 Salaries, offices, staff, equipment.

Salaries, offices, support staff, equipment, furnishings, and supplies for a child support referee shall be provided by the county and state through funds appropriated by the county and state to the district court, separate juvenile court, and county court. If the Supreme Court appoints a referee to serve in more than one judicial district pursuant to section 43-1609, the salary and

necessary travel expenses of the referee shall be paid by funds appropriated by the state to the Supreme Court.

Source: Laws 1989, LB 265, § 3; Laws 1991, LB 715, § 22; Laws 2008, LB1014, § 50.

Operative date January 1, 2009.

43-1611 Support and paternity matters; protection orders; referral or assignment.

A district court, separate juvenile court, or county court may by rule or order refer or assign any and all matters regarding the establishment, modification, enforcement, and collection of child, spousal, or medical support, paternity matters, and orders issued under subsection (1) of section 42-924 to a child support referee for findings and recommendations.

Source: Laws 1989, LB 265, § 4; Laws 1991, LB 715, § 23; Laws 2008, LB1014, § 51.

Operative date January 1, 2009.

43-1612 Hearing; procedure.

(1) A hearing before a child support referee shall be conducted in the same manner as a hearing before the district court, separate juvenile court, or county court. A child support referee shall have the power to summon and enforce the attendance of parties and witnesses, administer all necessary oaths, supervise pretrial preparation pursuant to the rules of discovery adopted pursuant to section 25-1273.01, grant continuations and adjournments, recommend the appointment of counsel for indigent parties, and carry out any other duties permitted by law and assigned by the district court, separate juvenile court, or county court.

(2) Testimony in matters heard by a child support referee shall be preserved by tape recording or other prescribed measures and in accordance with prescribed standards. Transcripts of all hearings shall be available upon request and all costs of preparing the transcript shall be paid by the party for whom it is prepared.

(3) A child support referee shall, in all cases, announce orally his or her findings and recommendations to the parties or their attorneys and submit a written report to the district court, separate juvenile court, or county court containing findings of fact and recommendations and any and all exceptions.

Source: Laws 1989, LB 265, § 5; Laws 2008, LB1014, § 52.

Operative date January 1, 2009.

43-1613 Findings and recommendations; exceptions; review by court.

In any and all cases referred to a child support referee by the district court, separate juvenile court, or county court, the parties shall have the right to take exceptions to the findings and recommendations made by the referee and to have a further hearing before such court for final disposition. The court upon receipt of the findings, recommendations, and exceptions shall review the child support referee's report and may accept or reject all or any part of the report and enter judgment based on the court's own determination.

Source: Laws 1989, LB 265, § 6; Laws 2008, LB1014, § 53.

Operative date January 1, 2009.

INFANTS AND JUVENILES

ARTICLE 17

INCOME WITHHOLDING FOR CHILD SUPPORT ACT

Cross References

Child support order enforcement:

- Bank match system, see sections 43-3328 to 43-3339.
- License Suspension Act, see section 43-3301.
- New Hire Reporting Act, see section 48-2301.
- Setoff against tax refund or state lottery prize, see sections 77-27,160 to 77-27,173.
- Uniform Interstate Family Support Act, see section 42-701.

Section

- 43-1701. Act, how cited.
- 43-1702. Purpose of act.
- 43-1703. Definitions, where found.
- 43-1704. Authorized attorney, defined.
- 43-1705. Child support, defined.
- 43-1706. Department, defined.
- 43-1707. Disposable income, defined.
- 43-1708. Employee or payee, defined.
- 43-1709. Employer or other payor, defined.
- 43-1710. Foreign support order, defined.
- 43-1711. Income, defined.
- 43-1712. Income withholding, defined.
- 43-1712.01. Medical support, defined.
- 43-1713. Obligee, defined.
- 43-1714. Obligor, defined.
- 43-1715. Spousal support, defined.
- 43-1715.01. State Disbursement Unit, defined.
- 43-1716. Support, defined.
- 43-1717. Support order, defined.
- 43-1718. Support order; operate as assignment of income; effect; duties.
- 43-1718.01. Obligor; subject to income withholding; when; notice.
- 43-1718.02. Obligor; subject to income withholding; when; notice; employer or other payor; prohibited acts; violation; penalty; termination or modification; notice; enforcement.
- 43-1719. Employer or other payor; duty to furnish information; action to enforce.
- 43-1720. Notice to employer, payor, or obligor; contents.
- 43-1721. Hearing, when held.
- 43-1722. Assignment; certification of amount.
- 43-1723. Notice to employer or other payor; contents; compliance; effect.
- 43-1724. Employer or other payor; failure to withhold and remit income; effect.
- 43-1725. Employer or other payor; prohibited actions; penalty.
- 43-1726. Notice to withhold income; termination; exception; procedure.
- 43-1727. Income withholding notice; modification or revocation; notice.
- 43-1728. Income from another jurisdiction; withholding order; how obtained.
- 43-1729. Foreign support order; acceptance; procedure.
- 43-1730. Entry of foreign support order; documentation required.
- 43-1731. Documentation; remedy of defects.
- 43-1732. Foreign support order; how enforced.
- 43-1733. Foreign support order; income withholding notice; contents; hearing; when held.
- 43-1734. Foreign support order; validity; prima facie evidence; allowable defenses.
- 43-1735. Foreign support order; continuance; undisputed amount; withholding.
- 43-1736. Foreign support order; discovery; testimony; evidence; voluntary testimony.
- 43-1737. Income withholding; when effective.
- 43-1738. Foreign support order entry; effect; amounts credited.
- 43-1739. Foreign support order; receipt of amendment or modification; effect.
- 43-1740. Foreign support order; obligor; new or additional income or employment; county or authorized attorney; duties.
- 43-1741. Foreign support order; voluntary income withholding; procedure.

Section	
43-1742.	Foreign support order; applicability of law.
43-1743.	Consent to income withholding; when allowed; procedure.

43-1701 Act, how cited.

Sections 43-1701 to 43-1743 shall be known and may be cited as the Income Withholding for Child Support Act.

Source: Laws 1985, Second Spec. Sess., LB 7, § 21; Laws 1991, LB 457, § 17; Laws 1994, LB 1224, § 64; Laws 2000, LB 972, § 19.

43-1702 Purpose of act.

It is the intent of the Legislature to encourage the use of all proven techniques for the collection of child, spousal, and medical support. While income withholding is the preferred technique, other techniques such as liens on property and contempt proceedings should be used when appropriate. The purpose of the Income Withholding for Child Support Act is to provide a simplified and relatively automatic procedure for implementing income withholding in order to guarantee that child, spousal, and medical support obligations are met when income is available for that purpose, to encourage voluntary withholding by obligors, and to facilitate the implementation of income withholding based on foreign support orders.

Source: Laws 1985, Second Spec. Sess., LB 7, § 22; Laws 1991, LB 457, § 18.

43-1703 Definitions, where found.

For purposes of the Income Withholding for Child Support Act, unless the context otherwise requires, the definitions found in sections 43-1704 to 43-1717 shall be used.

Source: Laws 1985, Second Spec. Sess., LB 7, § 23; Laws 1991, LB 457, § 19; Laws 2000, LB 972, § 20.

43-1704 Authorized attorney, defined.

Authorized attorney shall mean an attorney (1) employed by the county subject to the approval of the county board, (2) employed by the Department of Health and Human Services, or (3) appointed by the court, who is authorized to investigate and prosecute child, spousal, and medical support cases. An authorized attorney shall represent the state as provided in section 43-512.03.

Source: Laws 1985, Second Spec. Sess., LB 7, § 24; Laws 1987, LB 573, § 3; Laws 1991, LB 457, § 20; Laws 1994, LB 1224, § 65; Laws 1996, LB 1044, § 202; Laws 1997, LB 307, § 78.

43-1705 Child support, defined.

Child support shall mean support for one or more children.

Source: Laws 1985, Second Spec. Sess., LB 7, § 25.

43-1706 Department, defined.

Department shall mean the Department of Health and Human Services.

Source: Laws 1985, Second Spec. Sess., LB 7, § 26; Laws 1996, LB 1044, § 203; Laws 1997, LB 307, § 79.

43-1707 Disposable income, defined.

Disposable income shall mean that part of the income of any individual remaining after the deduction from such income of any amounts required by law to be withheld, excepting the amounts required to be deducted and withheld pursuant to the Income Withholding for Child Support Act or those provisions of law allowing garnishment, attachment, or execution.

Source: Laws 1985, Second Spec. Sess., LB 7, § 27.

43-1708 Employee or payee, defined.

Employee or payee shall mean any person who is compensated by or receives income from an employer or other payor, regardless of how such income is denominated.

Source: Laws 1985, Second Spec. Sess., LB 7, § 28; Laws 1991, LB 457, § 21; Laws 1993, LB 523, § 12.

43-1709 Employer or other payor, defined.

Employer or other payor shall mean any person, partnership, limited liability company, firm, corporation, association, political subdivision, or department or agency of the state or federal government in possession of income and shall include an obligor if he or she is self-employed.

Source: Laws 1985, Second Spec. Sess., LB 7, § 29; Laws 1991, LB 457, § 22; Laws 1993, LB 121, § 217.

43-1710 Foreign support order, defined.

Foreign support order shall mean a support order issued by a court or agency of another jurisdiction.

Source: Laws 1985, Second Spec. Sess., LB 7, § 30.

43-1711 Income, defined.

Income shall mean (1) compensation paid, payable, due, or to be due for personal services, whether denominated as wages, salary, earnings, income, commission, bonus, or otherwise, and shall include any periodic payments pursuant to a pension or a retirement program and dividends, and (2) any other income from whatever source derived.

Source: Laws 1985, Second Spec. Sess., LB 7, § 31; Laws 1993, LB 523, § 13.

43-1712 Income withholding, defined.

Income withholding shall mean retention of an employee's or payee's income pursuant to sections 43-1720 to 43-1723.

Source: Laws 1985, Second Spec. Sess., LB 7, § 32; Laws 1993, LB 523, § 14.

43-1712.01 Medical support, defined.

Medical support shall have the same meaning as found in section 43-512.

Source: Laws 1991, LB 457, § 23.

43-1713 Obligee, defined.

Obligee shall mean a person to whom a duty of support is owed pursuant to a support order.

Source: Laws 1985, Second Spec. Sess., LB 7, § 33.

43-1714 Obligor, defined.

Obligor shall mean a person who owes a duty of support pursuant to a support order.

Source: Laws 1985, Second Spec. Sess., LB 7, § 34.

43-1715 Spousal support, defined.

Spousal support shall mean alimony or maintenance support for a spouse or former spouse if the provision for support is a part of an order, decree, or judgment which provides for child support and the child and spouse or former spouse are living in the same household.

Source: Laws 1985, Second Spec. Sess., LB 7, § 35.

43-1715.01 State Disbursement Unit, defined.

State Disbursement Unit shall have the same meaning as found in section 43-3341.

Source: Laws 2000, LB 972, § 21.

43-1716 Support, defined.

Support shall mean the providing of necessary shelter, food, clothing, care, medical support, medical attention, education expenses, funeral expenses, or any other reasonable and necessary expense.

Source: Laws 1985, Second Spec. Sess., LB 7, § 36; Laws 1991, LB 457, § 24.

43-1717 Support order, defined.

Support order shall mean any order, decree, or judgment for child, spousal, or medical support or for payment of any arrearage for such support issued by a court or agency of competent jurisdiction, whether issued prior to, on, or after November 16, 1985, whether for temporary or permanent support, whether interlocutory or final, whether or not modifiable, and whether or not incidental to a proceeding for dissolution of marriage, judicial or legal separation, separate maintenance, paternity, guardianship, or civil protection or any other action.

Source: Laws 1985, Second Spec. Sess., LB 7, § 37; Laws 1991, LB 457, § 25.

43-1718 Support order; operate as assignment of income; effect; duties.

A support order shall constitute and shall operate as an assignment, to the State Disbursement Unit, of that portion of an obligor's income as will be sufficient to pay the amount ordered for child, spousal, or medical support and shall be binding on any existing or future employer or other payor of the obligor. The assignment shall take effect as provided in section 43-1718.01 or 43-1718.02 or on the date on which the payments are delinquent in an amount

equal to the support due and payable for a one-month period of time, whichever is earlier. No obligor whose child support payments are automatically withheld from his or her paycheck shall be regarded or reported as being delinquent or in arrears if (1) any delinquency or arrearage is solely caused by a disparity between the schedule of the obligor's regular pay dates and the scheduled date the support is due, (2) the total amount of support to be withheld from the paychecks of the obligor and the amount ordered by the support order are the same on an annual basis, and (3) the automatic deductions for support are continuous and occurring.

An assignment shall have priority as against any attachment, execution, or other assignment unless otherwise specifically ordered by a court of competent jurisdiction.

The Title IV-D Division of the Department of Health and Human Services or its designee shall be responsible for administering income withholding. In administering income withholding, the Title IV-D Division or its designee shall keep accurate records to document, track, and monitor support payments.

Source: Laws 1985, Second Spec. Sess., LB 7, § 38; Laws 1991, LB 457, § 26; Laws 1994, LB 1224, § 66; Laws 1997, LB 18, § 3; Laws 2000, LB 972, § 22.

43-1718.01 Obligor; subject to income withholding; when; notice.

(1) In any case in which services are provided under Title IV-D of the federal Social Security Act, as amended, and a support order has been issued or modified on or after September 6, 1991, the obligor's income shall be subject to income withholding regardless of whether or not payments pursuant to such order are in arrears, and the court shall require such income withholding in its order unless:

(a) One of the parties demonstrates and the court finds that there is good cause not to require immediate income withholding; or

(b) A written agreement between the parties, including the state if there is an assignment of support pursuant to section 43-512.07, providing an alternative arrangement is incorporated into the support order.

(2) In any case in which services are provided under Title IV-D of the federal Social Security Act, as amended, the income of an obligor not subject to withholding pursuant to subsection (1) of this section shall become subject to income withholding:

(a) On the date on which the payments are delinquent in an amount equal to the support due and payable for a one-month period of time; or

(b) Regardless of whether payments are in arrears, on the earliest of (i) the date as of which the obligor requests that income withholding begin, (ii) the date as of which the obligee requests that income withholding begin if the department determines that such request should be approved, or (iii) any earlier date after September 6, 1991, which the department selects.

The obligor shall receive notice of income withholding and his or her right to a hearing pursuant to section 43-1720 when his or her income is withheld pursuant to subdivision (b)(ii) or (b)(iii) of this subsection.

(3) No obligor whose child support payments are automatically withheld from his or her paycheck shall be regarded or reported as being delinquent or in arrears if (a) any delinquency or arrearage is solely caused by a disparity

between the schedule of the obligor's regular pay dates and the scheduled date the child support is due, (b) the total amount of child support to be withheld from the paychecks of the obligor and the amount ordered by the support order are the same on an annual basis, and (c) the automatic deductions for child support are continuous and occurring.

(4) The department shall adopt and promulgate rules and regulations necessary to carry out this section.

Source: Laws 1991, LB 457, § 27; Laws 1997, LB 18, § 4.

43-1718.02 Obligor; subject to income withholding; when; notice; employer or other payor; prohibited acts; violation; penalty; termination or modification; notice; enforcement.

(1) In any case in which services are not provided under Title IV-D of the federal Social Security Act, as amended, and a support order has been issued or modified on or after July 1, 1994, the obligor's income shall be subject to income withholding regardless of whether or not payments pursuant to such order are in arrears, and the court shall require such income withholding in its order unless:

(a) One of the parties demonstrates and the court finds that there is good cause not to require immediate income withholding; or

(b) A written agreement between the parties providing an alternative arrangement is incorporated into the support order.

(2) If the court pursuant to subsection (1) of this section orders income withholding regardless of whether or not payments are in arrears, the obligor shall prepare a notice to withhold income. The notice to withhold income shall be substantially similar to a prototype prepared by the department and made available by the department to the State Court Administrator and the clerks of the district courts. The notice to withhold shall direct:

(a) That the employer or other payor shall withhold from the obligor's disposable income the amount stated in the notice to withhold for the purpose of satisfying the obligor's ongoing obligation for support payments as they become due and if there are arrearages, reducing such arrearages in child, spousal, or medical support payments arising from the obligor's failure to fully comply with a support order;

(b) That the employer or other payor shall pay to the obligor, on his or her regularly scheduled payday, such income then due which is not required to be withheld as stated on the notice or pursuant to any court order;

(c) That the employer or other payor shall not withhold more than the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b)(2)(A) and (B), and the amount withheld to satisfy an arrearage of child, spousal, or medical support when added to the amount withheld to pay current support and the fee provided for in subdivision (2)(d) of this section shall not exceed such maximum amount;

(d) That the employer or other payor may assess an additional administrative fee from the obligor's disposable income not to exceed two dollars and fifty cents in any calendar month as compensation for the employer's or other payor's reasonable cost incurred in complying with the notice;

(e) That the employer or other payor shall remit, within seven days after the date the obligor is paid and in the manner specified in the notice, the income withheld, less the deduction allowed as an administrative fee by subdivision (2)(d) of this section, to the State Disbursement Unit and shall notify the unit of the date such income was withheld;

(f) That the notice to withhold income shall terminate with respect to the employer or other payor without any court action or action by the obligor thirty days after the obligor ceases employment with or is no longer entitled to income from such employer or other payor;

(g) That the employer or other payor may combine amounts required to be withheld from the income of two or more obligors in a single payment to the unit if the portion of the single payment which is attributable to each individual obligor is separately identified;

(h) That an employer or other payor who fails to withhold and remit income of an obligor after receiving proper notice or who discriminates, demotes, disciplines, or terminates an employee or payee after receiving a notice to withhold income shall be subject to the penalties prescribed in subsections (4) and (5) of this section; and

(i) That if the employer or other payor receives more than one notice to withhold income of a single obligor and the amount of income available to be withheld pursuant to the limits specified in subdivision (c) of this subsection is insufficient to satisfy the total support amount certified in the notices, the income available shall first be applied to current support. If the total amount of income available to be withheld is insufficient to satisfy the total amount of current support certified by the notices, the employer or other payor shall withhold for each notice the proportion that the amount of the current support certified in such notice bears to the total amount of current support certified in all notices received for the obligor. Any remaining income available to be withheld after current support is satisfied for all notices shall be applied to arrearages. If arrearages are certified in more than one notice, the employer or other payor shall withhold for each notice the proportion that the amount of the arrearage certified in such notice bears to the total amount of arrearage certified in all notices received for the obligor.

Compliance with the order by the employer or other payor shall operate as a discharge of the employer's or other payor's liability to the obligor as to the portion of the obligor's income withheld.

(3) The obligor shall deliver the notice to withhold income to his or her current employer or other payor and provide a copy of such notice to the clerk of the district court.

(4) Any employer or other payor who fails to withhold and remit any income of an obligor receiving income from the employer or other payor, after proper notice as provided in subsection (2) of this section, shall be required to pay to the unit the amount specified in the notice.

(5) An employer or other payor shall not use an order or notice to withhold income or order or the possibility of income withholding as a basis for (a) discrimination in hiring, (b) demotion of an employee or payee, (c) disciplinary action against an employee or payee, or (d) termination of an employee or payee.

Upon application by the obligor and after a hearing on the matter, the court may impose a civil fine of up to five hundred dollars for each violation of this subsection.

An employer or other payor who violates this subsection shall be required to make full restitution to the aggrieved employee or payee, including reinstatement and backpay.

(6) When an obligor ceases employment with or is no longer entitled to income from an employer or other payor, the notice to withhold income shall not cease to operate against the obligor and income withholding shall continue to apply to any subsequent employment or income of the obligor. The notice to withhold income shall terminate with respect to the employer or other payor without any court action or action by the obligor thirty days after the obligor ceases employment with or is no longer entitled to income from such employer or other payor. A notice to withhold income shall also terminate when the child, spousal, or medical support obligation terminates and all past-due support has been paid, in which case the obligor shall notify the employer or other payor to cease withholding income.

(7) A notice to withhold income may be modified or revoked by a court of competent jurisdiction as a result of modification of the support order. A notice to withhold income may also be modified or revoked by a court of competent jurisdiction, for other good cause shown, after notice and a hearing on the issue.

(8) The obligee or obligor may file an action in district court to enforce this section.

(9) If after an order is issued in any case under this section the case becomes one in which services are provided under Title IV-D of the federal Social Security Act, as amended, the county attorney or authorized attorney or the Department of Health and Human Services shall implement income withholding as otherwise provided in the Income Withholding for Child Support Act.

Source: Laws 1994, LB 1224, § 67; Laws 1996, LB 1044, § 204; Laws 1996, LB 1155, § 11; Laws 1997, LB 307, § 80; Laws 1997, LB 752, § 104; Laws 2000, LB 972, § 23; Laws 2007, LB296, § 130.

43-1719 Employer or other payor; duty to furnish information; action to enforce.

Any employer or other payor shall respond within ten days to a written request by a county attorney, an authorized attorney, or the department for information concerning: (1) The full name of an obligor; (2) the current address of the obligor; (3) the obligor's social security number; (4) the obligor's work location; (5) the number of the obligor's claimed dependents; (6) the obligor's gross income; (7) the obligor's net income; (8) an itemized statement of deductions from the obligor's income; (9) the obligor's pay schedule; and (10) the obligor's health insurance coverage. The employer or other payor shall not be required to provide any other information. The county attorney or authorized attorney may file an action in the district court to enforce this section.

Source: Laws 1985, Second Spec. Sess., LB 7, § 39; Laws 1991, LB 457, § 28.

43-1720 Notice to employer, payor, or obligor; contents.

If the department has previously sent a notice of assignment and opportunity for hearing on the same support order under section 48-647, the county attorney, authorized attorney, or the department shall certify the amount to be withheld from an obligor's disposable income pursuant to section 43-1722 and shall notify the obligor's employer or other payor pursuant to section 43-1723. If the department has not previously sent such notice, and except in cases in which the court has ordered income withholding pursuant to subsection (1) of section 43-1718.01 or section 43-1718.02, upon receiving certification pursuant to section 42-358 or notice of delinquent payments of medical support, the county attorney, the authorized attorney, or the department shall send a notice by certified mail to the last-known address of the obligor stating:

- (1) That an assignment of his or her income by means of income withholding will go into effect within fifteen days after the date the notice is sent;
- (2) That the income withholding will continue to apply to any subsequent employer or other payor of the obligor;
- (3) The amount of support the obligor owes;
- (4) The amount of income that will be withheld; and
- (5) That within the fifteen-day period, the obligor may request a hearing in the manner specified in the notice to contest a mistake of fact. For purposes of this subdivision, mistake of fact shall mean (a) an error in the amount of current or overdue support, (b) an error in the identity of the obligor, or (c) an error in the amount to be withheld as provided in section 43-1722.

Source: Laws 1985, Second Spec. Sess., LB 7, § 40; Laws 1986, LB 600, § 3; Laws 1991, LB 457, § 29; Laws 1993, LB 523, § 15; Laws 1994, LB 1224, § 68; Laws 1996, LB 1044, § 205; Laws 1996, LB 1155, § 12; Laws 1997, LB 307, § 81; Laws 2007, LB296, § 131.

Unless a prior notice has been sent and except where a court has ordered income withholding for child support, the notice of income withholding is triggered by receipt of certification from the clerk of the district court made pursuant to section 42-358. *McKibbin v. State*, 5 Neb. App. 570, 560 N.W.2d 507 (1997).

43-1721 Hearing, when held.

If the obligor requests a hearing, the department shall hold a hearing, if required by section 43-1720, within fifteen days of the date of receipt of the request, and the hearing shall be in accordance with the Administrative Procedure Act. The assignment shall be held in abeyance pending the outcome of the hearing. The department shall notify the obligor and the county attorney or authorized attorney of its decision within fifteen days of the date the hearing is held.

Source: Laws 1985, Second Spec. Sess., LB 7, § 41; Laws 1986, LB 600, § 4; Laws 1991, LB 457, § 30.

Cross References

Administrative Procedure Act, see section 84-920.

43-1722 Assignment; certification of amount.

(1) If no hearing is requested by the obligor, (2) if after a hearing the department determines that the assignment should go into effect, (3) in cases in which the court has ordered income withholding pursuant to subsection (1) of

section 43-1718.01, or (4) in cases in which the court has ordered income withholding pursuant to section 43-1718.02, which case subsequently becomes one in which services are being provided under Title IV-D of the federal Social Security Act, as amended, the county attorney, the authorized attorney, or the department shall certify the amount to be withheld from the obligor's disposable income. Such amount shall not in any case exceed the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b)(2)(A) and (B), and the amount withheld to satisfy an arrearage of child, spousal, or medical support when added to the amount withheld to pay current support and the fee provided for in section 43-1723 shall not exceed such maximum amount.

Source: Laws 1985, Second Spec. Sess., LB 7, § 42; Laws 1991, LB 457, § 31; Laws 1993, LB 523, § 16; Laws 1994, LB 1224, § 69; Laws 1996, LB 1155, § 13.

43-1723 Notice to employer or other payor; contents; compliance; effect.

Except as otherwise provided in this section, the county attorney, the authorized attorney, or the department shall notify the obligor's employer or other payor, by first-class mail or by electronic means, within the time determined by the department which shall comply with the requirements of Title IV-D of the federal Social Security Act, as amended. The notice shall specify the basis for the assignment of income and shall direct:

(1) That the employer or other payor shall withhold from the obligor's disposable income the amount certified by the county attorney, the authorized attorney, or the department for the purpose of reducing and satisfying the obligor's (a) previous arrearage in child, spousal, or medical support payments arising from the obligor's failure to fully comply with a support order previously entered and (b) ongoing obligation for support payments as they become due;

(2) That the employer or other payor shall implement income withholding no later than the first pay period that begins following the date on the notice;

(3) That the employer or other payor shall pay to the obligor, on his or her regularly scheduled payday, such income then due which is not certified to be withheld pursuant to section 43-1722 or any court order;

(4) That the employer or other payor may assess an additional administrative fee from the obligor's disposable income not to exceed two dollars and fifty cents in any calendar month as compensation for the employer's or other payor's reasonable cost incurred in complying with the notice;

(5) That the employer or other payor shall remit, within seven days after the date the obligor is paid and in the manner specified in the notice, the income withheld, less the deduction allowed as an administrative expense by subdivision (4) of this section, to the State Disbursement Unit as designated in the notice and shall notify the unit of the date such income was withheld;

(6) That the employer or other payor shall notify the county attorney, the authorized attorney, or the department in writing of the termination of the employment or income of the obligor, the last-known address of the obligor, and the name and address of the obligor's new employer or other payor, if known, and shall provide such written notification within thirty days after the termination of employment or income;

(7) That income withholding is binding on the employer or other payor until further notice by the county attorney, the authorized attorney, or the department;

(8) That the employer or other payor may combine amounts required to be withheld from the income of two or more obligors in a single payment to the unit as designated in an income withholding notice if the portion of the single payment which is attributable to each individual obligor is separately identified;

(9) That an employer or other payor who fails to withhold and remit income of an obligor after receiving proper notice or who discriminates, demotes, disciplines, or terminates an employee or payee after receiving an income withholding notice shall be subject to the penalties prescribed in sections 43-1724 and 43-1725; and

(10) That if the employer or other payor receives more than one notice to withhold income of a single obligor and the amount of income available to be withheld pursuant to the limits specified in section 43-1722 is insufficient to satisfy the total support amount certified in the notices, the income available shall first be applied to current support. If the total amount of income available to be withheld is insufficient to satisfy the total amount of current support certified by the notices, the employer or other payor shall withhold for each notice the proportion that the amount of the current support certified in such notice bears to the total amount of current support certified in all notices received for the obligor. Any remaining income available to be withheld after current support is satisfied for all notices shall be applied to arrearages. If arrearages are certified in more than one notice, the employer or other payor shall withhold for each notice the proportion that the amount of the arrearage certified in such notice bears to the total amount of arrearage certified in all notices received for the obligor.

Compliance with the order by the employer or other payor shall operate as a discharge of the employer's or other payor's liability to the obligor as to the portion of the obligor's income withheld. The county attorney, the authorized attorney, or the department need not notify the Commissioner of Labor as a payor if the commissioner is withholding for child support from the obligor under section 48-647 for the same support order.

Source: Laws 1985, Second Spec. Sess., LB 7, § 43; Laws 1986, LB 600, § 5; Laws 1991, LB 457, § 32; Laws 1993, LB 523, § 17; Laws 1996, LB 1155, § 14; Laws 1997, LB 752, § 105; Laws 2000, LB 972, § 24; Laws 2003, LB 245, § 3.

43-1724 Employer or other payor; failure to withhold and remit income; effect.

Any employer or other payor who fails to withhold and remit any income of an obligor receiving income from the employer or other payor, after proper notice as provided in section 43-1723, shall be required to pay the certified amount to the State Disbursement Unit. The county attorney or authorized attorney may file an action in district court to enforce this section. The court may sanction an employer or other payor twenty-five dollars per day, up to five hundred dollars per incident, for failure to comply with proper notice.

Source: Laws 1985, Second Spec. Sess., LB 7, § 44; Laws 1991, LB 457, § 33; Laws 1993, LB 523, § 18; Laws 2005, LB 116, § 20.

43-1725 Employer or other payor; prohibited actions; penalty.

An employer or other payor shall not use an income withholding notice or order or the possibility of income withholding as a basis for (1) discrimination in hiring, (2) demotion of an employee or payee, (3) disciplinary action against an employee or payee, or (4) termination of an employee or payee.

Upon application by the county attorney or authorized attorney and after a hearing on the matter, the court may impose a civil fine of up to five hundred dollars for each violation of this section.

An employer or other payor who violates this section may be required to make full restitution to the aggrieved employee or payee, including reinstatement and backpay.

Source: Laws 1985, Second Spec. Sess., LB 7, § 45; Laws 1991, LB 457, § 34; Laws 1993, LB 523, § 19.

43-1726 Notice to withhold income; termination; exception; procedure.

When an obligor ceases employment with or is no longer entitled to income from an employer or other payor, the notice to withhold income shall not cease to operate against the obligor and income withholding shall continue to apply to any subsequent employment or income of the obligor. The notice to withhold income shall terminate with respect to the employer or other payor without any court action or action by the county attorney, the authorized attorney, or the department thirty days after the obligor ceases employment with or is no longer entitled to income from such employer or other payor, except that a notice to withhold income shall not terminate with respect to unemployment compensation benefits being withheld by the Commissioner of Labor pursuant to section 48-647. The employer or other payor shall return a copy of the notice to withhold income to the county attorney, the authorized attorney, or the department, indicate that the employment or obligation to pay income has ceased, and cooperate in providing any known forwarding information. The county attorney, the authorized attorney, or the department shall notify the clerk of the appropriate district court that such employment or obligation to pay income has ceased. A notice to withhold income shall also terminate when the child, spousal, or medical support obligation terminates and all past-due support has been paid, in which case the county attorney, the authorized attorney, or the department shall notify the employer or other payor to cease withholding income.

Source: Laws 1985, Second Spec. Sess., LB 7, § 46; Laws 1986, LB 600, § 6; Laws 1991, LB 457, § 35; Laws 1993, LB 523, § 20; Laws 1996, LB 1155, § 15.

43-1727 Income withholding notice; modification or revocation; notice.

(1) An income withholding notice may be modified or revoked by a court of competent jurisdiction or by the county attorney, the authorized attorney, or the department as a result of a review conducted pursuant to sections 43-512.12 to 43-512.18. An income withholding notice may also be modified or revoked by a court of competent jurisdiction, for other good cause shown, after notice and a hearing on the issue. An income withholding notice may also be modified or revoked by the county attorney, the authorized attorney, or the department as provided in subsection (2) of this section or for other good cause. Payment by the obligor of overdue support, other than through income with-

holding, after receipt of notice of income withholding shall not by itself constitute good cause for modifying or revoking an income withholding notice.

(2) When income withholding has been implemented and, as a result, a support delinquency has been eliminated, the Title IV-D Division or its designee shall notify the county attorney, the authorized attorney, or the department. Upon receipt of such notification, the county attorney, the authorized attorney, or the department shall modify the income withholding notice to require income withholding for current support only and shall notify the employer or other payor of the change in the same manner as provided in section 43-1723.

Source: Laws 1985, Second Spec. Sess., LB 7, § 47; Laws 1991, LB 457, § 36; Laws 1991, LB 715, § 24; Laws 1996, LB 1155, § 16; Laws 2000, LB 972, § 25.

43-1728 Income from another jurisdiction; withholding order; how obtained.

(1) In any case in which the department is providing services either directly or pursuant to a contract with a county attorney or authorized attorney or (2) on application of a resident of this state, an obligee or obligor of a support order issued in this state, or an agency to whom an obligee has assigned child, spousal, or medical support rights, the department shall promptly request the agency of another jurisdiction in which the obligor derives income to receive and file such request for the purpose of obtaining a withholding order against such income. The department shall promptly compile and transmit to the agency of the cooperating jurisdiction all documentation required to effectuate an income withholding order. The department also shall transmit immediately to the agency of the cooperating jurisdiction a certified copy of any subsequent modification of any support order. The department may contract with an agent to carry out its powers and duties pursuant to sections 43-1728 to 43-1742.

Source: Laws 1985, Second Spec. Sess., LB 7, § 48; Laws 1991, LB 457, § 37; Laws 1993, LB 523, § 21.

43-1729 Foreign support order; acceptance; procedure.

Upon receiving a foreign support order and the documentation specified in section 43-1730 from an agency of another jurisdiction, an obligee, an obligor, or an attorney for either, the department shall transmit such order and documents to be filed with the clerk of the district court in the jurisdiction within this state in which income withholding is being sought. The clerk of the district court shall accept the documents filed, and such acceptance shall constitute entry of the foreign support order for purposes of income withholding.

The filing process required by this section shall not be construed as requiring an application, petition, answer, and hearing as might be required for the filing or registration of foreign judgments by the Nebraska Uniform Enforcement of Foreign Judgments Act or the Uniform Interstate Family Support Act.

Source: Laws 1985, Second Spec. Sess., LB 7, § 49; Laws 1993, LB 458, § 13; Laws 1993, LB 500, § 56; Laws 2000, LB 972, § 26.

Cross References

Nebraska Uniform Enforcement of Foreign Judgments Act, see section 25-1587.01.
Uniform Interstate Family Support Act, see section 42-701.

43-1730 Entry of foreign support order; documentation required.

The following documentation shall be required for the entry of a foreign support order:

- (1) A certified copy of the foreign support order with all modifications;
- (2) A certified copy of an income withholding order or notice, if any, still in effect;
- (3) A copy of the portion of the income withholding statute of the jurisdiction which issued the support order which states the requirements for obtaining an income withholding order or notice under the law of such jurisdiction;
- (4) A sworn statement of the obligee or certified statement of the requesting agency of the arrearages of child, spousal, or medical support payments and the assignment of the support rights, if any;
- (5) A statement of the name, address, and social security number of the obligor, if known;
- (6) A statement of the name and address of the obligor's employer or other payor or of any other source of income of the obligor derived in this state from which income withholding is sought; and
- (7) A statement of the name and address of the agency or person to whom support payments collected by income withholding shall be transmitted.

Source: Laws 1985, Second Spec. Sess., LB 7, § 50; Laws 1991, LB 457, § 38.

43-1731 Documentation; remedy of defects.

If the documentation received by the department does not conform to the requirements of section 43-1730, the department shall remedy any defect which it can without the assistance of the requesting agency or person. If the department is unable to make such corrections, the requesting agency or person shall immediately be notified of the necessary additions or corrections. In neither case shall the original documentation be returned. The department and the receiving court shall accept the documentation required by section 43-1730 even if it is not in the usual form required by state or local law or rules so long as the substantive requirements of such section are met.

Source: Laws 1985, Second Spec. Sess., LB 7, § 51.

43-1732 Foreign support order; how enforced.

A foreign support order entered pursuant to section 43-1729 shall be enforceable by withholding from income derived in this state in the manner and with the same effect as income withholding based on a support order of this state, except that any hearing requested by the obligor to contest any proposed income withholding shall be held by a court as provided in section 43-1733 instead of by the department. Entry of the order shall not confer jurisdiction on the courts of this state for any purpose other than income withholding.

Source: Laws 1985, Second Spec. Sess., LB 7, § 52.

43-1733 Foreign support order; income withholding notice; contents; hearing; when held.

Unless a foreign support order requires income withholding regardless of whether or not payment pursuant to such order is in arrears, within ten days

after the date a foreign support order is entered pursuant to section 43-1729 the county attorney or authorized attorney shall serve upon the obligor notice of proposed income withholding in accordance with section 43-1720. The notice shall also advise the obligor that income withholding was requested on the basis of a foreign support order.

If the obligor seeks a hearing to contest the proposed income withholding, the county attorney or authorized attorney shall immediately notify the obligee and obligor or their attorneys of the date, time, and place of the hearing.

Any such hearing shall be held by the appropriate court in the same manner as a civil action except as provided otherwise in sections 43-1734 to 43-1737.

Source: Laws 1985, Second Spec. Sess., LB 7, § 53; Laws 1993, LB 523, § 22.

43-1734 Foreign support order; validity; prima facie evidence; allowable defenses.

At any hearing contesting a proposed income withholding based on a foreign support order entered under section 43-1729, the entered order, the certified copy of an income withholding order or notice, if any, still in effect, and the sworn or certified statement concerning arrearages and any assignment of rights shall constitute prima facie evidence, without further proof or foundation, that the support order is valid, that the amount of current support payments and arrearages is as stated, and that the obligee would be entitled to income withholding under the law of the jurisdiction which issued the support order.

Once a prima facie case has been established, the obligor may raise only the following defenses:

(1) That withholding is not proper because of a mistake of fact, that is not res judicata, concerning matters such as an error in the amount of current support owed or the arrearage that has accrued, mistaken identity of the obligor, or error in the amount of income to be withheld;

(2) That the court or agency which issued the support order lacked personal jurisdiction over the obligor;

(3) That the support order was obtained by fraud; or

(4) That the statute of limitations, as provided in subsection (3) of section 43-1742, precludes enforcement of all or part of the arrearages.

The burden shall be on the obligor to establish such defenses.

Source: Laws 1985, Second Spec. Sess., LB 7, § 54; Laws 1991, LB 457, § 39.

43-1735 Foreign support order; continuance; undisputed amount; withholding.

If the obligor presents evidence which constitutes a full or partial defense under section 43-1734, the court shall, on the request of the obligee, continue the case to permit further evidence relative to the defense to be adduced by either party, except that if the obligor acknowledges liability sufficient to entitle the obligee to income withholding, the court shall require such withholding for the payment of current child, spousal, or medical support payments under the foreign support order and of so much of any arrearage as is not in dispute,

while continuing the case with respect to those matters still in dispute. The court shall determine such matters as soon as possible and if appropriate shall modify the withholding order to conform to its determination.

Source: Laws 1985, Second Spec. Sess., LB 7, § 55; Laws 1991, LB 457, § 40.

43-1736 Foreign support order; discovery; testimony; evidence; voluntary testimony.

(1) In addition to other procedural devices available to a party, any party to an income withholding proceeding based on a foreign support order or a guardian ad litem or other representative of the child may adduce testimony of witnesses in another state, including the parties and any of the children, by deposition, by written discovery, by electronic discovery such as videotaped depositions, or by personal appearance before the court by telephone or electronic means. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

(2) A court of this state may request the appropriate court or agency of another state to hold a hearing to adduce evidence, to permit a deposition to be taken before the court or agency, to order a party to produce or give evidence under other procedures of that state, and to forward to the court of this state certified copies of the evidence adduced in compliance with the request.

(3) Upon request of a court or agency of another state, the courts of this state which are competent to hear support matters may order a person in this state to appear at a hearing or deposition before the court to adduce evidence or to produce or give evidence under other procedures available in this state. A certified copy of the evidence adduced, such as a transcript or videotape, shall be forwarded by the clerk of the court to the requesting court or agency.

(4) A person within this state may voluntarily testify by statement or affidavit in this state for use in a proceeding to obtain income withholding outside this state.

Source: Laws 1985, Second Spec. Sess., LB 7, § 56.

43-1737 Income withholding; when effective.

If the obligor does not request a hearing in the time provided or if the foreign support order provides for income withholding regardless of whether or not payment pursuant to such order is in arrears, the income withholding notice shall take effect and the obligor's employer or other payor shall be notified pursuant to section 43-1723. If a hearing is held and it is determined that the obligee has been or is entitled to income withholding under the local law of the jurisdiction which issued the foreign support order, the court shall issue an income withholding order to the obligor's employer or other payor in the same manner as the notice provided for in section 43-1723.

Source: Laws 1985, Second Spec. Sess., LB 7, § 57; Laws 1986, LB 600, § 7; Laws 1991, LB 457, § 41; Laws 1993, LB 523, § 23.

43-1738 Foreign support order entry; effect; amounts credited.

A foreign support order entered pursuant to section 43-1729 shall not nullify and shall not be nullified by a support order made by a court of this state

pursuant to any other law or by any other foreign support order. Amounts collected by any income withholding shall be credited against the amounts accruing or accrued for any period under any support order issued by this state which is the subject of an income withholding notice or any other foreign support order which is the subject of an income withholding order pursuant to section 43-1737.

Source: Laws 1985, Second Spec. Sess., LB 7, § 58.

43-1739 Foreign support order; receipt of amendment or modification; effect.

Upon receiving a certified copy of any amendment or modification to a foreign support order entered pursuant to section 43-1729, the department shall initiate necessary procedures to amend or modify the income withholding order of this state which was based upon the foreign support order in the same manner as if it were a support order of this state.

Source: Laws 1985, Second Spec. Sess., LB 7, § 59.

43-1740 Foreign support order; obligor; new or additional income or employment; county or authorized attorney; duties.

If the county attorney or authorized attorney determines that an obligor subject to a foreign support order has obtained employment in another state or has a new or additional source of income in another state, he or she shall notify the agency or person who requested the income withholding of the changes and shall forward to such agency or person all information he or she has or can obtain with respect to the obligor's new address and the name and address of the obligor's new employer or other payor or other source of income. The county attorney or authorized attorney shall include with the notice a certified copy of the income withholding order or notice in effect in this state.

Source: Laws 1985, Second Spec. Sess., LB 7, § 60; Laws 1991, LB 457, § 42.

43-1741 Foreign support order; voluntary income withholding; procedure.

Any person who is the obligor on a foreign support order may obtain voluntary income withholding by filing with the court a request for such withholding and a certified copy of the foreign support order. The court shall issue an income withholding order pursuant to section 43-1737. Payment shall be made to the State Disbursement Unit.

Source: Laws 1985, Second Spec. Sess., LB 7, § 61; Laws 2000, LB 972, § 27.

43-1742 Foreign support order; applicability of law.

(1) Except as provided in subsections (2) and (3) of this section, the local law of this state shall apply in all actions and proceedings concerning the issuance, enforcement, and duration of income withholding orders issued by a court of this state based upon a foreign support order entered pursuant to section 43-1729.

(2) The local law of the jurisdiction which issued the foreign support order shall govern the following:

(a) The interpretation of the support order including amount of support, form of payment, and duration of support;

(b) The amount of support arrearages necessary to require the issuance of an income withholding order or notice; and

(c) The definition of what costs, in addition to the periodic support obligation, are included as arrearages which are enforceable by income withholding, including, but not limited to, interest, attorney's fees, court costs, and costs of paternity testing.

(3) The court shall apply the statute of limitations for maintaining an action on arrearages of support payments of either the local law of this state or of the state which issued the foreign support order, whichever provides the longer period of time.

Source: Laws 1985, Second Spec. Sess., LB 7, § 62.

43-1743 Consent to income withholding; when allowed; procedure.

Nothing in the Income Withholding for Child Support Act shall be construed as prohibiting a person from consenting to an income withholding order as part of a property settlement agreement incorporated into a decree dissolving a marriage or by agreement in a proceeding in the county court, district court, county court sitting as a juvenile court, or separate juvenile court in which the payment of child, spousal, or medical support is an issue. Any such order or agreement shall be filed with the clerk of the district court who shall notify the person's employer or other payor, if any, of the order or agreement by first-class mail and file a record of such mailing in the court. The income withholding shall be treated in all other respects the same as an income withholding initiated pursuant to section 43-1720.

Source: Laws 1985, Second Spec. Sess., LB 7, § 63; Laws 1991, LB 457, § 43; Laws 1996, LB 1296, § 25.

ARTICLE 18

GRANDPARENT VISITATION

Section

43-1801. Grandparent, defined.

43-1802. Visitation; conditions; order; modification.

43-1803. Venue; petition; contents; service.

43-1801 Grandparent, defined.

As used in sections 43-1801 to 43-1803, unless the context otherwise requires, grandparent shall mean the biological or adoptive parent of a minor child's biological or adoptive parent. Such term shall not include a biological or adoptive parent of any minor child's biological or adoptive parent whose parental rights have been terminated.

Source: Laws 1986, LB 105, § 1.

43-1802 Visitation; conditions; order; modification.

(1) A grandparent may seek visitation with his or her minor grandchild if:

(a) The child's parent or parents are deceased;

(b) The marriage of the child's parents has been dissolved or petition for the dissolution of such marriage has been filed, is still pending, but no decree has been entered; or

(c) The parents of the minor child have never been married but paternity has been legally established.

(2) In determining whether a grandparent shall be granted visitation, the court shall require evidence concerning the beneficial nature of the relationship of the grandparent to the child. The evidence may be presented by affidavit and shall demonstrate that a significant beneficial relationship exists, or has existed in the past, between the grandparent and the child and that it would be in the best interests of the child to allow such relationship to continue. Reasonable rights of visitation may be granted when the court determines by clear and convincing evidence that there is, or has been, a significant beneficial relationship between the grandparent and the child, that it is in the best interests of the child that such relationship continue, and that such visitation will not adversely interfere with the parent-child relationship.

(3) The court may modify an order granting or denying such visitation upon a showing that there has been a material change in circumstances which justifies such modification and that the modification would serve the best interests of the child.

Source: Laws 1986, LB 105, § 2.

Grandparents' existing visitation rights are not automatically terminated by an adoption, but can be modified upon a showing of cause with the child's best interests at issue. *Raney v. Blecha*, 258 Neb. 731, 605 N.W.2d 449 (2000).

In order for a trial court to grant grandparent visitation under subsection (2) of this section, evidence must be adduced to enable the court to find "by clear and convincing evidence that there is, or has been, a significant beneficial relationship between the grandparent and the child, that it is in the best interests of the child that such relationship continue, and that such visitation will not adversely interfere with the parent-child relationship". Nothing contained within the modification provisions of the grandparent visitation statutes makes the modification of previously ordered grandparent visitation dependent upon the parent's continued parental relationship with the child. By the grandparent visitation statutes' express provision of a method by which to modify previously ordered grandparent visitation, the Legislature intended that grandparent visitation granted under those statutes not be interrupted by the adoption statutes. *Pier v. Bolles*, 257 Neb. 120, 596 N.W.2d 1 (1999).

The statutory criteria for modification of a prior grandparent visitation order are different than the criteria for obtaining grandparent visitation initially. Grandparents' efforts to undermine the relationship between a mother and her children do not serve the best interests of the children. *Morris v. Corzatt*, 255 Neb. 182, 583 N.W.2d 26 (1998).

This section sets out criteria for awarding grandparent visitation which must be proved by clear and convincing evidence before a court may exercise its discretionary authority to grant grandparent visitation rights. *Eberspacher v. Hulme*, 248 Neb. 202, 533 N.W.2d 103 (1995).

After the deaths of the minor child's biological parents, the child's maternal biological grandparents became his parents by adopting him. Therefore, the child's parents are not deceased within the meaning of this statute, and the paternal biological grandparents cannot seek court ordered visitation under subsection (1)(a) of this section. *Rust v. Buckler*, 247 Neb. 852, 530 N.W.2d 630 (1995).

The grandparent visitation statutes do not provide for an award of attorney fees, nor is there a uniform course of procedure in these cases which would allow recovery of attorney fees. A grandparent visitation action may be initiated either during the dissolution proceeding or after the marriage of the parents has been dissolved. *Rosse v. Rosse*, 244 Neb. 967, 510 N.W.2d 73 (1994).

Pursuant to subsection (2) of this section, a juvenile court is not the proper venue for a grandparent to petition for grandparent visitation under the grandparent visitation statutes. It is within the juvenile court's statutory jurisdiction to determine a motion for visitation asserted by a grandparent who has properly intervened. *In re Interest of Dylan W.*, 8 Neb. App. 1039, 606 N.W.2d 847 (2000).

The overriding and paramount consideration in determining grandparent visitation rights is the best interests of the children. The disruption to the lives of the grandchildren, including the distance of travel to exercise visitation rights, is clearly an appropriate consideration in the award of grandparent visitation privileges. *Beal v. Endsley*, 3 Neb. App. 589, 529 N.W.2d 125 (1995).

The standard of review in cases involving visitation by grandparents is the same as the standard of review in other custody and visitation cases. *Dice v. Dice*, 1 Neb. App. 241, 493 N.W.2d 207 (1992).

43-1803 Venue; petition; contents; service.

(1) If the minor child's parent or parents are deceased or have never been married, a grandparent seeking visitation shall file a petition in the district court in the county in which the minor child resides. If the marriage of the parents of a minor child has been dissolved or a petition for the dissolution of such marriage has been filed, is still pending, but no decree has been entered, a grandparent seeking visitation shall file a petition for such visitation in the district court in the county in which the dissolution was had or the proceedings are taking place. The county court or the district court may hear the proceeding

as provided in section 25-2740. The form of the petition and all other pleadings required by this section shall be prescribed by the Supreme Court. The petition shall include the following:

- (a) The name and address of the petitioner and his or her attorney;
- (b) The name and address of the parent, guardian, or other party having custody of the child or children;
- (c) The name and address of any parent not having custody of the child or children if applicable;
- (d) The name and year of birth of each child with whom visitation is sought;
- (e) The relationship of petitioner to such child or children;
- (f) An allegation that the parties have attempted to reconcile their differences, but the differences are irreconcilable and such parties have no recourse but to seek redress from the court; and
- (g) A statement of the relief sought.

(2) When a petition seeking visitation is filed, a copy of the petition shall be served upon the parent or parents or other party having custody of the child and upon any parent not having custody of such child by personal service or in the manner provided in section 25-517.02.

Source: Laws 1986, LB 105, § 3; Laws 1996, LB 1296, § 26; Laws 1997, LB 229, § 39; Laws 2007, LB221, § 2.

A grandparent visitation action may be initiated either during the dissolution proceeding or after the marriage of the parents has been dissolved. *Rosse v. Rosse*, 244 Neb. 967, 510 N.W.2d 73 (1994).

A proceeding for grandparent visitation under this section is subject to the Nebraska Child Custody Jurisdiction Act, section 43-1201 et seq. *Dorszynski v. Reier*, 6 Neb. App. 877, 578 N.W.2d 457 (1998). Note: Sections 43-1201 to 43-1225 were repealed in 2003.

Juvenile court is not the proper venue for grandparents seeking visitation rights of children placed in the temporary custody of the Nebraska Department of Social Services, since this section specifically provides for venue in the district court of the county where the children reside or in the district court where dissolution of parents' marriage was pending or was dissolved. *In re Interest of Zachary W. & Alyssa W.*, 3 Neb. App. 274, 526 N.W.2d 233 (1994).

ARTICLE 19

CHILD ABUSE PREVENTION

Cross References

Child abuse:

Crime, see section 28-707.

Reports, Child Protection Act, see sections 28-710, 81-2010.01, and 81-2010.02.

Child abuse and neglect teams, see sections 28-728 to 28-732.

Child Protection Division of the Attorney General, see section 84-205.

Section

- 43-1901. Legislative findings.
- 43-1902. Terms, defined.
- 43-1903. Nebraska Child Abuse Prevention Fund Board; created; members; terms; vacancies; officers; expenses; removal.
- 43-1904. Board; powers and duties.
- 43-1905. Department; duties.
- 43-1906. Nebraska Child Abuse Prevention Fund; established; investment; use.

43-1901 Legislative findings.

The Legislature hereby finds that the large number of confirmed cases of child abuse and neglect places an enormous burden upon the citizens and government of Nebraska because victimized and maltreated children often bear the scars of abuse and neglect for many years and even throughout their lives. The Legislature recognizes that siblings, parents, and entire families suffer from

the disruption and turmoil which accompany incidents of child abuse and neglect.

The Legislature further recognizes that the taxpaying public labors under the heavy economic burden of paying for the destructive effects of child abuse including subsequent juvenile delinquency, educational problems, adult criminal activity, mental illness, and poor parenting behavior.

The Legislature further recognizes that child abuse and neglect is a problem that should be approached through prevention efforts and that society presently possesses the ability to prevent many of these problems before the suffering and social costs begin to mount.

It is the expressed intent of sections 43-1901 to 43-1906 to make the prevention of child abuse and neglect a priority of this state and to establish the Nebraska Child Abuse Prevention Fund as a means to that end.

Source: Laws 1986, LB 333, § 1.

43-1902 Terms, defined.

As used in sections 43-1901 to 43-1906, unless the context otherwise requires:

- (1) Board means the Nebraska Child Abuse Prevention Fund Board;
- (2) Department means the Department of Health and Human Services; and
- (3) Fund means the Nebraska Child Abuse Prevention Fund.

Source: Laws 1986, LB 333, § 2; Laws 1996, LB 1044, § 206; Laws 2007, LB296, § 132.

43-1903 Nebraska Child Abuse Prevention Fund Board; created; members; terms; vacancies; officers; expenses; removal.

(1) There is hereby created within the department the Nebraska Child Abuse Prevention Fund Board which shall be composed of nine members as follows: Two representatives of the Department of Health and Human Services appointed by the chief executive officer and seven members to be appointed by the Governor with the approval of the Legislature. The Governor shall appoint two members from each of the three congressional districts and one member from the state at large. As a group, the appointed board members (a) shall demonstrate knowledge in the area of child abuse and neglect prevention, (b) shall be representative of the demographic composition of this state, and (c) to the extent practicable, shall be representative of all of the following categories (i) the business community, (ii) the religious community, (iii) the legal community, (iv) professional providers of child abuse and neglect prevention services, and (v) volunteers in child abuse and neglect prevention services.

(2) The term of each appointed board member shall be three years, except that of the board members first appointed, two, including the at-large member, shall serve for three years, three shall serve for two years, and two shall serve for one year. The Governor shall designate the term which each of the members first appointed shall serve when he or she makes the appointments. An appointed board member shall not serve more than two consecutive terms whether partial or full. A vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment.

(3) The board shall elect a chairperson from among the appointed board members who shall serve for a term of two years. The board may elect the other officers and establish committees as it deems appropriate.

(4) The members of the board shall not receive any compensation for their services but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177. The reimbursement shall be paid from the fund. In any one fiscal year, no more than five percent of the annually available funds as provided in section 43-1906 shall be used for the purpose of reimbursement of board members.

(5) Any board member may be removed by the Governor for misconduct, incompetency, or neglect of duty after first being given the opportunity to be heard in his or her own behalf.

Source: Laws 1986, LB 333, § 3; Laws 1996, LB 1044, § 207; Laws 2007, LB296, § 133.

43-1904 Board; powers and duties.

The board shall have the following powers and duties:

(1) To meet not less than twice annually at the call of the chairperson to conduct its official business;

(2) To require that at least five of the board members approve the awarding of grants made under subdivision (3)(b) of this section; and

(3) To develop, one year after the appointment of the original board and annually thereafter, a state plan for the distribution and disbursement of money in the fund. The plan developed under this subdivision shall assure that an equal opportunity exists for the establishment and maintenance of prevention programs and the receipt of money from the fund in all geographic areas of this state. The plan shall be transmitted to the department, the Governor, and the Legislature and made available to the general public. In carrying out a plan developed under this subdivision, the board shall establish procedures for:

(a) Developing and publicizing criteria for the awarding of grants for programs to be supported with money from the fund within the limits of appropriations made for that purpose;

(b) Awarding grants to agencies, organizations, or individuals for community-based child abuse prevention programs. The programs shall provide education, public awareness, or prevention services. In awarding grants under this subdivision, consideration shall be given by the board to factors such as need, geographic location, diversity, coordination with or improvement of existing services, and extensive use of volunteers;

(c) Supporting and encouraging the formation of local child abuse councils;

(d) Consulting with applicable state agencies, commissions, and boards to help determine probable effectiveness, fiscal soundness, and need for proposed community-based educational and service prevention programs;

(e) Facilitating information exchange among groups concerned with prevention programs; and

(f) Encouraging statewide educational and public awareness programs regarding the problems of families and children which (i) encourage professional persons and groups to recognize and deal with problems of families and children, (ii) make information regarding the problems of families and children

and the prevention of such problems available to the general public in order to encourage citizens to become involved in the prevention of such problems, and (iii) encourage the development of community prevention programs.

Source: Laws 1986, LB 333, § 4; Laws 2007, LB296, § 134.

43-1905 Department; duties.

The department shall:

- (1) Have the power to deny any grant award, or portion of such award, made by the board;
- (2) Review and monitor expenditures of money from the fund on a periodic basis; and
- (3) Submit to the Governor and the Legislature an annual report of all receipts and disbursements of funds, including the recipients, the nature of the program funded, the dollar amount awarded, and the percentage of the total annually available funds the grant represents. The report may be made available to the public upon request.

Source: Laws 1986, LB 333, § 5; Laws 2007, LB296, § 135.

43-1906 Nebraska Child Abuse Prevention Fund; established; investment; use.

(1) There is hereby established the Nebraska Child Abuse Prevention Fund. The additional docket fee as provided in section 33-106.03, the additional charge for supplying a certified copy of the record of any birth as provided in sections 71-612, 71-617.15, 71-627, and 71-628, and all amounts which may be received from grants, gifts, bequests, the federal government, or other sources granted or given for the purposes specified in sections 43-1901 to 43-1906 shall be remitted to the State Treasurer for credit to the Nebraska Child Abuse Prevention Fund. The fund shall be administered and disbursed by the department.

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

(3) In any one fiscal year, no more than twenty percent of the annually appropriated funds shall be disbursed to any one agency, organization, or individual.

(4) Funds allocated from the fund shall only be used for purposes authorized under sections 43-1901 to 43-1906 and shall not be used to supplant any existing governmental program or service. No grants may be made to any state department or agency.

Source: Laws 1986, LB 333, § 6; Laws 1995, LB 7, § 39; Laws 2002, LB 1310, § 4; Laws 2002, Second Spec. Sess., LB 48, § 2.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 20

MISSING CHILDREN IDENTIFICATION ACT

Cross References

Missing person, criminal procedure, see sections 29-212 to 29-214.01.

Section

- 43-2001. Act, how cited.
- 43-2002. Legislative findings.
- 43-2003. Terms, defined.
- 43-2004. Missing person; notification.
- 43-2005. Flagging birth certificate.
- 43-2006. Flagged birth certificate; inquiry and request; how handled.
- 43-2007. Schools; home school; duties.
- 43-2008. Flag; requirements.
- 43-2009. Removal of flag.
- 43-2010. Local law enforcement agency; duties.
- 43-2011. Immunity from liability.
- 43-2012. Department; patrol; adopt rules and regulations.

43-2001 Act, how cited.

Sections 43-2001 to 43-2012 shall be known and may be cited as the Missing Children Identification Act.

Source: Laws 1987, LB 599, § 1.

43-2002 Legislative findings.

Each year Nebraska children are reported missing. The Legislature is seeking a procedure whereby it can help locate such missing children through school records and birth certificates filed with the schools and the Department of Health and Human Services.

Source: Laws 1987, LB 599, § 2; Laws 1997, LB 307, § 82; Laws 2007, LB296, § 136.

43-2003 Terms, defined.

As used in the Missing Children Identification Act, unless the context otherwise requires:

- (1) County agency means any agency in a county that records and maintains birth certificates;
- (2) Department means the Department of Health and Human Services;
- (3) Missing person means a person sixteen years of age or younger reported to any law enforcement agency as abducted or lost; and
- (4) Patrol means the Nebraska State Patrol.

Source: Laws 1987, LB 599, § 3; Laws 1996, LB 1044, § 208; Laws 1997, LB 307, § 83; Laws 2007, LB296, § 137.

43-2004 Missing person; notification.

Upon notification to a local law enforcement agency of the disappearance of a missing person, such agency shall immediately notify the patrol which shall notify the school in which such missing person is enrolled and the department. The department shall notify the county agency if such missing person was born

in such county. Any information known to the patrol shall be supplied to the department.

Source: Laws 1987, LB 599, § 4; Laws 1997, LB 307, § 84.

43-2005 Flagging birth certificate.

If a missing person was born in Nebraska, the department shall flag such person's birth certificate, and if such person was born in a county where a county agency records and maintains birth certificates, such agency shall also flag the birth certificate in its custody.

Source: Laws 1987, LB 599, § 5; Laws 1997, LB 307, § 85.

43-2006 Flagged birth certificate; inquiry and request; how handled.

(1) If an inquiry is made regarding the flagged birth certificate, the department or county agency shall not furnish any information to such requesting person and shall request the name of the inquirer, address, and any other pertinent information. The department and such county agency shall immediately notify the patrol of such inquiry.

(2) If a request is made in person from the department or such county agency for a flagged birth certificate, the department or such county agency shall:

(a) Immediately notify the patrol or local law enforcement agency;

(b) Have the person requesting the flagged birth certificate fill in a form requesting such person's name, address, telephone number, social security number, and relationship to the person whose birth certificate is being requested and the name, address, and birthdate of the person whose birth certificate is being requested;

(c) Try to obtain a photocopy of the driver's license of the person making the request;

(d) Inform the person making the request that the birth certificate will be mailed to him or her;

(e) Report the description of such person making the request and any other relevant information to the patrol or other law enforcement agency; and

(f) Provide the patrol with copies of such documents but retain the original in the office of the department or county agency.

(3) If a request is made for such birth certificate in writing, the department or county agency shall notify the patrol and provide the patrol with a copy of the request but retain the original request in the office of the department or county agency.

Source: Laws 1987, LB 599, § 6; Laws 1997, LB 307, § 86.

43-2007 Schools; home school; duties.

(1) Upon notification by the patrol of a missing person, any school in which the missing person is currently or was previously enrolled shall flag the school records of such person in such school's possession. The school shall report immediately any request concerning a flagged record or any knowledge of the whereabouts of the missing person.

(2) Upon enrollment of a student for the first time in a public school district or private school system, the school of enrollment shall notify in writing the person enrolling the student that within thirty days he or she must provide

either (a) a certified copy of the student's birth certificate or (b) other reliable proof of the student's identity and age accompanied by an affidavit explaining the inability to produce a copy of the birth certificate.

(3) The parent or guardian of a child who is receiving his or her education in a home school subject to sections 79-1601 to 79-1607 shall, not later than October 1 of the first year of the child's attendance at the home school, provide to the Commissioner of Education either (a) a certified copy of the child's birth certificate or (b) other reliable proof of the child's identity and age accompanied by an affidavit explaining the inability to produce a copy of the birth certificate.

(4) Upon failure of the person, parent, or guardian to comply with subsection (2) or (3) of this section, the school or Commissioner of Education shall notify such person, parent, or guardian in writing that unless he or she complies within ten days the matter shall be referred to the local law enforcement agency for investigation. If compliance is not obtained within such ten-day period, the school or commissioner shall immediately report such matter. Any affidavit received pursuant to subsection (2) or (3) of this section that appears inaccurate or suspicious in form or content shall be reported immediately to the local law enforcement agency by the school or commissioner.

(5) Any school requested to forward a copy of a transferred student's record shall not forward a copy of such record to the requesting school if the record has been flagged pursuant to subsection (1) of this section. If such record has been flagged, the school to whom such request is made shall notify the local law enforcement agency of the request and that such student is a reported missing person.

Source: Laws 1987, LB 599, § 7; Laws 1991, LB 511, § 3; Laws 1992, LB 245, § 9; Laws 1996, LB 900, § 1047.

43-2008 Flag; requirements.

The flag on such birth certificate or school record shall be large enough so that any personnel looking at such birth certificate or record shall be alerted to the fact that such birth certificate or record is of a missing person.

Source: Laws 1987, LB 599, § 8.

43-2009 Removal of flag.

Upon notification of recovery of such missing person, the department, the county agency, and any school pursuant to section 43-2007 shall remove the flag from such person's record.

Source: Laws 1987, LB 599, § 9; Laws 1997, LB 307, § 87.

43-2010 Local law enforcement agency; duties.

Any local law enforcement agency notified pursuant to the Missing Children Identification Act of the request for the birth certificate, school record, or other information concerning a missing person shall immediately notify the patrol of such request and shall investigate such matter.

Source: Laws 1987, LB 599, § 10.

43-2011 Immunity from liability.

Any school or any person acting on behalf of a school shall be immune from civil and criminal liability for any acts or omissions which occur as a result of the requirements of the Missing Children Identification Act.

Source: Laws 1987, LB 599, § 11.

43-2012 Department; patrol; adopt rules and regulations.

The department and the patrol shall adopt and promulgate rules and regulations necessary to carry out their responsibilities under the Missing Children Identification Act.

Source: Laws 1987, LB 599, § 12; Laws 1997, LB 307, § 88.

**ARTICLE 21
AGE OF MAJORITY**

Cross References

- Alcohol purchases**, minor defined, see section 53-103.
- Candidate**, requirement for holding office, see section 32-602.
- Elections**, voting qualifications, see Article VI, section 1, Constitution of Nebraska.
- Licensing Law, Uniform**, requirement for license, certificate, or registration, see section 71-103.
- Obscenity**, minor defined, see section 28-807.
- Shoplifting**, minor defined, see section 25-21,194.

Section

43-2101. Persons declared minors; marriage, effect.

43-2101 Persons declared minors; marriage, effect.

All persons under nineteen years of age are declared to be minors, but in case any person marries under the age of nineteen years, his or her minority ends.

Source: R.S.1866, c. 23, § 1, p. 178; R.S.1913, § 1627; Laws 1921, c. 247, § 1, p. 853; C.S.1922, § 1576; C.S.1929, § 38-101; R.S. 1943, § 38-101; Laws 1965, c. 207, § 1, p. 613; Laws 1969, c. 298, § 1, p. 1072; Laws 1972, LB 1086, § 1; R.S.1943, (1984), § 38-101; Laws 1988, LB 790, § 6.

Cross References

Juvenile committed under Nebraska Juvenile Code, marriage under age of nineteen years does not make juvenile age of majority, see section 43-289.

**ARTICLE 22
NEBRASKA UNIFORM GIFTS TO MINORS ACT**

Section

- 43-2201. Repealed. Laws 1992, LB 907, § 29.
- 43-2202. Repealed. Laws 1992, LB 907, § 29.
- 43-2203. Repealed. Laws 1992, LB 907, § 29.
- 43-2204. Repealed. Laws 1992, LB 907, § 29.
- 43-2205. Repealed. Laws 1992, LB 907, § 29.
- 43-2206. Repealed. Laws 1992, LB 907, § 29.
- 43-2207. Repealed. Laws 1992, LB 907, § 29.
- 43-2208. Repealed. Laws 1992, LB 907, § 29.
- 43-2209. Repealed. Laws 1992, LB 907, § 29.
- 43-2210. Repealed. Laws 1992, LB 907, § 29.

43-2201 Repealed. Laws 1992, LB 907, § 29.

43-2202 Repealed. Laws 1992, LB 907, § 29.

- 43-2203 Repealed. Laws 1992, LB 907, § 29.**
- 43-2204 Repealed. Laws 1992, LB 907, § 29.**
- 43-2205 Repealed. Laws 1992, LB 907, § 29.**
- 43-2206 Repealed. Laws 1992, LB 907, § 29.**
- 43-2207 Repealed. Laws 1992, LB 907, § 29.**
- 43-2208 Repealed. Laws 1992, LB 907, § 29.**
- 43-2209 Repealed. Laws 1992, LB 907, § 29.**
- 43-2210 Repealed. Laws 1992, LB 907, § 29.**

**ARTICLE 23
BEQUESTS TO MINORS**

Section

- 43-2301. Repealed. Laws 1992, LB 907, § 29.
- 43-2302. Repealed. Laws 1992, LB 907, § 29.
- 43-2303. Repealed. Laws 1992, LB 907, § 29.
- 43-2304. Repealed. Laws 1992, LB 907, § 29.
- 43-2305. Repealed. Laws 1992, LB 907, § 29.

- 43-2301 Repealed. Laws 1992, LB 907, § 29.**
- 43-2302 Repealed. Laws 1992, LB 907, § 29.**
- 43-2303 Repealed. Laws 1992, LB 907, § 29.**
- 43-2304 Repealed. Laws 1992, LB 907, § 29.**
- 43-2305 Repealed. Laws 1992, LB 907, § 29.**

**ARTICLE 24
JUVENILE SERVICES**

Cross References

Health and Human Services, Office of Juvenile Services Act, see section 43-401.
Juvenile detention facilities, standards, see sections 83-4,124 to 83-4,134.
Nebraska Juvenile Code, see section 43-2,129.

Section

- 43-2401. Act, how cited.
- 43-2402. Terms, defined.
- 43-2403. Legislative findings; purposes of act.
- 43-2404. Grants; use.
- 43-2404.01. Comprehensive juvenile services plan; statewide system to evaluate fund recipients.
- 43-2404.02. County Juvenile Services Aid Program; created; use; reports.
- 43-2405. Grants under Commission Grant Program; application; requirements.
- 43-2406. Grants; criteria.
- 43-2407. Repealed. Laws 2000, LB 1167, § 56.
- 43-2408. Grants; use.
- 43-2409. Eligible applicants; performance review; commission; powers; use of grants; limitation.
- 43-2410. Repealed. Laws 2000, LB 1167, § 56.
- 43-2411. Nebraska Coalition for Juvenile Justice; created; members; terms; expenses; task forces or subcommittee; authorized.

Section	
43-2412.	Coalition; powers and duties.
43-2413.	Coordinator; position established; duties.
43-2414.	Repealed. Laws 2007, LB 296, § 815.

43-2401 Act, how cited.

Sections 43-2401 to 43-2413 shall be known and may be cited as the Juvenile Services Act.

Source: Laws 1990, LB 663, § 1; Laws 2000, LB 1167, § 40; Laws 2001, LB 640, § 2.

43-2402 Terms, defined.

For purposes of the Juvenile Services Act:

- (1) Coalition means the Nebraska Coalition for Juvenile Justice established pursuant to section 43-2411;
- (2) Commission means the Nebraska Commission on Law Enforcement and Criminal Justice;
- (3) Commission Grant Program means grants provided to eligible applicants under section 43-2406;
- (4) County Juvenile Services Aid Program means aid to counties provided under section 43-2404.02;
- (5) Eligible applicant means a community-based agency or organization, political subdivision, school district, federally recognized or state-recognized Indian tribe, or state agency necessary to comply with the federal act;
- (6) Federal act means the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601 et seq., as the act existed on July 1, 2001;
- (7) Juvenile means a person who is under eighteen years of age; and
- (8) Office of Juvenile Services means the Office of Juvenile Services created in section 43-404.

Source: Laws 1990, LB 663, § 2; Laws 1992, LB 447, § 6; Laws 2000, LB 1167, § 41; Laws 2001, LB 640, § 3.

43-2403 Legislative findings; purposes of act.

The Legislature hereby finds that the incarceration of juveniles in adult jails, lockups, and correctional facilities is contrary to the best interests and well-being of juveniles and frequently inconsistent with state and federal law requiring intervention by the least restrictive method. The Legislature further finds that the lack of available alternatives within local communities is a significant factor in the incarceration of juveniles in such adult jails, lockups, and correctional facilities.

To address such lack of available alternatives to the incarceration of juveniles, the Legislature declares it to be the policy of the State of Nebraska to aid in the establishment of programs or services for juveniles under the jurisdiction of the juvenile or criminal justice system and to finance such programs or services with appropriations from the General Fund and with funds acquired by participation in the federal act. The purposes of the Juvenile Services Act shall be to (1) assist in the provision of appropriate preventive, diversionary, and dispositional alternatives for juveniles, (2) encourage coordination of the ele-

ments of the juvenile services system, and (3) provide an opportunity for local involvement in developing community programs for juveniles so that the following objectives may be obtained:

- (a) Preservation of the family unit whenever the best interests of the juvenile are served and such preservation does not place the juvenile at imminent risk;
- (b) Limitation on intervention to those actions which are necessary and the utilization of the least restrictive yet most effective and appropriate resources;
- (c) Encouragement of active family participation in whatever treatment is afforded a juvenile whenever the best interests of the juvenile require it;
- (d) Treatment in the community rather than commitment to a youth rehabilitation and treatment center whenever the best interests of the juvenile require it; and
- (e) Assistance in the development of alternatives to secure temporary custody for juveniles who do not require secure detention.

Source: Laws 1990, LB 663, § 3; Laws 1992, LB 447, § 7; Laws 1994, LB 988, § 25; Laws 1995, LB 739, § 2; Laws 1997, LB 424, § 1; Laws 2000, LB 1167, § 42; Laws 2001, LB 640, § 4.

43-2404 Grants; use.

The coalition shall make award recommendations to the commission, at least annually, in accordance with the Juvenile Services Act and the federal act for grants made under the Commission Grant Program. Such grants shall be used to assist communities in the implementation and operation of programs or services identified in their comprehensive juvenile services plan, including, but not limited to, programs for assessment and evaluation, the prevention of delinquent behavior, diversion, detention, shelter care, intensive juvenile probation services, restitution, family support services, and community centers for the care and treatment of juveniles in need of services.

Source: Laws 1990, LB 663, § 4; Laws 1992, LB 447, § 8; Laws 1997, LB 424, § 2; Laws 2000, LB 1167, § 43; Laws 2001, LB 640, § 5.

43-2404.01 Comprehensive juvenile services plan; statewide system to evaluate fund recipients.

(1) To be eligible for participation in either the Commission Grant Program or the County Juvenile Services Aid Program, counties shall develop and adopt a comprehensive juvenile services plan and submit such plan to the commission in accordance with the federal act and rules and regulations adopted and promulgated by the commission in consultation with the Office of Juvenile Services. Such plan may be developed by individual counties or by multiple counties. Any portion of the comprehensive juvenile services plan dealing with administration, procedures, and programs of the juvenile court shall not be submitted to the commission without the concurrence of the presiding judge or judges of the court or courts having jurisdiction in juvenile cases for the geographic area to be served. Programs or services established by such plans shall conform to the family policy tenets prescribed in sections 43-532 to 43-534.

(2) The commission, in consultation with the Office of Juvenile Services and the coalition, shall develop or contract for the development of a statewide

system to monitor and evaluate the effectiveness of plans and programs receiving funds from: (a) The Commission Grant Program and (b) the County Juvenile Services Aid Program in preventing persons from entering the juvenile justice system and in rehabilitating juvenile offenders.

Source: Laws 2001, LB 640, § 6; Laws 2005, LB 193, § 1.

43-2404.02 County Juvenile Services Aid Program; created; use; reports.

(1) There is created a separate and distinct budgetary program within the commission to be known as the County Juvenile Services Aid Program. Funding acquired from participation in the federal act, state General Funds, and funding acquired from other sources which may be used for purposes consistent with the Juvenile Services Act and the federal act shall be used to aid counties in the establishment and provision of community-based services for accused and adjudicated juvenile offenders and to increase capacity for community-based services to juveniles.

(2) The annual General Fund appropriation to the County Juvenile Services Aid Program shall be apportioned to the counties as aid in accordance with a formula established in rules and regulations adopted and promulgated by the commission. The formula shall be based on the total number of residents per county who are twelve years of age through eighteen years of age and other relevant factors as determined by the commission. The commission may require a local match of up to forty percent from counties receiving aid under such program. Any local expenditures for community-based programs for juveniles may be applied toward such match requirement.

(3) Funds provided to counties under the County Juvenile Services Aid Program shall be used exclusively to assist counties in implementation and operation of programs or services identified in their comprehensive juvenile services plan, including, but not limited to, programs for assessment and evaluation, prevention of delinquent behavior, diversion, shelter care, intensive juvenile probation services, restitution, family support services, and family group conferencing. No funds appropriated or distributed under the County Juvenile Services Aid Program shall be used for construction of secure detention facilities, secure youth treatment facilities, or secure youth confinement facilities. Aid received under this section shall not be used for capital construction or the lease or acquisition of facilities and shall not be used to replace existing funding for programs or services. Any funds not distributed to counties under this subsection shall be retained by the commission to be distributed on a competitive basis under the County Juvenile Services Aid Program.

(4) Any county receiving funding under the County Juvenile Services Aid Program shall file an annual report as required by rules and regulations adopted and promulgated by the commission. The report shall include, but not be limited to, information on the total number of juveniles served, the units of service provided, a listing of the county's annual juvenile justice budgeted and actual expenditures, and a listing of expenditures for detention, residential treatment, and nonresidential treatment.

(5) The commission shall report annually to the Governor and the Legislature on the distribution and use of funds appropriated under the County Juvenile Services Aid Program.

(6) The commission shall adopt and promulgate rules and regulations to implement this section.

Source: Laws 2001, LB 640, § 7; Laws 2005, LB 193, § 2; Laws 2008, LB1014, § 54.

Operative date July 18, 2008.

43-2405 Grants under Commission Grant Program; application; requirements.

(1) An eligible applicant may apply to the coalition for a grant under the Commission Grant Program in a manner and form prescribed by the commission for funds made available from the Commission Grant Program or the federal act. The application shall include a comprehensive juvenile services plan. Grants shall be awarded to eligible applicants at least annually within the limits of available funds until programs are available statewide.

(2) Eligible applicants may give consideration to contracting with private nonprofit agencies for the provision of programs.

Source: Laws 1990, LB 663, § 5; Laws 1992, LB 447, § 9; Laws 1997, LB 424, § 3; Laws 2000, LB 1167, § 44; Laws 2001, LB 640, § 8.

43-2406 Grants; criteria.

From amounts appropriated to the commission for the Commission Grant Program or funds available through the federal act, the commission shall award grants on a competitive basis to eligible applicants based upon criteria determined by the commission.

Source: Laws 1990, LB 663, § 6; Laws 1992, LB 447, § 10; Laws 1994, LB 988, § 26; Laws 1997, LB 424, § 4; Laws 2000, LB 1167, § 45; Laws 2001, LB 640, § 9.

43-2407 Repealed. Laws 2000, LB 1167, § 56.

43-2408 Grants; use.

(1) Grants provided under the Commission Grant Program may be used for developing programs under the Juvenile Services Act.

(2) No grants from the Commission Grant Program shall be used to acquire, develop, build, or improve local correctional facilities.

Source: Laws 1990, LB 663, § 8; Laws 2000, LB 1167, § 46; Laws 2001, LB 640, § 10.

43-2409 Eligible applicants; performance review; commission; powers; use of grants; limitation.

(1) The coalition shall review periodically the performance of eligible applicants participating under the Commission Grant Program and the federal act to determine if substantial compliance criteria are being met. The commission shall establish criteria for defining substantial compliance.

(2) Grants received by an eligible applicant under the Commission Grant Program shall not be used to replace or supplant any funds currently being used to support existing programs for juveniles.

(3) Grants received under the Commission Grant Program shall not be used for capital construction or the lease or acquisition of facilities.

Source: Laws 1990, LB 663, § 9; Laws 1992, LB 447, § 11; Laws 1997, LB 424, § 6; Laws 2000, LB 1167, § 47; Laws 2001, LB 640, § 11.

43-2410 Repealed. Laws 2000, LB 1167, § 56.

43-2411 Nebraska Coalition for Juvenile Justice; created; members; terms; expenses; task forces or subcommittee; authorized.

(1) The Nebraska Coalition for Juvenile Justice is created. As provided in the federal act, there shall be no less than fifteen nor more than thirty-three members of the coalition. The coalition members shall be appointed by the Governor and shall include:

- (a) The Administrator of the Office of Juvenile Services;
- (b) The chief executive officer of the Department of Health and Human Services or his or her designee;
- (c) The Commissioner of Education or his or her designee;
- (d) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice or his or her designee;
- (e) The Executive Director of the Nebraska Association of County Officials or his or her designee;
- (f) The probation administrator of the Office of Probation Administration or his or her designee;
- (g) One county commissioner or supervisor;
- (h) One police chief;
- (i) One sheriff;
- (j) One separate juvenile court judge;
- (k) One county court judge;
- (l) One representative of mental health professionals who works directly with juveniles;
- (m) Three representatives, one from each congressional district, from community-based, private nonprofit organizations who work with juvenile offenders and their families;
- (n) One volunteer who works with juvenile offenders or potential juvenile offenders;
- (o) One person who works with an alternative to incarceration program for juveniles;
- (p) The director or his or her designee from a youth rehabilitation and treatment center;
- (q) The director or his or her designee from a secure youth confinement facility;
- (r) The director or his or her designee from a staff secure youth confinement facility;
- (s) At least five members who are under twenty-four years of age when appointed;

(t) One person who works directly with juveniles who have learning or emotional difficulties or are abused or neglected;

(u) One member of the Nebraska Commission on Law Enforcement and Criminal Justice;

(v) One county attorney; and

(w) One public defender.

(2) The terms of members appointed pursuant to subdivisions (1)(g) through (1)(w) of this section shall be three years, except that the terms of the initial members of the coalition shall be staggered so that one-third of the members are appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years, as determined by the Governor. A majority of the coalition members, including the chairperson, shall not be full-time employees of federal, state, or local government. At least one-fifth of the coalition members shall be under the age of twenty-four at the time of appointment. Any vacancy on the coalition shall be filled by appointment by the Governor. The coalition shall select a chairperson, a vice-chairperson, and such other officers as it deems necessary.

(3) Members of the coalition shall be reimbursed for their actual and necessary expenses pursuant to sections 81-1174 to 81-1177.

(4) The coalition may appoint task forces or subcommittees to carry out its work. Task force and subcommittee members shall have knowledge of, responsibility for, or interest in an area related to the duties of the coalition.

Source: Laws 1990, LB 663, § 11; Laws 1996, LB 1044, § 209; Laws 1997, LB 424, § 8; Laws 2000, LB 1167, § 48; Laws 2007, LB296, § 138.

43-2412 Coalition; powers and duties.

(1) Consistent with the purposes and objectives of the Juvenile Services Act and the federal act, the coalition shall:

(a) Make recommendations to the commission on the awarding of grants under the Commission Grant Program to eligible applicants;

(b) Identify juvenile justice issues, share information, and monitor and evaluate programs in the juvenile justice system;

(c) Recommend guidelines and supervision procedures to the Office of Juvenile Services to be used to develop or expand local diversion programs for juveniles from the juvenile justice system;

(d) Prepare an annual report to the Governor, the Legislature, and the Office of Juvenile Services including recommendations on administrative and legislative actions which would improve the juvenile justice system;

(e) Ensure widespread citizen involvement in all phases of its work; and

(f) Meet at least four times each year.

(2) Consistent with the purposes and objectives of the acts and within the limits of available time and appropriations, the coalition may:

(a) Recommend criteria to the Office of Juvenile Services for administrative procedures, including, but not limited to, procedures for intake, detention, petition filing, and probation supervision;

(b) Recommend to the Office of Juvenile Services minimum professional standards, including requirements for continuing professional training, for employees of community-based, youth-serving agencies;

(c) Recommend to the Office of Juvenile Services curricula for and cause to have conducted training sessions for juvenile court judges and employees of other community-based, youth-serving agencies;

(d) Assist and advise state and local agencies in the establishment of volunteer training programs and the utilization of volunteers;

(e) Apply for and receive funds from federal and private sources for carrying out its powers and duties; and

(f) Provide technical assistance to eligible applicants.

(3) In formulating, adopting, and promulgating the standards, recommendations, and guidelines provided for in this section, the coalition shall consider the differences among counties in population, in geography, and in the availability of local resources.

Source: Laws 1990, LB 663, § 12; Laws 1992, LB 447, § 12; Laws 1997, LB 424, § 9; Laws 2000, LB 1167, § 49; Laws 2001, LB 640, § 12.

43-2413 Coordinator; position established; duties.

There is established within the commission the position of coordinator for the Nebraska Coalition for Juvenile Justice. The coordinator shall assist the commission in the administration of the Juvenile Services Act and the federal act and shall serve as staff to the coalition.

Source: Laws 1990, LB 663, § 13; Laws 1992, LB 447, § 13; Laws 2000, LB 1167, § 50.

43-2414 Repealed. Laws 2007, LB 296, § 815.

ARTICLE 25

INFANTS WITH DISABILITIES

Cross References

Developmental Disabilities Services Act, see section 83-1201.
Special Education Act, see section 79-1110.
Visually handicapped persons, educational programs, see section 79-11,109.

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43-2501.	Act, how cited.
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43-2507.01.	Eligible infants and toddlers with disabilities; entitlements.
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43-2513.	Special grant funds; designation.
43-2514.	Repealed. Laws 1993, LB 520, § 31.
43-2515.	Federal medicaid funds; certification; appropriations.
43-2516.	Rules and regulations.

43-2501 Act, how cited.

Sections 43-2501 to 43-2516 shall be known and may be cited as the Early Intervention Act.

Source: Laws 1991, LB 701, § 1; Laws 1993, LB 520, § 1.

43-2502 Legislative intent.

It is the intent of the Legislature to assist in securing early intervention services to infants or toddlers with disabilities and their families in accordance with the federal early intervention program and whenever possible in concert with the family policy objectives prescribed in sections 43-532 to 43-534 and federal and state initiatives. Such services are necessary to:

- (1) Enhance the development of infants and toddlers with disabilities;
- (2) Reduce the costs to our society by minimizing the need for special services, including special education and related services, after such infants or toddlers reach school age;
- (3) Minimize the likelihood of institutionalization of persons with disabilities and maximize their potential for independent living in society;
- (4) Enhance the capacity of families to meet the needs of their infants or toddlers with disabilities;
- (5) Strengthen, promote, and empower families to determine the most appropriate use of resources to address the unique and changing needs of families and their infants or toddlers with disabilities; and
- (6) Enhance the capacity of state and local agencies and service providers to identify, evaluate, and meet the needs of historically underrepresented populations, particularly minority, low-income, and rural populations.

Source: Laws 1991, LB 701, § 2; Laws 1993, LB 520, § 6.

43-2502.01 General findings and declarations.

The Legislature hereby finds and declares that: (1) All families have strengths; (2) families strengthen communities; (3) families are the primary decisionmakers for their children; and (4) all families have needs that change over time and require the support of their communities.

Source: Laws 1993, LB 520, § 2.

43-2502.02 Legislative findings.

The Legislature further finds that: (1) Many state initiatives for improving or reforming the current service delivery systems for children and their families have been identified and are currently underway within Nebraska; (2) there is

a need to facilitate coordination and promote communication across these efforts to identify common visions and approaches and to establish linkages across health, social services, family support services, mental health, and education initiatives at the state and community levels; and (3) these initiatives need continued support and nurturing in order to empower communities and families and to provide and promote an integrated service delivery system.

Source: Laws 1993, LB 520, § 3.

43-2502.03 Legislative declarations.

The Legislature declares that it shall be the policy of the State of Nebraska to promote the development of a statewide system of comprehensive, coordinated, family-centered, community-based, and culturally competent services for children and their families to assure that services help build strong families and provide appropriate environments prenatally and for children from birth through their early years in programs and services which are:

(1) Family-centered, recognizing that parents have the primary responsibility for their children's development and learning and that programs must recognize and support the role of parents through family-friendly criteria in planning their structure, services, staffing, and delivery;

(2) Comprehensive, recognizing that services must include attention to all aspects of the child and family and address needed health and nutrition, education, family support, and social services. Such a service system should allow families to choose the services they need with minimal costs and requirements;

(3) Coordinated, recognizing that collaboration among the state agencies and variety of private and community programs and services is required to assure that comprehensive child and family needs are met and that the most efficient use is made of public resources, community services, and informal support systems of families;

(4) Quality, recognizing that outcomes for children in the early years are strengthened when programs and services display indicators of quality, including developmentally appropriate practices, extensive family involvement, trained staff, and culturally responsive approaches;

(5) Inclusive, recognizing that all children benefit when they have optimum opportunities to interact with peer groups of children with diverse backgrounds and characteristics; and

(6) Equitable, recognizing that program practices strive for potential achievement of all children including children from minority groups, with disabilities, from less advantaged backgrounds, and from less populated geographic areas.

Source: Laws 1993, LB 520, § 4.

43-2502.04 Declaration of policy.

The Legislature further declares that it shall be the policy of the State of Nebraska, through the implementation of the Early Intervention Act, to promote, facilitate, and support:

(1) Healthy families, enhancing the well-being of each family member as well as that of the family as a unit and encouraging family independence and decisionmaking about the future of their children;

(2) Service systems which are responsive, flexible, integrated, and accessible to children and their families;

(3) Community ownership, recognizing that families live and children grow up in communities, that programs are implemented in communities, and that all families need supportive communities; and

(4) Maximum impact of prevention and early intervention, encouraging and supporting active parent and family partnership in all programs and services.

Source: Laws 1993, LB 520, § 5.

43-2503 Purposes of act.

The purposes of the Early Intervention Act shall be to:

(1) Develop and implement a statewide system of comprehensive, coordinated, family-centered, community-based, and culturally competent early intervention services for infants or toddlers with disabilities and their families through the collaboration of the Department of Health and Human Services, the State Department of Education, and all other relevant agencies or organizations at the state, regional, and local levels;

(2) Establish and implement a billing system for accessing federal medicaid funds;

(3) Establish and implement services coordination through a community team approach;

(4) Facilitate the coordination of payment for early intervention services from federal, state, local, and private sources including public and private insurance coverage; and

(5) Enhance Nebraska's capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to eligible infants or toddlers with disabilities and their families.

Source: Laws 1991, LB 701, § 3; Laws 1993, LB 520, § 7; Laws 1996, LB 1044, § 210; Laws 2007, LB296, § 139.

43-2504 Repealed. Laws 1993, LB 520, § 31.

43-2505 Terms, defined.

For purposes of the Early Intervention Act:

(1) Collaborating agencies means the Department of Health and Human Services and the State Department of Education;

(2) Developmental delay has the definition found in section 79-1118.01;

(3) Early intervention services may include services which:

(a) Are designed to meet the developmental needs of each eligible infant or toddler with disabilities and the needs of the family related to enhancing the development of their infant or toddler;

(b) Are selected in collaboration with the parent or guardian;

(c) Are provided in accordance with an individualized family service plan;

(d) Meet all applicable federal and state standards; and

(e) Are provided, to the maximum extent appropriate, in natural environments including the home and community settings in which infants and toddlers without disabilities participate;

(4) Eligible infant or toddler with disabilities means a child who needs early intervention services and is two years of age or younger, except that toddlers who reach age three during the school year shall remain eligible throughout that school year. The need for early intervention services is established when the infant or toddler experiences developmental delays or any of the other disabilities described in the Special Education Act;

(5) Federal early intervention program means the federal early intervention program for infants and toddlers with disabilities, 20 U.S.C. 1471 to 1485;

(6) Individualized family service plan means the process, periodically documented in writing, of determining appropriate early intervention services for an eligible infant or toddler with disabilities and his or her family;

(7) Interagency planning team means an organized group of interdisciplinary, interagency representatives, community leaders, and family members in each local community or region;

(8) Lead agency or agencies means the Department of Health and Human Services, the State Department of Education, and any other agencies designated by the Governor for general administration, supervision, and monitoring of programs and activities receiving federal funds under the federal early intervention program and state funds appropriated for early intervention services under the Early Intervention Act; and

(9) Services coordination means a flexible process of interaction facilitated by a services coordinator to assist the family of an eligible infant or toddler with disabilities within a community to identify and meet their needs pursuant to the act. Services coordination under the act shall not duplicate any case management services which an eligible infant or toddler with disabilities and his or her family are already receiving or eligible to receive from other sources.

Source: Laws 1991, LB 701, § 4; Laws 1993, LB 520, § 8; Laws 1996, LB 900, § 1048; Laws 1996, LB 1044, § 211; Laws 1997, LB 346, § 1; Laws 1999, LB 813, § 2; Laws 2000, LB 1135, § 9; Laws 2006, LB 994, § 56; Laws 2007, LB296, § 140.

Cross References

Special Education Act, see section 79-1110.

43-2506 Repealed. Laws 2000, LB 1135, § 34.

43-2507 Collaborating agency; statewide system; components; duties; sharing information and data.

(1) Planning for early intervention services shall be the responsibility of each collaborating agency. The planning shall address a statewide system of comprehensive, coordinated, family-centered, community-based, and culturally competent early intervention services to all eligible infants or toddlers with disabilities and their families in Nebraska. The statewide system shall include the following minimum components:

(a) A public awareness program, including a central directory;

(b) A comprehensive early identification system, including a system for identifying children and making referrals for infants or toddlers who may be eligible for early intervention services;

(c) Common intake, referral, and assessment processes, procedures, and forms to determine eligibility of infants and toddlers and their families referred for early intervention services;

(d) An individualized family service plan, including services coordination, for each eligible infant or toddler with disabilities and his or her family;

(e) A comprehensive system of personnel development;

(f) A uniform computer data base and reporting system which crosses agency lines; and

(g) Services coordination to access the following early intervention services: Audiology; family training, counseling, and home visits; health services; medical services only for diagnostic or evaluation purposes; nursing services; nutrition services; occupational therapy; physical therapy; psychological services; social work services; special instruction; speech-language pathology; transportation and related costs that are necessary to enable an eligible infant or toddler with disabilities and his or her family to receive early intervention services; assistive technology devices and assistive technology services; vision services; and hearing services.

(2) Collaborating agencies shall review standards to ensure that personnel are appropriately and adequately prepared and trained to carry out the Early Intervention Act.

(3) Collaborating agencies shall be responsible for designing, supporting, and implementing a statewide training and technical assistance plan which shall address preservice, inservice, and leadership development for service providers and parents of eligible infants and toddlers with disabilities.

(4) Policies and procedures shall be jointly examined and analyzed by the collaborating agencies to satisfy data collection requirements under the federal early intervention program and to assure the confidentiality of the data contained in the statewide system. Notwithstanding any other provision of state law, the collaborating agencies shall be permitted to share information and data necessary to carry out the provisions of the federal early intervention program, including the personal identification or other specific information concerning individual infants, toddlers, or their families, except that the vital and medical records and health information concerning individuals provided to the Department of Health and Human Services may be released only under the laws authorizing the provision of such records and information. Nothing in this section shall prohibit the use of such data to provide for the preparation of reports, fiscal information, or other documents required by the Early Intervention Act, but no information in such reports, fiscal information, or other documents shall be used in a manner which would allow for the personal identification of an individual infant, toddler, or family.

Source: Laws 1991, LB 701, § 6; Laws 1993, LB 520, § 10; Laws 1996, LB 1044, § 212; Laws 2006, LB 994, § 57; Laws 2007, LB296, § 141.

43-2507.01 Eligible infants and toddlers with disabilities; entitlements.

(1) Infants or toddlers who are referred because of possible disabilities shall be entitled, at no cost to their families, to early identification of eligible infants or toddlers, evaluation and assessment in order to determine eligibility under the Special Education Act, and procedural safeguards.

(2) By June 1, 1995, eligible infants or toddlers with disabilities shall also be entitled, at no cost to their families, to services coordination and development of the individualized family service plan.

(3) For other early intervention services not mandated under the Special Education Act and not paid through any other source, including, but not limited to, insurance, medicaid, or other third-party payor, payment for such services shall be the responsibility of the parent, guardian, or other person responsible for the eligible infant or toddler.

(4) Except for services coordination, the Early Intervention Act shall not be construed to create new early intervention or family services or establish an entitlement to such new services.

Source: Laws 1993, LB 520, § 11.

Cross References

Special Education Act, see section 79-1110.

43-2507.02 State Department of Education; duties.

The State Department of Education shall maintain its responsibility under the Special Education Act regarding special education and related services. The department shall provide grants for the costs of such programs to the school district of residence as provided in section 79-1132.

Source: Laws 1993, LB 520, § 12; Laws 1996, LB 900, § 1049.

Cross References

Special Education Act, see section 79-1110.

43-2508 Department of Health and Human Services; duties.

(1) The Department of Health and Human Services shall be responsible for providing or contracting for services.

(2) Whenever possible, the medical assistance program prescribed in the Medical Assistance Act shall be used for payment of services coordination.

(3) It is the intent of this section that the department shall apply for and implement a Title XIX medicaid waiver as a way to assist in the provision of services coordination to eligible infants or toddlers with disabilities and their families.

Source: Laws 1991, LB 701, § 7; Laws 1993, LB 520, § 13; Laws 1996, LB 1044, § 213; Laws 2006, LB 994, § 58; Laws 2006, LB 1248, § 55; Laws 2007, LB296, § 142.

Cross References

Medical Assistance Act, see section 68-901.

43-2509 Department of Health and Human Services; duties.

The Department of Health and Human Services is responsible for incorporating components required under the federal early intervention program into the state plans developed for the Special Supplemental Nutrition Program for Women, Infants, and Children, the Commodity Supplemental Food Program, the maternal and child health program, and the developmental disabilities program. The department shall provide technical assistance, planning, and coordination related to the incorporation of such components.

Source: Laws 1991, LB 701, § 8; Laws 1993, LB 520, § 14; Laws 1996, LB 1044, § 214; Laws 2006, LB 994, § 59; Laws 2007, LB296, § 143.

43-2510 Department of Health and Human Services; duties.

The Department of Health and Human Services is responsible for incorporating components required under the federal early intervention program into the mental health and developmental disabilities planning responsibilities of the department. The department shall provide technical assistance, planning, and coordination related to the incorporation of such components.

Source: Laws 1991, LB 701, § 9; Laws 1993, LB 520, § 15; Laws 1996, LB 1044, § 215; Laws 2006, LB 994, § 60; Laws 2007, LB296, § 144.

43-2511 Statewide billing system; establishment; participation required.

There is hereby established a statewide billing system for accessing federal medicaid funds for special education and related services provided by school districts. The system shall apply to all students verified with disabilities from date of diagnosis to twenty-one years of age as allowed under the federal Medicare Catastrophic Coverage Act of 1988. The system shall be developed jointly by the Department of Health and Human Services and the State Department of Education. School districts, educational service units, or approved cooperatives providing special education and related services shall be required to participate in the statewide billing system. It is the intent of this section that costs to school districts associated with the implementation of such a system shall be eligible for payment through the medicaid reimbursement rates to be established for each therapy.

Source: Laws 1991, LB 701, § 10; Laws 1993, LB 520, § 16; Laws 1996, LB 1044, § 216; Laws 2007, LB296, § 145.

43-2511.01 Statewide services coordination system; development; implementation.

The lead agencies shall develop and implement a statewide services coordination system for eligible infants or toddlers with disabilities and their families pursuant to the Early Intervention Act. The amount and duration of services coordination shall be based on need, as specified on the individualized family service plan. Services coordination under the act shall not duplicate any case management services which an eligible infant or toddler with disabilities and his or her family are already receiving or eligible to receive from whatever source.

Source: Laws 1993, LB 520, § 17.

43-2512 Interagency planning team; members; duties; Department of Health and Human Services; provide services coordination.

Each region established pursuant to section 79-1135 shall establish an interagency planning team, which planning team shall include representatives from school districts, social services, health and medical services, parents, and mental health, developmental disabilities, Head Start, and other relevant agencies or persons serving children from birth to age five and their families and parents or guardians. Each interagency planning team shall be responsible for assisting in the planning and implementation of the Early Intervention Act in each local community or region. The Department of Health and Human

Services, in collaboration with each regional interagency planning team, shall provide or contract for services coordination.

Source: Laws 1991, LB 701, § 11; Laws 1993, LB 520, § 18; Laws 1996, LB 900, § 1050; Laws 1996, LB 1044, § 217; Laws 2006, LB 994, § 61; Laws 2007, LB296, § 146.

43-2513 Special grant funds; designation.

For purposes of the general fund budget of expenditures as defined in section 79-1003, funds received to carry out the services coordination functions and the administration of the billing system shall be considered special grant funds.

Source: Laws 1991, LB 701, § 12; Laws 1993, LB 520, § 19; Laws 1994, LB 1290, § 1; Laws 1995, LB 840, § 1; Laws 1996, LB 900, § 1051.

43-2514 Repealed. Laws 1993, LB 520, § 31.

43-2515 Federal medicaid funds; certification; appropriations.

On or before October 1, 1993, and for each year thereafter, the Department of Health and Human Services and the State Department of Education shall jointly certify to the budget administrator of the budget division of the Department of Administrative Services the amount of federal medicaid funds paid to school districts pursuant to the Early Intervention Act for special education services for children five years of age and older. The General Fund appropriation to the State Department of Education for state special education aid shall be decreased by an amount equal to the amount that would have been reimbursed with state general funds to the school districts through the special education reimbursement process for special education services for children five years of age and older that was paid to school districts or approved cooperatives with federal medicaid funds.

It is the intent of the Legislature that an amount equal to the amount that would have been reimbursed with state general funds to the school districts, certified to the budget administrator, be appropriated from the General Fund to aid in carrying out the provisions of the Early Intervention Act and other related early intervention services.

Source: Laws 1993, LB 520, § 20; Laws 1996, LB 1044, § 218; Laws 1998, Spec. Sess., LB 1, § 4; Laws 2007, LB296, § 147.

43-2516 Rules and regulations.

The lead agencies shall adopt and promulgate rules and regulations pursuant to the Early Intervention Act.

Source: Laws 1993, LB 520, § 21.

ARTICLE 26

CHILD CARE

Cross References

Before-and-after school services, school districts provide, see section 79-1104.

Child Care Licensing Act, see section 71-1908.

Early Childhood Training Center, see section 79-1102.

Foster care, see sections 71-1901 to 71-1906.01.

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43-2606.	Providers of child care and school-age-care programs; training requirements.
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43-2611.	Repealed. Laws 2000, LB 1135, § 34.
43-2612.	Repealed. Laws 2000, LB 1135, § 34.
43-2613.	Repealed. Laws 2000, LB 1135, § 34.
43-2614.	Repealed. Laws 2000, LB 1135, § 34.
43-2615.	Repealed. Laws 2000, LB 1135, § 34.
43-2616.	Family child care home; location.
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43-2618.	Family child care homes; inspections.
43-2619.	Office for child development and early childhood education services.
43-2620.	Collaboration of activities; duties.
43-2620.01.	State Board of Education; voluntary accreditation process; rules and regulations.
43-2621.	Block grant funds; use.
43-2622.	Child Care Grant Fund; established; use; investment.
43-2623.	Appropriation to Child Care Grant Fund; legislative intent.
43-2624.	Child care grants.
43-2625.	Child care grants; rules and regulations.

43-2601 Act, how cited.

Sections 43-2601 to 43-2625 shall be known and may be cited as the Quality Child Care Act.

Source: Laws 1991, LB 836, § 1; Laws 1995, LB 401, § 2.

43-2602 Legislative intent.

It is the intent of the Legislature to promote the growth and development of a comprehensive child care system which meets the needs of families in Nebraska by encouraging high-quality, affordable, and accessible child care services that are educationally and developmentally appropriate. The Legislature finds that existing child care resources are inadequate to meet the need for services and that high-quality services can substantially increase the well-being of children and families.

Source: Laws 1991, LB 836, § 2.

43-2603 Legislative declarations.

The Legislature declares that it shall be the policy of the State of Nebraska to:

(1) Recognize the family as the most important social and economic unit of society and support the central role parents play in raising children. All parents are encouraged to care for and nurture their children through the traditional methods of parental care at home. However, to the extent early childhood care and education and school-age-care programs are used, parents are encouraged to participate fully in the effort to improve the quality of such programs;

(2) Promote a variety of culturally and developmentally appropriate child care programs of high quality;

(3) Promote the growth, development, and safety of children by working with community groups and agencies, including providers and parents, to establish standards for high-quality programs, training of providers, fair and equitable monitoring, and salary levels commensurate with provider responsibilities and support services;

(4) Promote equal access to high-quality, affordable, and socioeconomically integrated programs for all children and families; and

(5) Facilitate broad community and private sector involvement in the provision of high-quality programs to foster economic development and assist business.

The Legislature supports the full integration of children with special needs into the same child care environments serving children with no identified handicapping conditions.

The Legislature also finds that family child care homes should be the primary focus in upgrading child care programs in Nebraska at this time. There is a need for a larger, more visible, and better trained supply of family child care homes.

Source: Laws 1991, LB 836, § 3; Laws 1995, LB 401, § 3.

43-2604 Legislative findings and priorities.

The Legislature finds that since the majority of children of prekindergarten age will continue to be served in private child care settings and programs, an investment of public resources in upgrading the training levels of staff will be an investment in all the children of the state. Coordination of existing training opportunities offered by agencies would greatly enhance the ability of providers in local communities to gain access to relevant training and would also enhance efforts to provide training which is sensitive to local needs. The Legislature also finds that training which brings together staff from various programs can provide a setting in which to initiate and promote collaborative efforts at the local level.

The Legislature finds that the highest priority need for training is for family child care home providers.

The Legislature further finds that the funding provided by the federal Child Care and Development Block Grant Act of 1990 will provide significant new funding to improve child care and early childhood education and school-age care in Nebraska.

Source: Laws 1991, LB 836, § 4; Laws 1995, LB 401, § 4.

43-2605 Terms, defined.

For purposes of the Quality Child Care Act:

(1) Child care shall mean the care and supervision of children in lieu of parental care and supervision and shall include programs; and

(2) Programs shall mean the programs listed in subdivision (2) of section 71-1910.

Source: Laws 1991, LB 836, § 5; Laws 1995, LB 401, § 5; Laws 2007, LB296, § 148.

43-2606 Providers of child care and school-age-care programs; training requirements.

(1) The Department of Health and Human Services shall adopt and promulgate rules and regulations for mandatory training requirements for providers of child care and school-age-care programs. Such requirements shall include preservice orientation and at least four hours of annual inservice training. All child care programs required to be licensed under section 71-1911 shall show completion of a preservice orientation approved or delivered by the department prior to receiving a provisional license.

(2) The department shall initiate a system of documenting the training levels of staff in specific child care settings to assist parents in selecting optimal care settings.

(3) The training requirements shall be designed to meet the health, safety, and developmental needs of children and shall be tailored to the needs of licensed providers of child care programs. The training requirements for providers of child care programs shall include, but not be limited to, information on sudden infant death syndrome, shaken baby syndrome, and child abuse.

(4) The department shall provide or arrange for training opportunities throughout the state and shall provide information regarding training opportunities to all providers of child care programs at the time of registration or licensure, when renewing a registration, or on a yearly basis following licensure.

(5) Each provider of child care and school-age-care programs receiving orientation or training shall provide his or her social security number to the department.

(6) The department shall review and provide recommendations to the Governor for updating rules and regulations adopted and promulgated under this section at least every five years.

Source: Laws 1991, LB 836, § 6; Laws 1995, LB 401, § 6; Laws 1996, LB 1044, § 219; Laws 1997, LB 307, § 89; Laws 1997, LB 310, § 2; Laws 1997, LB 752, § 106; Laws 1999, LB 594, § 22; Laws 1999, LB 828, § 4; Laws 2006, LB 994, § 62; Laws 2007, LB296, § 149.

43-2607 Early Childhood Program Training Fund; created; use; investment; contracts authorized.

There is hereby created the Early Childhood Program Training Fund. The fund shall be administered by the State Department of Education and shall be used to enhance, provide, and coordinate training for providers of programs. Emphasis shall be placed on the coordination of and dissemination of information about existing training opportunities. Such training may include:

(1) Programs targeted to parents needing or using child care to assist them in selecting optimum child care settings;

(2) Specialized training regarding the care of children with special needs; and

(3) Programs concerning health, safety, or developmental needs of children.

The department may contract with any public or private entity to provide such training. Any money in the fund available for investment shall be invested

by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1991, LB 836, § 7; Laws 1994, LB 1066, § 28; Laws 1995, LB 401, § 7.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

43-2608 Toll-free hotline for providers; established.

The Department of Health and Human Services shall establish a statewide toll-free hotline to provide immediate responses to the needs of providers of programs. Such hotline may be operated by the department, or the department may contract with a state agency or with any other public or private entity capable of providing such service to operate the hotline.

Source: Laws 1991, LB 836, § 8; Laws 1995, LB 401, § 8; Laws 1996, LB 1044, § 220; Laws 1997, LB 307, § 90.

43-2609 Family child care homes; voluntary registration; department; powers and duties; payments; restricted.

(1) The Legislature finds that a system of voluntary registration would provide a mechanism for participation in the food programs offered by the United States Department of Agriculture, for eligibility to receive funds under the federal Child Care Subsidy program, for support and assistance to unlicensed family child care home providers, and for voluntary participation in training.

(2) The Department of Health and Human Services shall institute a system of voluntary registration for family child care homes not required to be licensed under section 71-1911. The department shall promulgate standards for such voluntary registration. The application for registration shall include the applicant's social security number. The department shall not make payments for child care, from any state or federal funds, to any family child care home provider not voluntarily registered under this section.

(3) The department shall issue a certificate of registration to any family child care home provider registered pursuant to this section.

(4) For purposes of implementing voluntary registration, the department may contract with family child care home associations or full-service community-based agencies to carry out such voluntary registration procedures for the department.

Source: Laws 1991, LB 836, § 9; Laws 1995, LB 401, § 9; Laws 1996, LB 1044, § 221; Laws 1997, LB 307, § 91; Laws 1997, LB 752, § 107.

43-2610 Repealed. Laws 2000, LB 1135, § 34.

43-2611 Repealed. Laws 2000, LB 1135, § 34.

43-2612 Repealed. Laws 2000, LB 1135, § 34.

43-2613 Repealed. Laws 2000, LB 1135, § 34.

43-2614 Repealed. Laws 2000, LB 1135, § 34.

43-2615 Repealed. Laws 2000, LB 1135, § 34.**43-2616 Family child care home; location.**

Notwithstanding any other provision of law, including section 71-1914, family child care homes licensed by the Department of Health and Human Services pursuant to section 71-1911 or by a city, village, or county pursuant to subsection (2) of section 71-1914 may be established and operated in any residential zone within the exercised zoning jurisdiction of any city or village.

Source: Laws 1991, LB 836, § 16; Laws 1995, LB 401, § 16; Laws 1996, LB 1044, § 227; Laws 1997, LB 307, § 97; Laws 1999, LB 594, § 25; Laws 2007, LB296, § 150.

43-2617 Program provider; communicable disease; notice to parents.

A provider of a program shall notify the parents of enrolled children of the outbreak of any communicable disease in any child in the program on the same day the provider is informed of or observes the outbreak. The Department of Health and Human Services shall develop appropriate procedures to carry out this section.

Source: Laws 1991, LB 836, § 17; Laws 1995, LB 401, § 17; Laws 1996, LB 1044, § 228; Laws 1997, LB 307, § 98; Laws 2007, LB296, § 151.

43-2618 Family child care homes; inspections.

All family child care homes required to be licensed under section 71-1911 or which are registered pursuant to section 43-2609 shall be inspected within sixty days of licensure or registration. All family child care homes licensed under section 71-1911 shall be inspected after the initial inspection pursuant to section 71-1912. All family child care homes registered under section 43-2609 shall be inspected at least every two years after the initial inspection. It is the intent of the Legislature that registered family child care homes be inspected annually if sufficient funds are made available under the federal Child Care and Development Block Grant Act of 1990 for such purposes.

Source: Laws 1991, LB 836, § 18; Laws 1995, LB 401, § 18; Laws 1997, LB 310, § 3.

43-2619 Office for child development and early childhood education services.

There is hereby created within the State Department of Education an office for child development and early childhood education services.

Source: Laws 1991, LB 836, § 19.

43-2620 Collaboration of activities; duties.

The Department of Health and Human Services and the State Department of Education shall collaborate in their activities and may:

(1) Encourage the development of comprehensive systems of child care programs and early childhood education programs which promote the wholesome growth and educational development of children, regardless of the child's level of ability;

(2) Encourage and promote the provision of parenting education, developmentally appropriate activities, and primary prevention services by program providers;

(3) Facilitate cooperation between the private and public sectors in order to promote the expansion of child care;

(4) Promote continuing study of the need for child care and early childhood education and the most effective methods by which these needs can be served through governmental and private programs;

(5) Coordinate activities with other state agencies serving children and families;

(6) Strive to make the state a model employer by encouraging the state to offer a variety of child care benefit options to its employees;

(7) Provide training for early childhood education providers as authorized in sections 79-1101 to 79-1103;

(8) Develop and support resource and referral services for parents and providers that will be in place statewide by January 1, 1994;

(9) Promote the involvement of businesses and communities in the development of child care throughout the state by providing technical assistance to providers and potential providers of child care;

(10) Establish a voluntary accreditation process for public and private child care and early childhood education providers, which process promotes program quality;

(11) At least biennially, develop an inventory of programs and early childhood education programs provided to children in Nebraska and identify the number of children receiving and not receiving such services, the types of programs under which the services are received, and the reasons children not receiving the services are not being served; and

(12) Support the identification and recruitment of persons to provide child care for children with special needs.

Source: Laws 1991, LB 836, § 20; Laws 1995, LB 401, § 19; Laws 1996, LB 900, § 1052; Laws 1996, LB 1044, § 229; Laws 1997, LB 307, § 99; Laws 1999, LB 594, § 26; Laws 2000, LB 1135, § 10; Laws 2007, LB296, § 152.

43-2620.01 State Board of Education; voluntary accreditation process; rules and regulations.

The State Board of Education may adopt and promulgate reasonable rules and regulations to establish the voluntary accreditation process referred to in subdivision (10) of section 43-2620.

Source: Laws 1995, LB 401, § 21.

43-2621 Block grant funds; use.

Funds provided to the State of Nebraska pursuant to the Child Care and Development Block Grant Act of 1990 shall be used to implement the Quality Child Care Act.

Source: Laws 1991, LB 836, § 21.

43-2622 Child Care Grant Fund; established; use; investment.

The Child Care Grant Fund is hereby established to be administered by the Department of Health and Human Services. The fund shall be used to make grants pursuant to section 43-2624. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1991, LB 836, § 23; Laws 1994, LB 1066, § 29; Laws 1996, LB 1044, § 230; Laws 1997, LB 307, § 100.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

43-2623 Appropriation to Child Care Grant Fund; legislative intent.

The Legislature recognizes that a shortage of quality, affordable, and accessible child care exists to the detriment of families and employers throughout the state. Workers are unable to enter or remain in the work force due to a shortage of child care resources. The high costs of starting or expanding a child care business creates a barrier to the creation of additional space, especially for infants and children with special needs. It is the intent of the Legislature to appropriate two hundred fifty thousand dollars annually to the Child Care Grant Fund from funds designated by the State of Nebraska under the Child Care and Development Block Grant Act of 1990.

Source: Laws 1991, LB 836, § 22.

43-2624 Child care grants.

The Department of Health and Human Services shall award grants to persons, community-based organizations, or schools needing assistance to start or improve a child care program or needing assistance to provide staff training for a child care program. No grant shall exceed ten thousand dollars. A recipient of a grant shall not be eligible for a grant more than once in a three-year period. Child care grants shall be awarded on the basis of need for the proposed services in the community. Grants shall be given only to grantees who do not discriminate against children with disabilities or children whose care is funded by any state or federal funds. When considering grant applications of equal merit, the department shall award the grant to the applicant which has not previously received a grant from the Child Care Grant Fund.

Source: Laws 1991, LB 836, § 24; Laws 1995, LB 401, § 20; Laws 1996, LB 1044, § 231; Laws 1997, LB 307, § 101; Laws 1998, LB 1073, § 32.

43-2625 Child care grants; rules and regulations.

The Department of Health and Human Services shall adopt and promulgate rules and regulations setting forth criteria, application procedures, and methods to assure compliance with the criteria for grants to be awarded pursuant to section 43-2624.

Source: Laws 1991, LB 836, § 25; Laws 1996, LB 1044, § 232; Laws 1997, LB 307, § 102.

ARTICLE 27

NEBRASKA UNIFORM TRANSFERS TO MINORS ACT

Cross References

Guardians of minors, see sections 30-2601 to 30-2629.

Nebraska Uniform Custodial Trust Act, see section 30-3501.

Protection of property of minors, see sections 30-2630 to 30-2661.

Section

- 43-2701. Act, how cited.
- 43-2702. Definitions.
- 43-2703. Scope and jurisdiction.
- 43-2704. Nomination of custodian.
- 43-2705. Transfer by gift or exercise of power of appointment.
- 43-2706. Transfer authorized by will or trust.
- 43-2707. Other transfer by fiduciary.
- 43-2708. Transfer by obligor.
- 43-2709. Receipt for custodial property.
- 43-2710. Manner of creating custodial property and effecting transfer; designation of initial custodian; control.
- 43-2711. Single custodianship.
- 43-2712. Validity and effect of transfer.
- 43-2713. Care of custodial property.
- 43-2714. Powers of custodian.
- 43-2715. Use of custodial property.
- 43-2716. Custodian's expenses, compensation, and bond.
- 43-2717. Exemption of third person from liability.
- 43-2718. Liability to third persons.
- 43-2719. Renunciation, resignation, death, or removal of custodian; designation of successor custodian.
- 43-2720. Accounting by and determination of liability of custodian.
- 43-2721. Termination of custodianship.
- 43-2722. Applicability.
- 43-2723. Effect on existing custodianships.
- 43-2724. Uniformity of application and construction.

43-2701 Act, how cited.

Sections 43-2701 to 43-2724 shall be known and may be cited as the Nebraska Uniform Transfers to Minors Act.

Source: Laws 1992, LB 907, § 1.

43-2702 Definitions.

For purposes of the Nebraska Uniform Transfers to Minors Act:

- (1) Adult means an individual who has attained the age of twenty-one years;
- (2) Benefit plan means an employer's plan for the benefit of an employee, member, or partner;
- (3) Broker means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others;
- (4) Conservator means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions;
- (5) Court means the county court;

(6) Custodial property means (a) any interest in property transferred to a custodian under the Nebraska Uniform Transfers to Minors Act and (b) the income from and proceeds of that interest in property;

(7) Custodian means a person so designated under section 43-2710 or a successor or substitute custodian designated under section 43-2719;

(8) Financial institution means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law;

(9) Legal representative means an individual's personal representative or conservator;

(10) Member of the minor's family means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption;

(11) Minor means an individual who has not attained the age of twenty-one years;

(12) Person means an individual, corporation, limited liability company, organization, or other legal entity;

(13) Personal representative means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions;

(14) State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States;

(15) Transfer means a transaction that creates custodial property under section 43-2710;

(16) Transferor means a person who makes a transfer under the Nebraska Uniform Transfers to Minors Act; and

(17) Trust company means a financial institution, corporation, limited liability company, or other legal entity, authorized to exercise general trust powers.

Source: Laws 1992, LB 907, § 2; Laws 1993, LB 121, § 218.

43-2703 Scope and jurisdiction.

(1) The Nebraska Uniform Transfers to Minors Act applies to a transfer that refers to the Nebraska Uniform Transfers to Minors Act in the designation under subsection (1) of section 43-2710 by which the transfer is made if at the time of the transfer the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to the Nebraska Uniform Transfers to Minors Act despite a subsequent change in residence of a transferor, the minor, or the custodian or the removal of custodial property from this state.

(2) A person designated as custodian under the Nebraska Uniform Transfers to Minors Act is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(3) A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer the

transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

Source: Laws 1992, LB 907, § 3.

43-2704 Nomination of custodian.

(1) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: as custodian for (name of minor) under the Nebraska Uniform Transfers to Minors Act. The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(2) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under subsection (1) of section 43-2710.

(3) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under section 43-2710. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to section 43-2710.

Source: Laws 1992, LB 907, § 4.

43-2705 Transfer by gift or exercise of power of appointment.

A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to section 43-2710.

Source: Laws 1992, LB 907, § 5.

43-2706 Transfer authorized by will or trust.

(1) A personal representative or trustee may make an irrevocable transfer pursuant to section 43-2710 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(2) If the testator or settlor has nominated a custodian under section 43-2704 to receive the custodial property, the transfer must be made to that person.

(3) If the testator or settlor has not nominated a custodian under section 43-2704, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under subsection (1) of section 43-2710.

Source: Laws 1992, LB 907, § 6.

43-2707 Other transfer by fiduciary.

(1) Subject to subsection (3) of this section, a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to section 43-2710, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(2) Subject to subsection (3) of this section, a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to section 43-2710.

(3) A transfer under subsection (1) or (2) of this section may be made only if (a) the personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor, (b) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument, and (c) the transfer is authorized by the court if it exceeds ten thousand dollars in value.

Source: Laws 1992, LB 907, § 7.

43-2708 Transfer by obligor.

(1) Subject to subsections (2) and (3) of this section, a person not subject to section 43-2706 or 43-2707 who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to section 43-2710.

(2) If a person having the right to do so under section 43-2704 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(3) If no custodian has been nominated under section 43-2704 or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds ten thousand dollars in value.

Source: Laws 1992, LB 907, § 8.

43-2709 Receipt for custodial property.

A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to the Nebraska Uniform Transfers to Minors Act.

Source: Laws 1992, LB 907, § 9.

43-2710 Manner of creating custodial property and effecting transfer; designation of initial custodian; control.

(1) Custodial property is created and a transfer is made whenever:

(a) An uncertificated security or a certificated security in registered form is either:

(i) Registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: as custodian for (name of minor) under the Nebraska Uniform Transfers to Minors Act; or

(ii) Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as

custodian, accompanied by an instrument in substantially the form set forth in subsection (2) of this section;

(b) Money is paid or delivered, or a security held in the name of a broker, financial institution, or its nominee is transferred, to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: as custodian for (name of minor) under the Nebraska Uniform Transfers to Minors Act;

(c) The ownership of a life or endowment insurance policy or annuity contract is either:

(i) Registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: as custodian for (name of minor) under the Nebraska Uniform Transfers to Minors Act; or

(ii) Assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: as custodian for (name of minor) under the Nebraska Uniform Transfers to Minors Act;

(d) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: as custodian for (name of minor) under the Nebraska Uniform Transfers to Minors Act;

(e) An interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: as custodian for (name of minor) under the Nebraska Uniform Transfers to Minors Act;

(f) A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(i) Issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: as custodian for (name of minor) under the Nebraska Uniform Transfers to Minors Act; or

(ii) Delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: as custodian for (name of minor) under the Nebraska Uniform Transfers to Minors Act; or

(g) An interest in any property not described in subdivisions (a) through (f) of this subsection is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (2) of this section.

(2) An instrument in the form set forth in this subsection satisfies the requirements of subdivisions (1)(a)(ii) and (1)(g) of this section.

**TRANSFER UNDER THE NEBRASKA UNIFORM
TRANSFERS TO MINORS ACT**

I, (name of transferor or name and representative capacity if a fiduciary), hereby transfer to (name of custodian), as custodian for

..... (name of minor) under the Nebraska Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated:

.....
(Signature)

..... (name of custodian) acknowledges receipt of the property described in this document as custodian for the minor named in this document under the Nebraska Uniform Transfers to Minors Act.

Dated:

.....
(Signature of Custodian)

(3) A transferor shall place the custodian in control of the custodial property as soon as practicable.

Source: Laws 1992, LB 907, § 10.

43-2711 Single custodianship.

A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under the Nebraska Uniform Transfers to Minors Act by the same custodian for the benefit of the same minor constitutes a single custodianship.

Source: Laws 1992, LB 907, § 11.

43-2712 Validity and effect of transfer.

(1) The validity of a transfer made in a manner prescribed in the Nebraska Uniform Transfers to Minors Act is not affected by:

- (a) Failure of the transferor to comply with subsection (3) of section 43-2710 concerning possession and control;
- (b) Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under subsection (1) of section 43-2710; or
- (c) Death or incapacity of a person nominated under section 43-2704 or designated under section 43-2710 as custodian or the disclaimer of the office by that person.

(2) A transfer made pursuant to section 43-2710 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in the Nebraska Uniform Transfers to Minors Act, and neither the minor nor the minor’s legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in the act.

(3) By making a transfer, the transferor incorporates in the disposition all the provisions of the Nebraska Uniform Transfers to Minors Act and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in the act.

Source: Laws 1992, LB 907, § 12.

43-2713 Care of custodial property.

(1) A custodian shall:

- (a) Take control of custodial property;
- (b) Register or record title to custodial property if appropriate; and
- (c) Collect, hold, manage, invest, and reinvest custodial property.

(2) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(3) A custodian may invest in or pay premiums on life insurance or endowment policies on (a) the life of the minor only if the minor or the minor's estate is the sole beneficiary or (b) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian is the irrevocable beneficiary.

(4) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: as a custodian for (name of minor) under the Nebraska Uniform Transfers to Minors Act.

(5) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of fourteen years.

Source: Laws 1992, LB 907, § 13.

43-2714 Powers of custodian.

(1) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.

(2) This section does not relieve a custodian from liability for breach of section 43-2713.

Source: Laws 1992, LB 907, § 14.

43-2715 Use of custodial property.

(1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor without court order and without regard to (a) the duty or ability of the custodian personally or of any other person to

support the minor or (b) any other income or property of the minor which may be applicable or available for that purpose.

(2) On petition of an interested person or the minor if the minor has attained the age of fourteen years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(3) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

Source: Laws 1992, LB 907, § 15.

43-2716 Custodian's expenses, compensation, and bond.

(1) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(2) Except for one who is a transferor under section 43-2705, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(3) Except as provided in subsection (6) of section 43-2719, a custodian need not give a bond.

Source: Laws 1992, LB 907, § 16.

43-2717 Exemption of third person from liability.

A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

(1) The validity of the purported custodian's designation;

(2) The propriety of or the authority under the Nebraska Uniform Transfers to Minors Act for any act of the purported custodian;

(3) The validity or propriety under the Nebraska Uniform Transfers to Minors Act of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(4) The propriety of the application of any property of the minor delivered to the purported custodian.

Source: Laws 1992, LB 907, § 17.

43-2718 Liability to third persons.

(1) A claim based on (a) a contract entered into by a custodian acting in a custodial capacity, (b) an obligation arising from the ownership or control of custodial property, or (c) a tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

(2) A custodian is not personally liable:

(a) On a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(b) For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(3) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

Source: Laws 1992, LB 907, § 18.

43-2719 Renunciation, resignation, death, or removal of custodian; designation of successor custodian.

(1) A person nominated under section 43-2704 or designated under section 43-2710 as custodian may decline to serve by delivering a valid disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under section 43-2704, the person who made the nomination may nominate a substitute custodian under section 43-2704; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under subsection (1) of section 43-2710. The custodian so designated has the rights of a successor custodian.

(2) A custodian at any time may designate a trust company or an adult other than a transferor under section 43-2705 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(3) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of fourteen years and to the successor custodian and by delivering the custodial property to the successor custodian.

(4) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of fourteen years, the minor may designate as successor custodian, in the manner prescribed in subsection (2) of this section, an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not attained the age of fourteen years or fails to act within sixty days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(5) A custodian who declines to serve under subsection (1) of this section or who resigns under subsection (3) of this section, or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor if the minor has attained the age of fourteen years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under section 43-2705 or to require the custodian to give appropriate bond.

Source: Laws 1992, LB 907, § 19.

43-2720 Accounting by and determination of liability of custodian.

(1) A minor who has attained the age of fourteen years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court (a) for an accounting by the custodian or the custodian's legal representative or (b) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under section 43-2718 to which the minor or the minor's legal representative was a party.

(2) A successor custodian may petition the court for an accounting by the predecessor custodian.

(3) The court, in a proceeding under the Nebraska Uniform Transfers to Minors Act or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under subsection (6) of section 43-2719, the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

Source: Laws 1992, LB 907, § 20.

43-2721 Termination of custodianship.

The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) The minor's attainment of twenty-one years of age with respect to custodial property transferred under section 43-2705 or 43-2706;

(2) The minor's attainment of majority under section 43-2101 with respect to custodial property transferred under section 43-2707 or 43-2708; or

(3) The minor's death.

Source: Laws 1992, LB 907, § 21.

43-2722 Applicability.

The Nebraska Uniform Transfers to Minors Act applies to a transfer within the scope of section 43-2703 made after July 15, 1992, if:

(1) The transfer purports to have been made under the Nebraska Uniform Gifts to Minors Act or sections 43-2301 to 43-2305 as such act or sections existed on July 15, 1992; or

(2) The instrument by which the transfer purports to have been made uses in substance the designation as custodian under the Uniform Gifts to Minors Act of any other state or as custodian under the Uniform Transfers to Minors Act of

any other state, and the application of the Nebraska Uniform Transfers to Minors Act is necessary to validate the transfer.

Source: Laws 1992, LB 907, § 22.

43-2723 Effect on existing custodianships.

(1) Any transfer of custodial property as defined in the Nebraska Uniform Transfers to Minors Act made before July 15, 1992, is validated notwithstanding that there was no specific authority in the Nebraska Uniform Gifts to Minors Act or sections 43-2301 to 43-2305 as such act or sections existed prior to such date for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) The Nebraska Uniform Transfers to Minors Act applies to all transfers made before July 15, 1992, in a manner and form prescribed in the Nebraska Uniform Gifts to Minors Act or sections 43-2301 to 43-2305 as such act or sections existed prior to such date except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on such date.

(3) Sections 43-2702 and 43-2721 with respect to the age of a minor for whom custodial property is held under the Nebraska Uniform Transfers to Minors Act do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of nineteen years before July 15, 1992.

(4) To the extent that the Nebraska Uniform Transfers to Minors Act, by virtue of subsection (2) of this section, does not apply to transfers made in a manner prescribed in the Nebraska Uniform Gifts to Minors Act or sections 43-2301 to 43-2305 as such act or sections existed prior to July 15, 1992, or to the powers, duties, and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of the Nebraska Uniform Gifts to Minors Act and sections 43-2301 to 43-2305 as such act and sections existed prior to such date does not affect those transfers or those powers, duties, and immunities.

Source: Laws 1992, LB 907, § 23.

43-2724 Uniformity of application and construction.

The Nebraska Uniform Transfers to Minors Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the Uniform Transfers to Minors Act among states enacting it.

Source: Laws 1992, LB 907, § 24.

ARTICLE 28

JUVENILE JUSTICE TASK FORCE

Section

- 43-2801. Repealed. Laws 2001, LB 6, § 1.
- 43-2802. Repealed. Laws 2001, LB 6, § 1.
- 43-2803. Repealed. Laws 2001, LB 6, § 1.
- 43-2804. Repealed. Laws 2001, LB 6, § 1.

43-2801 Repealed. Laws 2001, LB 6, § 1.

43-2802 Repealed. Laws 2001, LB 6, § 1.

43-2803 Repealed. Laws 2001, LB 6, § 1.

43-2804 Repealed. Laws 2001, LB 6, § 1.

**ARTICLE 29
PARENTING ACT**

Cross References

Dissolution or legal separation, parenting plan incorporated, see section 42-364.

Section

- 43-2901. Repealed. Laws 2007, LB 554, § 49.
- 43-2902. Repealed. Laws 2007, LB 554, § 49.
- 43-2903. Repealed. Laws 2007, LB 554, § 49.
- 43-2904. Repealed. Laws 2007, LB 554, § 49.
- 43-2905. Repealed. Laws 2007, LB 554, § 49.
- 43-2906. Repealed. Laws 2007, LB 554, § 49.
- 43-2907. Repealed. Laws 2007, LB 554, § 49.
- 43-2908. Repealed. Laws 2007, LB 554, § 49.
- 43-2909. Repealed. Laws 2007, LB 554, § 49.
- 43-2910. Repealed. Laws 2007, LB 554, § 49.
- 43-2911. Repealed. Laws 2007, LB 554, § 49.
- 43-2912. Repealed. Laws 2007, LB 554, § 49.
- 43-2913. Repealed. Laws 2007, LB 554, § 49.
- 43-2914. Repealed. Laws 2007, LB 554, § 49.
- 43-2915. Repealed. Laws 2007, LB 554, § 49.
- 43-2916. Repealed. Laws 2007, LB 554, § 49.
- 43-2917. Repealed. Laws 2007, LB 554, § 49.
- 43-2917.01. Repealed. Laws 2007, LB 554, § 49.
- 43-2918. Repealed. Laws 2007, LB 554, § 49.
- 43-2919. Repealed. Laws 2007, LB 554, § 49.
- 43-2920. Act, how cited.
- 43-2921. Legislative findings.
- 43-2922. Terms, defined.
- 43-2923. Best interests of the child requirements.
- 43-2924. Applicability of act.
- 43-2925. Proceeding in which parenting functions for child are at issue; information provided to parties; filing required.
- 43-2926. State Court Administrator; create information sheet; contents; parenting plan mediation; distribution of information sheet.
- 43-2927. Training; screening guidelines and safety procedures; State Court Administrator's office; duties.
- 43-2928. Attendance at basic level parenting education course; delay or waiver; second-level parenting education course; State Court Administrator; duties; costs.
- 43-2929. Parenting plan; developed; approved by court; contents.
- 43-2930. Child information affidavit; when required; contents; hearing; temporary parenting order; contents; form; temporary support.
- 43-2931. Repealed. Laws 2008, LB 1014, § 81.
- 43-2932. Parenting plan; limitations to protect child or child's parent from harm; effect of court determination; burden of proof.
- 43-2933. Registered sex offender; other criminal convictions; limitation on or denial of custody or access to child; presumption; modification of previous order.
- 43-2934. Restraining order, protection order, or criminal no-contact order; effect; court findings; court powers and duties.
- 43-2935. Hearing; parenting plan; modification; court powers.
- 43-2936. Request for mediation, specialized alternative dispute resolution, or other alternative dispute resolution process; information provided to parties.

§ 43-2901

INFANTS AND JUVENILES

Section

- 43-2937. Court referral to mediation or specialized alternative dispute resolution; temporary relief; specialized alternative dispute resolution rule; approval; mandatory court order; when.
- 43-2938. Mediator; qualifications; training; approved specialized mediator; requirements.
- 43-2939. Parenting Act mediator; duties; conflict of interest; report of child abuse or neglect; termination of mediation.
- 43-2940. Mediation; uniform standards of practice; State Court Administrator; duties; mediation conducted in private.
- 43-2941. Mediation subject to other laws; claim of privilege; disclosures authorized.
- 43-2942. Costs.
- 43-2943. Rules; Parenting Act Fund; created; use; investment.

43-2901 Repealed. Laws 2007, LB 554, § 49.

43-2902 Repealed. Laws 2007, LB 554, § 49.

43-2903 Repealed. Laws 2007, LB 554, § 49.

43-2904 Repealed. Laws 2007, LB 554, § 49.

43-2905 Repealed. Laws 2007, LB 554, § 49.

43-2906 Repealed. Laws 2007, LB 554, § 49.

43-2907 Repealed. Laws 2007, LB 554, § 49.

43-2908 Repealed. Laws 2007, LB 554, § 49.

43-2909 Repealed. Laws 2007, LB 554, § 49.

43-2910 Repealed. Laws 2007, LB 554, § 49.

43-2911 Repealed. Laws 2007, LB 554, § 49.

43-2912 Repealed. Laws 2007, LB 554, § 49.

43-2913 Repealed. Laws 2007, LB 554, § 49.

43-2914 Repealed. Laws 2007, LB 554, § 49.

43-2915 Repealed. Laws 2007, LB 554, § 49.

43-2916 Repealed. Laws 2007, LB 554, § 49.

43-2917 Repealed. Laws 2007, LB 554, § 49.

43-2917.01 Repealed. Laws 2007, LB 554, § 49.

43-2918 Repealed. Laws 2007, LB 554, § 49.

43-2919 Repealed. Laws 2007, LB 554, § 49.

43-2920 Act, how cited.

Sections 43-2920 to 43-2943 shall be known and may be cited as the Parenting Act.

Source: Laws 2007, LB554, § 1.

43-2921 Legislative findings.

The Legislature finds that it is in the best interests of a child that a parenting plan be developed in any proceeding under Chapter 42 involving custody, parenting time, visitation, or other access with a child and that the parenting plan establish specific individual responsibility for performing such parenting functions as are necessary and appropriate for the care and healthy development of each child affected by the parenting plan.

The Legislature further finds that it is in the best interests of a child to have a safe, stable, and nurturing environment. The best interests of each child shall be paramount and consideration shall be given to the desires and wishes of the child if of an age of comprehension regardless of chronological age, when such desires and wishes are based on sound reasoning.

In any proceeding involving a child, the best interests of the child shall be the standard by which the court adjudicates and establishes the individual responsibilities, including consideration in any custody, parenting time, visitation, or other access determinations as well as resolution of conflicts affecting each child. The state presumes the critical importance of the parent-child relationship in the welfare and development of the child and that the relationship between the child and each parent should be equally considered unless it is contrary to the best interests of the child.

Given the potential profound effects on children from witnessing child abuse or neglect or domestic intimate partner abuse, as well as being directly abused, the courts shall recognize the duty and responsibility to keep the child or children safe when presented with a preponderance of the evidence of child abuse or neglect or domestic intimate partner abuse, including evidence of a child being used by the abuser to establish or maintain power and control over the victim. In domestic intimate partner abuse cases, the best interests of each child are often served by keeping the child and the victimized partner safe and not allowing the abuser to continue the abuse. When child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict prevents the best interests of the child from being served in the parenting arrangement, then the safety and welfare of the child is paramount in the resolution of those conflicts.

Source: Laws 2007, LB554, § 2.

43-2922 Terms, defined.

For purposes of the Parenting Act:

- (1) Appropriate means reflective of the developmental abilities of the child taking into account any cultural traditions that are within the boundaries of state and federal law;
- (2) Approved mediation center means a mediation center approved by the Office of Dispute Resolution;
- (3) Best interests of the child means the determination made taking into account the requirements stated in section 43-2923;
- (4) Child means a minor under nineteen years of age;
- (5) Child abuse or neglect has the same meaning as in section 28-710;
- (6) Court conciliation program means a court-based conciliation program under the Conciliation Court Law;

(7) Custody includes legal custody and physical custody;

(8) Domestic intimate partner abuse means an act of abuse as defined in section 42-903 and a pattern or history of abuse evidenced by one or more of the following acts: Physical or sexual assault, threats of physical assault or sexual assault, stalking, harassment, mental cruelty, emotional abuse, intimidation, isolation, economic abuse, or coercion against any current or past intimate partner, or an abuser using a child to establish or maintain power and control over any current or past intimate partner, and, when they contribute to the coercion or intimidation of an intimate partner, acts of child abuse or neglect or threats of such acts, cruel mistreatment or cruel neglect of an animal as defined in section 28-1008, or threats of such acts, and other acts of abuse, assault, or harassment, or threats of such acts against other family or household members. A finding by a child protection agency shall not be considered res judicata or collateral estoppel regarding an act of child abuse or neglect or a threat of such act, and shall not be considered by the court unless each parent is afforded the opportunity to challenge any such determination;

(9) Economic abuse means causing or attempting to cause an individual to be financially dependent by maintaining total control over the individual's financial resources, including, but not limited to, withholding access to money or credit cards, forbidding attendance at school or employment, stealing from or defrauding of money or assets, exploiting the victim's resources for personal gain of the abuser, or withholding physical resources such as food, clothing, necessary medications, or shelter;

(10) Emotional abuse means a pattern of acts, threats of acts, or coercive tactics, including, but not limited to, threatening or intimidating to gain compliance, destruction of the victim's personal property or threats to do so, violence to an animal or object in the presence of the victim as a way to instill fear, yelling, screaming, name-calling, shaming, mocking, or criticizing the victim, possessiveness, or isolation from friends and family. Emotional abuse can be verbal or nonverbal;

(11) Joint legal custody means mutual authority and responsibility of the parents for making mutual fundamental decisions regarding the child's welfare, including choices regarding education and health;

(12) Joint physical custody means mutual authority and responsibility of the parents regarding the child's place of residence and the exertion of continuous blocks of parenting time by both parents over the child for significant periods of time;

(13) Legal custody means the authority and responsibility for making fundamental decisions regarding the child's welfare, including choices regarding education and health;

(14) Mediation means a method of nonjudicial intervention in which a trained, neutral third-party mediator, who has no decisionmaking authority, provides a structured process in which individuals and families in conflict work through parenting and other related family issues with the goal of achieving a voluntary, mutually agreeable parenting plan or related resolution;

(15) Mediator means a mediator meeting the qualifications of section 43-2938 and acting in accordance with the Parenting Act;

(16) Office of Dispute Resolution means the office established under section 25-2904;

(17) Parenting functions means those aspects of the relationship in which a parent or person in the parenting role makes fundamental decisions and performs fundamental functions necessary for the care and development of a child. Parenting functions include, but are not limited to:

(a) Maintaining a safe, stable, consistent, and nurturing relationship with the child;

(b) Attending to the ongoing developmental needs of the child, including feeding, clothing, physical care and grooming, health and medical needs, emotional stability, supervision, and appropriate conflict resolution skills and engaging in other activities appropriate to the healthy development of the child within the social and economic circumstances of the family;

(c) Attending to adequate education for the child, including remedial or other special education essential to the best interests of the child;

(d) Assisting the child in maintaining a safe, positive, and appropriate relationship with each parent and other family members, including establishing and maintaining the authority and responsibilities of each party with respect to the child and honoring the parenting plan duties and responsibilities;

(e) Minimizing the child's exposure to harmful parental conflict;

(f) Assisting the child in developing skills to maintain safe, positive, and appropriate interpersonal relationships; and

(g) Exercising appropriate support for social, academic, athletic, or other special interests and abilities of the child within the social and economic circumstances of the family;

(18) Parenting plan means a plan for parenting the child that takes into account parenting functions;

(19) Parenting time, visitation, or other access means communication or time spent between the child and parent, the child and a court-appointed guardian, or the child and another family member or members;

(20) Physical custody means authority and responsibility regarding the child's place of residence and the exertion of continuous parenting time for significant periods of time;

(21) Provisions for safety means a plan developed to reduce risks of harm to children and adults who are victims of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict;

(22) Remediation process means the method established in the parenting plan which maintains the best interests of the child and provides a means to identify, discuss, and attempt to resolve future circumstantial changes or conflicts regarding the parenting functions and which minimizes repeated litigation and utilizes judicial intervention as a last resort;

(23) Specialized alternative dispute resolution means a method of nonjudicial intervention in high conflict or domestic intimate partner abuse cases in which an approved specialized mediator facilitates voluntary mutual development of and agreement to a structured parenting plan, provisions for safety, a transition plan, or other related resolution between the parties;

(24) Transition plan means a plan developed to reduce exposure of the child and the adult to ongoing unresolved parental conflict during parenting time, visitation, or other access for the exercise of parental functions; and

(25) Unresolved parental conflict means persistent conflict in which parents are unable to resolve disputes about parenting functions which has a potentially harmful impact on a child.

Source: Laws 2007, LB554, § 3; Laws 2008, LB1014, § 55.

Operative date April 17, 2008.

Cross References

Conciliation Court Law, see section 42-802.

43-2923 Best interests of the child requirements.

The best interests of the child require:

(1) A parenting arrangement and parenting plan or other court-ordered arrangement which provides for a child's safety, emotional growth, health, stability, and physical care and regular and continuous school attendance and progress for school-age children;

(2) When a preponderance of the evidence indicates domestic intimate partner abuse, a parenting and visitation arrangement that provides for the safety of a victim parent;

(3) That the child's families and those serving in parenting roles remain appropriately active and involved in parenting with safe, appropriate, continuing quality contact between children and their families when they have shown the ability to act in the best interests of the child and have shared in the responsibilities of raising the child;

(4) That even when parents have voluntarily negotiated or mutually mediated and agreed upon a parenting plan, the court shall determine whether it is in the best interests of the child for parents to maintain continued communications with each other and to make joint decisions in performing parenting functions as are necessary for the care and healthy development of the child. If the court rejects a parenting plan, the court shall provide written findings as to why the parenting plan is not in the best interests of the child; and

(5) That certain principles provide a basis upon which education of parents is delivered and upon which negotiation and mediation of parenting plans are conducted. Such principles shall include: To minimize the potentially negative impact of parental conflict on children; to provide parents the tools they need to reach parenting decisions that are in the best interests of a child; to provide alternative dispute resolution or specialized alternative dispute resolution options that are less adversarial for the child and the family; to ensure that the child's voice is heard and considered in parenting decisions; to maximize the safety of family members through the justice process; and, in cases of domestic intimate partner abuse or child abuse or neglect, to incorporate the principles of victim safety and sensitivity, offender accountability, and community safety in parenting plan decisions.

Source: Laws 2007, LB554, § 4; Laws 2008, LB1014, § 56.

Operative date April 17, 2008.

43-2924 Applicability of act.

(1) The Parenting Act shall apply to proceedings or modifications filed on or after January 1, 2008, in which parenting functions for a child are at issue (a) under Chapter 42, including, but not limited to, proceedings or modification of orders for dissolution of marriage and child custody and (b) under sections

43-1401 to 43-1418. The Parenting Act may apply to proceedings or modifications in which parenting functions for a child are at issue under Chapter 30 or 43.

(2) The Parenting Act does not apply in any action filed by a county attorney or authorized attorney pursuant to his or her duties under section 42-358, 43-512 to 43-512.18, or 43-1401 to 43-1418, the Income Withholding for Child Support Act, the Revised Uniform Reciprocal Enforcement of Support Act before January 1, 1994, or the Uniform Interstate Family Support Act for purposes of the establishment of paternity and the establishment and enforcement of child and medical support. A county attorney or authorized attorney shall not participate in the development of or court review of a parenting plan under the Parenting Act. If both parents are parties to a paternity or support action filed by a county attorney or authorized attorney, the parents may proceed with a parenting plan.

Source: Laws 2007, LB554, § 5; Laws 2008, LB1014, § 57.
Operative date April 17, 2008.

Cross References

Income Withholding for Child Support Act, see section 43-1701.
Revised Uniform Reciprocal Enforcement of Support Act, see section 42-7,105.
Uniform Interstate Family Support Act, see section 42-701.

43-2925 Proceeding in which parenting functions for child are at issue; information provided to parties; filing required.

(1) In any proceeding under Chapter 30 or 43 in which the parenting functions for a child are at issue, except any proceeding under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act, subsequent to the initial filing or upon filing of an application for modification of a decree, the parties shall receive from the clerk of the court information regarding the parenting plan, the mediation process, and resource materials, as well as the availability of mediation through court conciliation programs or approved mediation centers.

(2) In any proceeding under Chapter 42 and the Parenting Act in which the parenting functions for a child are at issue, subsequent to the filing of such proceeding all parties shall receive from the clerk of the court information regarding:

- (a) The litigation process;
- (b) A dissolution or separation process timeline;
- (c) Healthy parenting approaches during and after the proceeding;
- (d) Information on child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict;
- (e) Mediation, specialized alternative dispute resolution, and other alternative dispute resolution processes available through court conciliation programs and approved mediation centers;
- (f) Resource materials identifying the availability of services for victims of child abuse or neglect and domestic intimate partner abuse; and
- (g) Intervention programs for batterers or abusers.

(3) The clerk of the court and counsel for represented parties shall file documentation of compliance with this section. Development of these informa-

tional materials and the implementation of this section shall be accomplished through the State Court Administrator.

Source: Laws 2007, LB554, § 6.

Cross References

Revised Uniform Reciprocal Enforcement of Support Act, see section 42-7,105.

Uniform Interstate Family Support Act, see section 42-701.

43-2926 State Court Administrator; create information sheet; contents; parenting plan mediation; distribution of information sheet.

The State Court Administrator shall create an information sheet for parties in a proceeding in which parenting functions for a child are at issue under the Parenting Act that includes information regarding parenting plans, child custody, parenting time, visitation, and other access and that informs the parties that they are required to attend a basic level parenting education course. The information sheet shall also state (1) that the parties have the right to agree to a parenting plan arrangement, (2) that before July 1, 2010, if they do not agree, they may be required, and on and after July 1, 2010, if they do not agree, they shall be required to participate in parenting plan mediation, and (3) that if mediation does not result in an agreement, the court will be required to create a parenting plan. The information sheet shall also provide information on how to obtain assistance in resolving a custody case, including, but not limited to, information on finding an attorney, information on accessing court-based self-help services if they are available, information about domestic violence service agencies, information about mediation, and information regarding other sources of assistance in developing a parenting plan. The State Court Administrator shall adopt this information sheet as a statewide form and take reasonable steps to ensure that it is distributed statewide and made available to parties in parenting function matters.

Source: Laws 2007, LB554, § 7.

43-2927 Training; screening guidelines and safety procedures; State Court Administrator's office; duties.

(1) Mediators involved in proceedings under the Parenting Act shall participate in training approved by the State Court Administrator to recognize child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict and its potential impact upon children and families.

(2) Screening guidelines and safety procedures for cases involving conditions identified in subsection (1) of section 43-2939 shall be devised by the State Court Administrator. Such screening shall be conducted by mediators using State Court Administrator-approved screening tools.

(3) Such screening shall be conducted as a part of the individual initial screening session for each case referred to mediation under the Parenting Act prior to setting the case for mediation to determine whether or not it is appropriate to proceed in mediation or to proceed in a form of specialized alternative dispute resolution.

(4) The State Court Administrator's office, in collaboration with professionals in the fields of domestic abuse services, child and family services, mediation, and law, shall develop and approve curricula for the training required under subsection (1) of this section, as well as develop and approve rules, procedures,

and forms for training and screening for child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict.

Source: Laws 2007, LB554, § 8; Laws 2008, LB1014, § 58.
Operative date April 17, 2008.

43-2928 Attendance at basic level parenting education course; delay or waiver; second-level parenting education course; State Court Administrator; duties; costs.

(1) The court shall order all parties to a proceeding under the Parenting Act to attend a basic level parenting education course. Participation in the course may be delayed or waived by the court for good cause shown. Failure or refusal by any party to participate in such a course as ordered by the court shall not delay the entry of a final judgment or an order modifying a final judgment in such action by more than six months and shall in no case be punished by incarceration.

(2) The court may order parties under the act to attend a second-level parenting education course subsequent to completion of the basic level course when screening or a factual determination of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict has been identified.

(3) The State Court Administrator shall approve all parenting education courses under the act.

(4) The basic level parenting education course pursuant to this section shall be designed to educate the parties about the impact of the pending court action upon the child and appropriate application of parenting functions. The course shall include, but not be limited to, information on the developmental stages of children, adjustment of a child to parental separation, the litigation and court process, alternative dispute resolution, conflict management, stress reduction, guidelines for parenting time, visitation, or other access, provisions for safety and transition plans, and information about parents and children affected by child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict.

(5) The second-level parenting education course pursuant to this section shall include, but not be limited to, information about development of provisions for safety and transition plans, the potentially harmful impact of domestic intimate partner abuse and unresolved parental conflict on the child, use of effective communication techniques and protocols, resource and referral information for victim and perpetrator services, batterer intervention programs, and referrals for mental health services, substance abuse services, and other community resources.

(6) Each party shall be responsible for the costs, if any, of attending any court-ordered parenting education course. At the request of any party, or based upon screening or recommendation of a mediator, the parties shall be allowed to attend separate courses or to attend the same course at different times, particularly if child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict is or has been present in the relationship or one party has threatened the other party.

Source: Laws 2007, LB554, § 9; Laws 2008, LB1014, § 59.
Operative date April 17, 2008.

43-2929 Parenting plan; developed; approved by court; contents.

(1) In any proceeding in which parenting functions for a child are at issue under Chapter 42, a parenting plan shall be developed and shall be approved by the court. Court rule may provide for the parenting plan to be developed by the parties or their counsel, a court conciliation program, an approved mediation center, or a private mediator. When a parenting plan has not been developed and submitted to the court, the court shall create the parenting plan in accordance with the Parenting Act. A parenting plan shall serve the best interests of the child pursuant to sections 42-364 and 43-2923 and shall:

(a) Assist in developing a restructured family that serves the best interests of the child by accomplishing the parenting functions; and

(b) Include, but not be limited to, determinations of the following:

(i) Legal custody and physical custody of each child;

(ii) Apportionment of parenting time, visitation, or other access for each child, including, but not limited to, specified religious and secular holidays, birthdays, Mother's Day, Father's Day, school and family vacations, and other special occasions, specifying dates and times for the same, or a formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court, and set out appropriate times and numbers for telephone access;

(iii) Location of the child during the week, weekend, and given days during the year;

(iv) A transition plan, including the time and places for transfer of the child, method of communication or amount and type of contact between the parties during transfers, and duties related to transportation of the child during transfers;

(v) Procedures for making decisions regarding the day-to-day care and control of the child consistent with the major decisions made by the person or persons who have legal custody and responsibility for parenting functions;

(vi) Provisions for a remediation process regarding future modifications to such plan;

(vii) Arrangements to maximize the safety of all parties and the child;

(viii) Provisions to ensure regular and continuous school attendance and progress for school-age children of the parties; and

(ix) Provisions for safety when a preponderance of the evidence establishes child abuse or neglect, domestic intimate partner abuse, unresolved parental conflict, or criminal activity which is directly harmful to a child.

(2) A parenting plan shall require that the parties notify each other of a change of address, except that the address or return address shall only include the county and state for a party who is living or moving to an undisclosed location because of safety concerns.

(3) When safe and appropriate for the best interests of the child, the parenting plan may encourage mutual discussion of major decisions regarding parenting functions including the child's education, health care, and spiritual or religious upbringing. However, when a prior factual determination of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict has been made, then consideration shall be given to inclusion of

provisions for safety and a transition plan that restrict communication or the amount and type of contact between the parties during transfers.

(4) Regardless of the custody determinations in the parenting plan, unless parental rights are terminated, both parents shall continue to have the rights stated in section 42-381.

(5) In the development of a parenting plan, consideration shall be given to the child's age, the child's developmental needs, and the child's perspective, as well as consideration of enhancing healthy relationships between the child and each party.

Source: Laws 2007, LB554, § 10; Laws 2008, LB1014, § 60.
Operative date April 17, 2008.

43-2930 Child information affidavit; when required; contents; hearing; temporary parenting order; contents; form; temporary support.

(1) Each party to a contested proceeding for a temporary order relating to parenting functions or custody, parenting time, visitation, or other access shall offer a child information affidavit as an exhibit at the hearing before the court. The child information affidavit shall be verified to the extent known or reasonably discoverable by the filing party or parties and may include the following:

(a) The name, address, and length of residence with any adults with whom each child has lived for the preceding twelve months; except that the address shall only include the county and state for a parent who is living in an undisclosed location because of safety concerns;

(b) The performance by each parent or person acting as parent for the preceding twelve months of the parenting functions relating to the daily needs of the child;

(c) A description of the work and child care schedules for the preceding twelve months of any person seeking custody, parenting time, visitation, or other access and any expected changes to these schedules in the near future;

(d) A description of the current proposed work and child care schedules; and

(e) A description of the child's school and extracurricular activities, including who is responsible for transportation of the child.

The child information affidavit may also state any circumstances of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict that are likely to pose a risk to the child and that warrant limitation on the award of temporary custody, parenting time, visitation, or other access to the child pending entry of a permanent parenting plan, including any restraining orders, protection orders, or criminal no-contact orders against either parent or a person acting as a parent by case number and jurisdiction.

(2) After a contested hearing by live testimony or affidavit, the court shall enter a temporary parenting order that includes:

(a) Provision for temporary legal custody;

(b) Provisions for temporary physical custody, which shall include either:

(i) A parenting time, visitation, or other access schedule that designates in which home each child will reside on given days of the year; or

(ii) A formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court;

(c) Designation of a temporary residence for the child;

(d) Reference to any existing restraining orders, protection orders, or criminal no-contact orders as well as provisions for safety and a transition plan, consistent with any court's finding of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict in order to provide for the safety of a child and custodial parent necessary for the best interests of the child; and

(e) If appropriate, a requirement that a parent complete a program of intervention for perpetrators of domestic violence, a program for drug or alcohol abuse, or a program designed to correct another factor as a condition of parenting time.

(3) A party may move for an order to show cause, and the court may enter a modified temporary parenting order.

(4) The State Court Administrator's office shall create a form that may be used by the parties to create a child information affidavit setting forth the elements identified in this section.

(5) Provisions for temporary support for the child and other financial matters may be included in the temporary parenting order.

Source: Laws 2007, LB554, § 11; Laws 2008, LB1014, § 61.
Operative date April 17, 2008.

43-2931 Repealed. Laws 2008, LB 1014, § 81.

43-2932 Parenting plan; limitations to protect child or child's parent from harm; effect of court determination; burden of proof.

(1) When the court is required to develop a parenting plan:

(a) If a preponderance of the evidence demonstrates, the court shall determine whether a parent who would otherwise be allocated custody, parenting time, visitation, or other access to the child under a parenting plan:

(i) Has committed child abuse or neglect;

(ii) Has committed child abandonment under section 28-705;

(iii) Has committed domestic intimate partner abuse; or

(iv) Has interfered persistently with the other parent's access to the child, except in the case of actions taken for the purpose of protecting the safety of the child or the interfering parent or another family member, pending adjudication of the facts underlying that belief; and

(b) If a parent is found to have engaged in any activity specified by subdivision (1)(a) of this section, limits shall be imposed that are reasonably calculated to protect the child or child's parent from harm. The limitations may include, but are not limited to:

(i) An adjustment of the custody of the child, including the allocation of sole legal custody or physical custody to one parent;

(ii) Supervision of the parenting time, visitation, or other access between a parent and the child;

(iii) Exchange of the child between parents through an intermediary or in a protected setting;

(iv) Restraints on the parent from communication with or proximity to the other parent or the child;

(v) A requirement that the parent abstain from possession or consumption of alcohol or nonprescribed drugs while exercising custodial responsibility and in a prescribed period immediately preceding such exercise;

(vi) Denial of overnight physical custodial parenting time;

(vii) Restrictions on the presence of specific persons while the parent is with the child;

(viii) A requirement that the parent post a bond to secure return of the child following a period in which the parent is exercising physical custodial parenting time or to secure other performance required by the court; or

(ix) Any other constraints or conditions deemed necessary to provide for the safety of the child, a child's parent, or any person whose safety immediately affects the child's welfare.

(2) A court determination under this section shall not be considered a report for purposes of inclusion in the central register of child protection cases pursuant to the Child Protection Act.

(3) If a parent is found to have engaged in any activity specified in subsection (1) of this section, the court shall not order legal or physical custody to be given to that parent without making special written findings that the child and other parent can be adequately protected from harm by such limits as it may impose under such subsection. The parent found to have engaged in the behavior specified in subsection (1) of this section has the burden of proving that legal or physical custody, parenting time, visitation, or other access to that parent will not endanger the child or the other parent.

Source: Laws 2007, LB554, § 13; Laws 2008, LB1014, § 62.
Operative date April 17, 2008.

Cross References

Child Protection Act, see section 28-710.

43-2933 Registered sex offender; other criminal convictions; limitation on or denial of custody or access to child; presumption; modification of previous order.

(1)(a) No person shall be granted custody of, or unsupervised parenting time, visitation, or other access with, a child if the person is required to be registered as a sex offender under the Sex Offender Registration Act for an offense that would make it contrary to the best interests of the child for such access or for an offense in which the victim was a minor or if the person has been convicted under section 28-311, 28-319.01, 28-320, 28-320.01, or 28-320.02, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(b) No person shall be granted custody of, or unsupervised parenting time, visitation, or other access with, a child if anyone residing in the person's household is required to register as a sex offender under the Sex Offender Registration Act as a result of a felony conviction in which the victim was a minor or for an offense that would make it contrary to the best interests of the child for such access unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(c) The fact that a child is permitted unsupervised contact with a person who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under the Sex Offender Registration Act shall

be prima facie evidence that the child is at significant risk. When making a determination regarding significant risk to the child, the prima facie evidence shall constitute a presumption affecting the burden of producing evidence. However, this presumption shall not apply if there are factors mitigating against its application, including whether the other party seeking custody, parenting time, visitation, or other access is also required, as the result of a felony conviction in which the victim was a minor, to register as a sex offender under the Sex Offender Registration Act.

(2) No person shall be granted custody, parenting time, visitation, or other access with a child if the person has been convicted under section 28-319 and the child was conceived as a result of that violation.

(3) A change in circumstances relating to subsection (1) or (2) of this section is sufficient grounds for modification of a previous order.

Source: Laws 2007, LB554, § 14.

Cross References

Sex Offender Registration Act, see section 29-4001.

43-2934 Restraining order, protection order, or criminal no-contact order; effect; court findings; court powers and duties.

(1) Whenever custody, parenting time, visitation, or other access is granted to a parent in a case in which domestic intimate partner abuse is alleged and a restraining order, protection order, or criminal no-contact order has been issued, the custody, parenting time, visitation, or other access order shall specify the time, day, place, and manner of transfer of the child for custody, parenting time, visitation, or other access to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members. If the court finds that a party is staying in a place designated as a shelter for victims of domestic abuse or other confidential location, the time, day, place, and manner of transfer of the child for custody, parenting time, visitation, or other access shall be designed to prevent disclosure of the location of the shelter or other confidential location.

(2) When making an order or parenting plan for custody, parenting time, visitation, or other access in a case in which domestic abuse is alleged and a restraining order, protection order, or criminal no-contact order has been issued, the court shall consider whether the best interests of the child, based upon the circumstances of the case, require that any custody, parenting time, visitation, or other access arrangement be limited to situations in which a third person, specified by the court, is present, or whether custody, parenting time, visitation, or other access should be suspended or denied.

(3) When required by the best interests of the child, the court may enter a custody, parenting time, visitation, or other access order that is inconsistent with an existing restraining order, protection order, or criminal no-contact order. However, it may do so only if it has jurisdiction and authority to do so.

(4) If the court lacks jurisdiction or is otherwise unable to modify the restraining order, protection order, or criminal no-contact order, the court shall require that a certified copy of the custody, parenting time, visitation, or

other access order be placed in the court file containing the restraining order, protection order, or criminal no-contact order.

Source: Laws 2007, LB554, § 15; Laws 2008, LB1014, § 63.
Operative date April 17, 2008.

43-2935 Hearing; parenting plan; modification; court powers.

After a hearing on the record, the court shall determine whether the submitted parenting plan meets all of the requirements of the Parenting Act and is in the best interests of the child. If the parenting plan lacks any of the elements required by the act or is not in the child's best interests, the court shall modify and approve the parenting plan as modified, reject the parenting plan and order the parties to develop a new parenting plan, or reject the parenting plan and create a parenting plan that meets all the required elements and is in the best interests of the child. The court may include in the parenting plan:

(1) A provision for resolution of disputes that arise under the parenting plan, including provisions for suspension of parenting time, visitation, and other access when new findings of child abuse or neglect, domestic intimate partner abuse, criminal activity affecting the best interests of a child, or the violation of a protection order, restraining order, or criminal no-contact order occur, until a modified custody order or parenting plan with provisions for safety or a transition plan, or both, is in place; and

(2) Consequences for failure to follow parenting plan provisions.

Source: Laws 2007, LB554, § 16.

43-2936 Request for mediation, specialized alternative dispute resolution, or other alternative dispute resolution process; information provided to parties.

An individual party, a guardian ad litem, or a social service agency may request that a custody, parenting time, visitation, other access, or related matter proceed to mediation, specialized alternative dispute resolution, or other alternative dispute resolution process at any time prior to the filing or after the filing of an action with a court. Upon receipt of such request, each mediator, court conciliation program, or approved mediation center shall provide information about mediation and specialized alternative dispute resolution to each party.

Source: Laws 2007, LB554, § 17; Laws 2008, LB1014, § 64.
Operative date April 17, 2008.

43-2937 Court referral to mediation or specialized alternative dispute resolution; temporary relief; specialized alternative dispute resolution rule; approval; mandatory court order; when.

(1) In addition to those cases that are mandatorily referred to mediation or specialized alternative dispute resolution under subsection (3) of this section, a court may, at any time in the proceedings upon its own motion or upon the motion of either party, refer a case to mediation or specialized alternative dispute resolution in order to attempt resolution of any relevant matter. The court may state a date for the case to return to court, and the court shall not grant an extension of such date except for cause. If the court refers a case to mediation or specialized alternative dispute resolution, the court may, if appropriate, order temporary relief, including necessary support and provision for

payment of mediation costs. Court referral shall be to a mediator agreed to by the parties and approved by the court, an approved mediation center, or a court conciliation program. The State Court Administrator's office shall develop a process to approve mediators under the Parenting Act.

(2) Prior to July 1, 2010, if there are allegations of domestic intimate partner abuse or unresolved parental conflict between the parties in any proceeding, mediation shall not be required pursuant to the Parenting Act or by local court rule, unless the court has established a specialized alternative dispute resolution rule approved by the State Court Administrator. The specialized alternative dispute resolution process shall include a method for court consideration of precluding or disqualifying parties from participating; provide an opportunity to educate both parties about the process; require informed consent from both parties in order to proceed; provide safety protocols, including separate individual sessions for each participant, informing each party about the process, and obtaining informed consent from each party to continue the process; allow support persons to attend sessions; and establish opt-out-for-cause provisions. On and after July 1, 2010, all trial courts shall have a mediation and specialized alternative dispute resolution rule in accordance with the act.

(3) For cases filed on or after July 1, 2010, all parties who have not submitted a parenting plan to the court within the time specified by the court shall be ordered to participate in mediation or specialized alternative dispute resolution with a mediator, a court conciliation program, or an approved mediation center as provided in section 43-2939.

Source: Laws 2007, LB554, § 18; Laws 2008, LB1014, § 65.
Operative date April 17, 2008.

43-2938 Mediator; qualifications; training; approved specialized mediator; requirements.

(1) A mediator under the Parenting Act may be a court conciliation program counselor, a court conciliation program mediator, an approved mediation center affiliated mediator, or a mediator in private practice.

(2) To qualify as a Parenting Act mediator, a person shall have basic mediation training and family mediation training, approved by the Office of Dispute Resolution, and shall have served as an apprentice to a mediator as defined in section 25-2903. The training shall include, but not be limited to:

(a) Knowledge of the court system and procedures used in contested family matters;

(b) General knowledge of family law, especially regarding custody, parenting time, visitation, and other access, and support, including calculation of child support using the child support guidelines pursuant to section 42-364.16;

(c) Knowledge of other resources in the state to which parties and children can be referred for assistance;

(d) General knowledge of child development, the potential effects of dissolution or parental separation upon children, parents, and extended families, and the psychology of families;

(e) Knowledge of child abuse or neglect and domestic intimate partner abuse and their potential impact upon the safety of family members, including knowledge of provisions for safety, transition plans, domestic intimate partner abuse screening protocols, and mediation safety measures; and

(f) Knowledge in regard to the potential effects of domestic violence on a child; the nature and extent of domestic intimate partner abuse; the social and family dynamics of domestic intimate partner abuse; techniques for identifying and assisting families affected by domestic intimate partner abuse; interviewing, documentation of, and appropriate recommendations for families affected by domestic intimate partner abuse; and availability of community and legal domestic violence resources.

(3) To qualify as an approved specialized mediator for parents involved in high conflict and situations in which abuse is present, the mediator shall apply to an approved mediation center or court conciliation program for consideration to be listed as an approved specialized mediator. The approved mediation center or court conciliation program shall submit its list of approved specialized mediators to the Office of Dispute Resolution on an annual basis. Minimum requirements to be listed as an approved specialized mediator include:

(a) Affiliation with a court conciliation program or an approved mediation center;

(b) Meeting the minimum standards for a Parenting Act mediator under this section;

(c) Meeting additional relevant standards and qualifications as determined by the State Court Administrator; and

(d) Satisfactorily completing an additional minimum twenty-four-hour specialized alternative dispute resolution domestic mediation training course developed by entities providing domestic abuse services and mediation services for children and families and approved by the State Court Administrator. This course shall include advanced education in regard to the potential effects of domestic violence on the child; the nature and extent of domestic intimate partner abuse; the social and family dynamics of domestic intimate partner abuse; techniques for identifying and assisting families affected by domestic intimate partner abuse; and appropriate and safe mediation strategies to assist parties in developing a parenting plan, provisions for safety, and a transition plan, as necessary and relevant.

Source: Laws 2007, LB554, § 19.

43-2939 Parenting Act mediator; duties; conflict of interest; report of child abuse or neglect; termination of mediation.

(1) A Parenting Act mediator, prior to meeting with the parties in an initial mediation session, shall provide an individual initial screening session with each party to assess the presence of child abuse or neglect, unresolved parental conflict, domestic intimate partner abuse, other forms of intimidation or coercion, or a party's inability to negotiate freely and make informed decisions. If any of these conditions exist, the mediator shall not proceed with the mediation session but shall proceed with a specialized alternative dispute resolution process that addresses safety measures for the parties, if the mediator is on the approved specialized list of an approved mediation center or court conciliation program, or shall refer the parties to a mediator who is so qualified. When public records such as current or expired protection orders, criminal domestic violence cases, and child abuse or neglect proceedings are provided to a mediator, such records shall be considered during the individual initial screening session to determine appropriate dispute resolution methods. The mediator has the duty to determine whether to proceed in joint session,

individual sessions, or caucus meetings with the parties in order to address safety and freedom to negotiate. In any mediation or specialized alternative dispute resolution, a mediator has the ongoing duty to assess appropriateness of the process and safety of the process upon the parties.

(2) No mediator who represents or has represented one or both of the parties or has had either of the parties as a client as an attorney or a counselor shall mediate the case, unless such services have been provided to both participants and mediation shall not proceed in such cases unless the prior relationship has been disclosed, the role of the mediator has been made distinct from the earlier relationship, and the participants have been given the opportunity to fully choose to proceed. All other potential conflicts of interest shall be disclosed and discussed before the parties decide whether to proceed with that mediator.

(3) No mediator who is also a licensed attorney may, after completion of the mediation process, represent either party in the role of attorney in the same matter through subsequent legal proceedings.

(4) The mediator shall facilitate the mediation process. Prior to the commencement of mediation, the mediator shall notify the parties that, if the mediator has reasonable cause to believe that a child has been subjected to child abuse or neglect or if the mediator observes a child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect, the mediator is obligated under section 28-711 to report such information to the authorized child abuse and neglect reporting agency and shall report such information unless the information has been previously reported. The mediator shall have access to court files for purposes of mediation under the Parenting Act. The mediator shall be impartial and shall use his or her best efforts to effect an agreement or parenting plan as required under the act. The mediator may interview the child if, in the mediator's opinion, such an interview is necessary or appropriate. The parties shall not bring the child to any sessions with the mediator unless specific arrangements have been made with the mediator in advance of the session. The mediator shall assist the parties in assessing their needs and the best interests of the child involved in the proceeding and may include other persons in the mediation process as necessary or appropriate. The mediator shall advise the parties that they should consult with an attorney.

(5) The mediator may terminate mediation if one or more of the following conditions exist:

(a) There is no reasonable possibility that mediation will promote the development of an effective parenting plan;

(b) Allegations are made of direct physical or significant emotional harm to a party or to a child that have not been heard and ruled upon by the court; or

(c) Mediation will otherwise fail to serve the best interests of the child.

(6) Until July 1, 2010, either party may terminate mediation at any point in the process. On and after July 1, 2010, a party may not terminate mediation until after an individual initial screening session and one mediation or specialized alternative dispute resolution session are held. The session after the individual initial screening session shall be an individual specialized alternative dispute resolution session if the screening indicated the existence of any condition specified in subsection (1) of this section.

Source: Laws 2007, LB554, § 20.

43-2940 Mediation; uniform standards of practice; State Court Administrator; duties; mediation conducted in private.

(1) Mediation of cases under the Parenting Act shall be governed by uniform standards of practice adopted by the State Court Administrator. In adopting the standards of practice, the State Court Administrator shall consider standards developed by recognized associations of mediators and attorneys and other relevant standards governing mediation and other dispute resolution processes of proceedings for the determination of parenting plans or dissolution of marriage. The standards of practice shall include, but not be limited to, all of the following:

(a) Provision for the best interests of the child and the safeguarding of the rights of the child in regard to each parent, consistent with the act;

(b) Facilitation of the transition of the family by detailing factors to be considered in decisions concerning the child's future;

(c) The conducting of negotiations in such a way as to address the relationships between the parties, considering safety and the ability to freely negotiate and make decisions; and

(d) Provision for a specialized alternative dispute resolution process in cases where any of the conditions specified in subsection (1) of section 43-2939 exist.

(2) Mediation under the Parenting Act shall be conducted in private.

Source: Laws 2007, LB554, § 21.

43-2941 Mediation subject to other laws; claim of privilege; disclosures authorized.

Mediation of a parenting plan shall be subject to the Uniform Mediation Act and the Dispute Resolution Act, to the extent such acts are not in conflict with the Parenting Act. Unsigned mediated agreements under the Parenting Act are not subject to a claim of privilege under subdivision (a)(1) of section 25-2935. In addition to disclosures permitted in section 25-2936, a mediator under the Parenting Act may also disclose a party's failure to schedule an individual initial screening session or a mediation session.

Source: Laws 2007, LB554, § 22.

Cross References

Dispute Resolution Act, see section 25-2901.

Uniform Mediation Act, see section 25-2930.

43-2942 Costs.

The costs of the mediation process shall be paid by the parties. If the court orders the parties to mediation, the costs to the parties shall be charged according to a sliding fee scale as established by the State Court Administrator.

Source: Laws 2007, LB554, § 23.

43-2943 Rules; Parenting Act Fund; created; use; investment.

(1) The State Court Administrator may develop rules to implement the Parenting Act.

(2) The Parenting Act Fund is created. The State Court Administrator, through the Office of Dispute Resolution, approved mediation centers, and court conciliation programs, shall use the fund to carry out the Parenting Act.

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

Source: Laws 2007, LB554, § 24; Laws 2008, LB1014, § 66.
Operative date April 17, 2008.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 30

ACCESS TO INFORMATION AND RECORDS

Section

43-3001. Child in state custody; court records and information; court order authorized; information confidential; immunity from liability; school records as evidence; violation; penalty.

43-3001 Child in state custody; court records and information; court order authorized; information confidential; immunity from liability; school records as evidence; violation; penalty.

(1) Notwithstanding any other provision of law regarding the confidentiality of records and when not prohibited by the federal Privacy Act of 1974, as amended, juvenile court records and any other pertinent information that may be in the possession of school districts, county attorneys, the Attorney General, law enforcement agencies, child advocacy centers, state probation personnel, state parole personnel, youth detention facilities, medical personnel, treatment or placement programs, the Department of Health and Human Services, the Department of Correctional Services, the State Foster Care Review Board, child abuse and neglect investigation teams, child abuse and neglect treatment teams, or other multidisciplinary teams for abuse, neglect, or delinquency concerning a child who is in the custody of the state may be shared with individuals and agencies who have been identified in a court order authorized by this section.

(2) In any judicial proceeding concerning a child who is currently, or who may become at the conclusion of the proceeding, a ward of the court or state or under the supervision of the court, an order may be issued which identifies individuals and agencies who shall be allowed to receive otherwise confidential information concerning the child for legitimate and official purposes. The individuals and agencies who may be identified in the court order are the child's attorney or guardian ad litem, the parents' attorney, foster parents, appropriate school personnel, county attorneys, the Attorney General, authorized court personnel, law enforcement agencies, state probation personnel, state parole personnel, youth detention facilities, medical personnel, treatment or placement programs, the Department of Health and Human Services, the Office of Juvenile Services, the Department of Correctional Services, the State Foster Care Review Board, child abuse and neglect investigation teams, child abuse and neglect treatment teams, and other multidisciplinary teams for abuse, neglect, or delinquency. Unless the order otherwise states, the order shall be effective until the child leaves the custody of the state or until a new order is issued.

(3) All information acquired by an individual or agency pursuant to this section shall be confidential and shall not be disclosed except to other persons who have a legitimate and official interest in the information and are identified in the court order issued pursuant to this section with respect to the child in question. A person who receives such information or who cooperates in good faith with other individuals and agencies identified in the appropriate court order by providing information or records about a child shall be immune from any civil or criminal liability. The provisions of this section granting immunity from liability shall not be extended to any person alleged to have committed an act of child abuse or neglect.

(4) In any proceeding under this section relating to a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence.

(5) Except as provided in subsection (4) of this section, any person who publicly discloses information received pursuant to this section shall be guilty of a Class III misdemeanor.

Source: Laws 1993, LB 719, § 1; Laws 1994, LB 988, § 27; Laws 1996, LB 1044, § 233; Laws 2006, LB 1113, § 42; Laws 2008, LB1014, § 67.

Operative date July 18, 2008.

ARTICLE 31

COURT PROCEEDINGS

Section

43-3101. Court proceeding; notice to noncustodial parent.

43-3101 Court proceeding; notice to noncustodial parent.

A noncustodial parent shall be defined as an interested person, and reasonable attempts shall be made to notify him or her of any court proceeding taken (1) by, against, or on behalf of his or her child or (2) by, against, or on behalf of the custodial parent if such court proceeding affects the child. The noncustodial parent need not be present at the commencement of such court proceeding.

Source: Laws 1994, LB 451, § 3.

ARTICLE 32

MCGRUFF HOUSE

Section

43-3201. McGruff House; law enforcement agency; obtain criminal history record information on residents; cost.

43-3201 McGruff House; law enforcement agency; obtain criminal history record information on residents; cost.

(1) For purposes of this section:

(a) McGruff House shall mean a house that has been designated as a temporary haven for school-age children by a McGruff House program; and

(b) McGruff House program shall mean a program organized by local law enforcement agencies and civic organizations to provide a temporary haven and sense of security to school-age children in emergency or threatening situations.

(2) A local law enforcement agency involved in establishing a McGruff House program may obtain criminal history record information maintained by the Nebraska State Patrol or any other law enforcement agency to investigate each person eighteen years of age or older residing in a house for which an application for designation as a McGruff House has been made.

(3) There shall be no cost to the applicant for the McGruff House designation or to the McGruff House program sponsoring the applicant for a criminal history record information check referred to in subsection (2) of this section utilizing Nebraska criminal history record information when the request involves only the electronic transfer of data from Nebraska criminal history record information maintained by the Nebraska State Patrol to the local law enforcement agency requesting the check on the applicant.

Source: Laws 1994, LB 663, § 1.

ARTICLE 33

SUPPORT ENFORCEMENT

(a) LICENSE SUSPENSION ACT

Section

- 43-3301. Act, how cited.
- 43-3302. Legislative intent.
- 43-3303. Definitions, where found.
- 43-3304. Authorized attorney, defined.
- 43-3305. Child support, defined.
- 43-3305.01. Department, defined.
- 43-3306. Medical support, defined.
- 43-3307. Operator's license, defined.
- 43-3308. Professional or occupational license, defined.
- 43-3309. Recreational license, defined.
- 43-3310. Relevant licensing authority, defined.
- 43-3311. Spousal support, defined.
- 43-3312. Support order, defined.
- 43-3313. Support, defined.
- 43-3314. Delinquent or past-due support; notice to license holder; contents.
- 43-3315. License holder; judicial review; notice; effect.
- 43-3316. License holder; administrative review; procedure.
- 43-3317. License holder; appeal of administrative decision; procedure.
- 43-3318. Certification to relevant licensing authorities; when; procedure; effect.
- 43-3319. License holder; motion or application to modify support order; effect.
- 43-3320. License holder; written confirmation of compliance.
- 43-3321. License holder; written confirmation of compliance; reinstatement or renewal of license; fee.
- 43-3322. Erroneous suspension.
- 43-3323. Rules and regulations.
- 43-3324. Information to Department of Health and Human Services; agreements authorized.
- 43-3325. Act; how construed.
- 43-3326. Reports to Legislature.

(b) ACCESS TO INFORMATION

- 43-3327. Support orders and genetic testing; access to information without court or administrative order; fee authorized; confidentiality; violation; penalty.

(c) BANK MATCH SYSTEM

- 43-3328. Legislative intent.
- 43-3329. Terms, defined.
- 43-3330. Listing of obligors; financial institution; duties; confidentiality.
- 43-3331. Financial institution; disclosure or release of information; immunity.

Section

- 43-3332. Financial institution; fees authorized.
- 43-3333. Seizure of obligor's property; notice of arrearage; contents; appeal.
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- 43-3342.05. Child Support Advisory Commission; created; members; terms; expenses; personnel; duties; Supreme Court; duties.
- 43-3342.06. Restriction on advertising and promotional materials.
- 43-3342.07. Repealed. Laws 2004, LB 1005, § 143.
- 43-3343. Repealed. Laws 2004, LB 1005, § 143.
- 43-3344. Support order payments; considered abandoned property; when; disposition.
- 43-3345. District courts; compliance required.
- 43-3346. Title IV-D Support Payment Distributive Fund; created; use.
- 43-3347. Rules and regulations.

(a) LICENSE SUSPENSION ACT

43-3301 Act, how cited.

Sections 43-3301 to 43-3326 shall be known and may be cited as the License Suspension Act.

Source: Laws 1997, LB 752, § 1; Laws 1999, LB 594, § 27.

43-3302 Legislative intent.

It is the intent of the Legislature to encourage the use of all proven techniques for the enforcement of support orders. The Legislature finds that the potential suspension of a professional, occupational, or recreational license or a motor vehicle operator's license for failure to pay child, spousal, and medical support is an effective technique for the enforcement of support orders, particularly for non-wage-earning and self-employed license holders who are not in compliance with support orders. It is the intent of the Legislature to encourage license holders to comply with their legal obligations and to add to the tools available for the enforcement of support orders. Therefore, the Department of Health and Human Services, county attorneys, authorized attorneys, or courts of competent jurisdiction are authorized to initiate actions under the License Suspension Act against individuals who are not in compliance with support orders.

Source: Laws 1997, LB 752, § 2.

43-3303 Definitions, where found.

For purposes of the License Suspension Act, the definitions found in sections 43-3304 to 43-3313 apply.

Source: Laws 1997, LB 752, § 3; Laws 1999, LB 594, § 28.

43-3304 Authorized attorney, defined.

Authorized attorney has the same meaning as found in section 43-1704.

Source: Laws 1997, LB 752, § 4.

43-3305 Child support, defined.

Child support has the same meaning as found in section 43-1705.

Source: Laws 1997, LB 752, § 5.

43-3305.01 Department, defined.

Department means the Department of Health and Human Services.

Source: Laws 1999, LB 594, § 29; Laws 2007, LB296, § 153.

43-3306 Medical support, defined.

Medical support has the same meaning as found in section 43-512.

Source: Laws 1997, LB 752, § 6.

43-3307 Operator's license, defined.

Operator's license has the same meaning as found in section 60-474 and includes a commercial driver's license as defined in section 60-464 and a restricted commercial driver's license as defined in section 60-476.03 except as specifically provided otherwise in section 43-3318.

Source: Laws 1997, LB 752, § 7.

43-3308 Professional or occupational license, defined.

Professional or occupational license means a license, certificate, registration, permit, or other similar document evidencing admission to or granting authority to engage in a profession or occupation in the State of Nebraska.

Source: Laws 1997, LB 752, § 8.

43-3309 Recreational license, defined.

Recreational license means a license, certificate, registration, permit, tag, sticker, or other similar document or identifier evidencing permission to hunt, fish, or trap for furs in the State of Nebraska.

Source: Laws 1997, LB 752, § 9.

43-3310 Relevant licensing authority, defined.

Relevant licensing authority means a board, bureau, commission, committee, department, political subdivision, or other public or private entity that is authorized under the laws of the State of Nebraska to grant, issue, or renew a professional, occupational, or recreational license.

Source: Laws 1997, LB 752, § 10.

43-3311 Spousal support, defined.

Spousal support has the same meaning as found in section 43-1715.

Source: Laws 1997, LB 752, § 11.

43-3312 Support order, defined.

Support order has the same meaning as found in section 43-1717.

Source: Laws 1997, LB 752, § 12.

43-3313 Support, defined.

Support in the definitions of child support, medical support, and spousal support means providing necessary shelter, food, clothing, care, medical support, medical attention, education expenses, or funeral expenses or any other reasonable and necessary expense.

Source: Laws 1997, LB 752, § 13; Laws 2003, LB 245, § 4.

43-3314 Delinquent or past-due support; notice to license holder; contents.

(1) When the department or a county attorney or authorized attorney has made reasonable efforts to verify and has reason to believe that a license holder in a case receiving services under Title IV-D of the Social Security Act, as amended, (a) is delinquent on a support order in an amount equal to the support due and payable for more than a three-month period of time, (b) is not in compliance with a payment plan for amounts due as determined by a county attorney, an authorized attorney, or the department for such past-due support, or (c) is not in compliance with a payment plan for amounts due under a support order pursuant to a court order for such past-due support, and therefor determines to certify the license holder to the appropriate licensing authority, the department, county attorney, or authorized attorney shall send written notice to the license holder by certified mail to the last-known address of the license holder or to the last-known address of the license holder available to the court pursuant to section 42-364.13. For purposes of this section, reasonable efforts to verify means reviewing the case file and having written or oral communication with the clerk of the court of competent jurisdiction and with the license holder. Reasonable efforts to verify may also include written or oral communication with custodial parents.

(2) The notice shall specify:

(a) That the Department of Health and Human Services, county attorney, or authorized attorney intends to certify the license holder to the Department of Motor Vehicles and to relevant licensing authorities pursuant to subsection (3) of section 43-3318 as a license holder described in subsection (1) of this section;

(b) The court or agency of competent jurisdiction which issued the support order or in which the support order is registered;

(c) That an enforcement action for a support order will incorporate any amount delinquent under the support order which may accrue in the future;

(d) That a license holder who is in violation of a support order can come into compliance by:

(i) Paying current support if a current support obligation exists; and

(ii) Paying all past-due support or, if unable to pay all past-due support and if a payment plan for such past-due support has not been determined, by making

payments in accordance with a payment plan determined by the county attorney, the authorized attorney, or the Department of Health and Human Services for such past-due support; and

(e) That within thirty days after issuance of the notice, the license holder may either:

(i) Request administrative review in the manner specified in the notice to contest a mistake of fact. Mistake of fact means an error in the identity of the license holder or an error in the determination of whether the license holder is a license holder described in subsection (1) of this section; or

(ii) Seek judicial review by filing a petition in the court of competent jurisdiction of the county where the support order was issued or registered or, in the case of a foreign support order not registered in Nebraska, the court of competent jurisdiction of the county where the child resides if the child resides in Nebraska or the court of competent jurisdiction of the county where the license holder resides if the child does not reside in Nebraska.

Source: Laws 1997, LB 752, § 14; Laws 1999, LB 594, § 30; Laws 2007, LB296, § 154.

43-3315 License holder; judicial review; notice; effect.

If the license holder makes a timely request for judicial review after receiving a notice under section 43-3314, the court of competent jurisdiction as specified in subdivision (2)(e)(ii) of section 43-3314 shall have jurisdiction to hear the license holder's petition. Upon the timely notification by the license holder to the Department of Health and Human Services that the license holder is seeking judicial review as provided under this section, the Department of Health and Human Services shall stay the action to certify the license holder to the Department of Motor Vehicles and relevant licensing authorities as a license holder described in subsection (1) of section 43-3314 pending the outcome of judicial review.

Source: Laws 1997, LB 752, § 15.

43-3316 License holder; administrative review; procedure.

If the license holder makes a timely request for administrative review after receiving a notice under section 43-3314, the Department of Health and Human Services shall provide an opportunity for a hearing in accordance with the Administrative Procedure Act. The issues that may be determined at the hearing are limited to whether there has been an error in the identity of the license holder or in the determination of whether the license holder is a license holder described in subsection (1) of section 43-3314. The license holder may raise additional issues, including the reasonableness of a payment plan for a support order, to be preserved for appeal to the district court as provided under the Administrative Procedure Act. The Department of Health and Human Services shall stay the action to certify the license holder to the Department of Motor Vehicles and relevant licensing authorities as a license holder described in subsection (1) of section 43-3314 pending the outcome of the hearing. The Department of Health and Human Services shall notify the license holder of its decision.

Source: Laws 1997, LB 752, § 16.

Cross References

Administrative Procedure Act, see section 84-920.

43-3317 License holder; appeal of administrative decision; procedure.

Any person aggrieved by a decision of the department pursuant to section 43-3316 may, upon exhaustion of the procedures for administrative review provided under the Administrative Procedure Act, seek judicial review within ten days after the issuance of notice of the department's decision pursuant to section 43-3316. Notwithstanding subdivision (2)(a) of section 84-917, proceedings for review shall be instituted by filing a petition in the court of competent jurisdiction of the county where the support order was issued or registered or, in the case of a foreign support order not registered in Nebraska, the court of competent jurisdiction as specified in subdivision (2)(e)(ii) of section 43-3314.

Source: Laws 1997, LB 752, § 17; Laws 2007, LB296, § 155.

Cross References

Administrative Procedure Act, see section 84-920.

43-3318 Certification to relevant licensing authorities; when; procedure; effect.

(1) The Department of Health and Human Services, county attorney, authorized attorney, or court of competent jurisdiction may certify in writing to the Department of Motor Vehicles, relevant licensing authorities, and, if the license holder is a member of the Nebraska State Bar Association, the Counsel for Discipline of the Nebraska Supreme Court, that a license holder is a license holder described in subsection (1) of section 43-3314 if:

(a) The license holder does not timely request either administrative review or judicial review upon issuance of a notice under subsection (2) of section 43-3314, is still a license holder described in subsection (1) of section 43-3314 thirty-one days after issuance of the notice, and does not obtain a written confirmation of compliance from the Department of Health and Human Services, county attorney, or authorized attorney pursuant to section 43-3320 within thirty-one days after issuance of the notice;

(b) The Department of Health and Human Services issues a decision after a hearing that finds the license holder is a license holder described in subsection (1) of section 43-3314, the license holder is still a license holder described in such subsection thirty-one days after issuance of that decision, and the license holder does not seek judicial review of the decision within the ten-day appeal period provided in section 43-3317; or

(c) The court of competent jurisdiction enters a judgment on a petition for judicial review, initiated under either section 43-3315 or 43-3317, that finds the license holder is a license holder described in subsection (1) of section 43-3314.

(2) The court of competent jurisdiction, after providing appropriate notice, may certify a license holder to the Department of Motor Vehicles and relevant licensing authorities if a license holder has failed to comply with subpoenas or warrants relating to paternity or child support proceedings.

(3) If the Department of Health and Human Services, county attorney, authorized attorney, or court of competent jurisdiction determines to certify a license holder to the appropriate licensing authority, then the department, county attorney, authorized attorney, or court of competent jurisdiction shall

certify a license holder in the following order and in compliance with the following restrictions:

(a) To the Department of Motor Vehicles to suspend the license holder's operator's license, except the Department of Motor Vehicles shall not suspend the license holder's commercial driver's license or restricted commercial driver's license. If a license holder possesses a commercial driver's license or restricted commercial driver's license, the Department of Health and Human Services, county attorney, authorized attorney, or court of competent jurisdiction shall certify such license holder pursuant to subdivision (b) of this subsection. If the license holder fails to come into compliance with the support order as provided in section 43-3314 or with subpoenas and warrants relating to paternity or child support proceedings within ten working days after the date on which the license holder's operator's license suspension becomes effective, then the department, county attorney, authorized attorney, or court of competent jurisdiction may certify the license holder pursuant to subdivision (b) of this subsection without further notice;

(b) To the relevant licensing authority to suspend the license holder's recreational license once the Game and Parks Commission has operative the electronic or other automated retrieval system necessary to suspend recreational licenses. If the license holder does not have a recreational license and until the Game and Parks Commission has operative the electronic or other automated retrieval system necessary to suspend recreational licenses, the department, county attorney, authorized attorney, or court of competent jurisdiction may certify the license holder pursuant to subdivision (c) of this subsection. If the license holder fails to come into compliance with the support order as provided in section 43-3314 or with subpoenas and warrants relating to paternity or child support proceedings within ten working days after the date on which the license holder's recreational license suspension becomes effective, the department, county attorney, authorized attorney, or court of competent jurisdiction may certify the license holder pursuant to subdivision (c) of this subsection without further notice; and

(c) To the relevant licensing authority to suspend the license holder's professional license, occupational license, commercial driver's license, or restricted commercial driver's license.

(4) If the Department of Health and Human Services, county attorney, authorized attorney, or court of competent jurisdiction certifies the license holder to the Department of Motor Vehicles, the Department of Motor Vehicles shall suspend the operator's license of the license holder ten working days after the date of certification. The Department of Motor Vehicles shall without undue delay notify the license holder by certified mail that the license holder's operator's license will be suspended and the date the suspension becomes effective. No person shall be issued an operator's license by the State of Nebraska if at the time of application for a license the person's operator's license is suspended under this section. Any person whose operator's license has been suspended shall return his or her license to the Department of Motor Vehicles within five working days after receiving the notice of the suspension. If any person fails to return the license, the Department of Motor Vehicles shall direct any peace officer to secure possession of the operator's license and to return it to the Department of Motor Vehicles. The peace officer who is directed to secure possession of the license shall make every reasonable effort to secure the license and return it to the Department of Motor Vehicles or shall show

good cause why the license cannot be returned. An appeal of the suspension of an operator's license under this section shall be pursuant to section 60-4,105. A license holder whose operator's license has been suspended under this section may apply for an employment driving permit as provided by sections 60-4,129 and 60-4,130, except that the license holder is not required to fulfill the driver improvement or driver education and training course requirements of subsection (2) of section 60-4,130.

(5) Except as provided in subsection (6) of this section as it pertains to a license holder who is a member of the Nebraska State Bar Association, if the Department of Health and Human Services, county attorney, authorized attorney, or court of competent jurisdiction certifies the license holder to a relevant licensing authority, the relevant licensing authority, notwithstanding any other provision of law, shall suspend the license holder's professional, occupational, or recreational license and the license holder's right to renew the professional, occupational, or recreational license ten working days after the date of certification. The relevant licensing authority shall without undue delay notify the license holder by certified mail that the license holder's professional, occupational, or recreational license will be suspended and the date the suspension becomes effective.

(6) If the department, county attorney, authorized attorney, or court of competent jurisdiction certifies a license holder who is a member of the Nebraska State Bar Association to the Counsel for Discipline of the Nebraska Supreme Court, the Nebraska Supreme Court may suspend the license holder's license to practice law. It is the intent of the Legislature to encourage all license holders to comply with their child support obligations. Therefore, the Legislature hereby requests that the Nebraska Supreme Court adopt amendments to the rules regulating attorneys, if necessary, which provide for the discipline of an attorney who is delinquent in the payment of or fails to pay his or her child support obligation.

(7) The Department of Health and Human Services, or court of competent jurisdiction when appropriate, shall send by certified mail to the license holder at the license holder's last-known address a copy of any certification filed with the Department of Motor Vehicles or a relevant licensing authority and a notice which states that the license holder's operator's license will be suspended ten working days after the date of certification and that the suspension of a professional, occupational, or recreational license pursuant to subsection (5) of this section becomes effective ten working days after the date of certification.

Source: Laws 1997, LB 752, § 18; Laws 1999, LB 594, § 31; Laws 2004, LB 1207, § 43; Laws 2007, LB296, § 156.

43-3319 License holder; motion or application to modify support order; effect.

If the license holder files a motion or application to modify a support order, the department, county attorney, or authorized attorney, upon notification by the license holder, shall stay the action to certify the license holder under section 43-3318 until disposition of the motion or application by the court or agency of competent jurisdiction. If the license holder requests review of the support order under section 43-512.12, the department shall stay the action to

certify the license holder pending final disposition of the review and modification process.

Source: Laws 1997, LB 752, § 19; Laws 2007, LB296, § 157.

43-3320 License holder; written confirmation of compliance.

(1) When a license holder comes into compliance with the support order as provided in section 43-3314, the department, county attorney, or authorized attorney shall provide the license holder with written confirmation that the license holder is in compliance.

(2) When a license holder comes into compliance with subpoenas and warrants relating to paternity or child support proceedings, the court of competent jurisdiction shall provide the license holder with written confirmation that the license holder is in compliance.

Source: Laws 1997, LB 752, § 20; Laws 2007, LB296, § 158.

43-3321 License holder; written confirmation of compliance; reinstatement or renewal of license; fee.

(1) Upon presentation by the license holder of a written confirmation of compliance to the Department of Motor Vehicles, the license holder may have his or her operator's license reinstated upon payment of a reinstatement fee of fifty dollars. The Department of Motor Vehicles shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(2) Upon presentation by the license holder of a written confirmation of compliance to the relevant licensing authority and upon payment of any fee which may be prescribed by the relevant licensing authority, the license holder may have his or her professional, occupational, or recreational license reinstated or renewed. The professional, occupational, or recreational license may be automatically reinstated or renewed pursuant to the relevant licensing authority's least restrictive reinstatement or renewal procedure applicable to license suspension, probation, or other licensing authority disciplinary action, except that the license holder must meet any other customary or standard requirement for reinstatement or renewal as required by the relevant licensing authority.

Source: Laws 1997, LB 752, § 21; Laws 2001, LB 38, § 3.

43-3322 Erroneous suspension.

If a motor vehicle operator's license or a professional, occupational, or recreational license is found to have been suspended erroneously, the license holder shall have his or her license reinstated or renewed without the payment of any reinstatement or renewal fee, but if a fee was paid because of the error, such fee shall be returned to the license holder by the relevant licensing authority.

Source: Laws 1997, LB 752, § 22.

43-3323 Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out the License Suspension Act.

Source: Laws 1997, LB 752, § 23; Laws 2007, LB296, § 159.

43-3324 Information to Department of Health and Human Services; agreements authorized.

The Department of Motor Vehicles and relevant licensing authorities shall provide to the Department of Health and Human Services specified information about license holders in a manner agreed to by the Department of Health and Human Services and the Department of Motor Vehicles or the relevant licensing authority annually on a date determined by the Department of Health and Human Services. The information shall include:

- (1) The name of the license holder;
- (2) The license holder's address of record;
- (3) The license holder's federal employer identification number or social security number, if available and permissible under law, and the license holder's date of birth;
- (4) The type of license held;
- (5) The effective date of the license or renewal;
- (6) The expiration date of the license; and
- (7) The status of the license as active or inactive.

The Department of Health and Human Services may enter into agreements with the Director of Motor Vehicles and relevant licensing authorities to carry out this section. Such agreements with the Game and Parks Commission with regard to recreational license holders shall only be made when electronic or other automated retrieval systems are available for such information.

Source: Laws 1997, LB 752, § 24.

43-3325 Act; how construed.

Nothing in the License Suspension Act shall prevent the department, the county attorney, the authorized attorney, or the court of competent jurisdiction from taking other enforcement actions.

Source: Laws 1997, LB 752, § 25; Laws 2007, LB296, § 160.

43-3326 Reports to Legislature.

The department shall issue a report to the Legislature on or before January 31 of each year which discloses the number of professional, occupational, or recreational licenses which were suspended and the number which were erroneously suspended and restored as a result of the License Suspension Act for the prior year. The Director of Motor Vehicles shall issue a report to the Legislature on or before January 31 of each year which discloses the number of operators' licenses which were suspended and the number which were erroneously suspended and restored as a result of the License Suspension Act for the prior year.

Source: Laws 1997, LB 752, § 26; Laws 1999, LB 594, § 32; Laws 2007, LB296, § 161.

(b) ACCESS TO INFORMATION

43-3327 Support orders and genetic testing; access to information without court or administrative order; fee authorized; confidentiality; violation; penalty.

(1) For purposes of this section:

(a) Authorized attorney has the same meaning as in section 43-1704;

(b) Department means the Department of Health and Human Services;

(c) Genetic testing means genetic testing ordered pursuant to section 43-1414; and

(d) Support order has the same meaning as in section 43-1717.

(2) Notwithstanding any other provision of law regarding the confidentiality of records, the department, a county attorney, or an authorized attorney may, without obtaining a court or administrative order:

(a) Compel by subpoena (i) information relevant to establishing, modifying, or enforcing a support order and (ii) genetic testing of an individual relevant to establishing, modifying, or enforcing a support order. Such information includes, but is not limited to, relevant financial records and other relevant records including the name, address, and listing of financial assets or liabilities from public or private entities. If a person fails or refuses to obey the subpoena, the department, a county attorney, or an authorized attorney may apply to a judge of the court of competent jurisdiction for an order directing such person to comply with the subpoena. Failure to obey such court order may be punished by the court as contempt of court; and

(b) Obtain access to information contained in the records, including automated data bases, of any state or local agency which is relevant to establishing, modifying, or enforcing a support order or to ordering genetic testing. Such records include, but are not limited to, vital records, state and local tax and revenue records, titles to real and personal property, employment security records, records of correctional institutions, and records concerning the ownership and control of business entities.

(3) The department shall subpoena or access information as provided in subsection (2) of this section at the request of a state agency of another state which administers Title IV-D of the federal Social Security Act for such information. The department may charge a fee for this service which does not exceed the cost of providing the service.

(4) All information acquired pursuant to this section is confidential and cannot be disclosed or released except to other agencies which have a legitimate and official interest in the information for carrying out the purposes of this section. A person who receives such information, subject to the provisions of this subsection on confidentiality and restrictions on disclosure or release, is immune from any civil or criminal liability. A person who cooperates in good faith by providing information or records under this section is immune from any civil or criminal liability. Any person acquiring information pursuant to this section who discloses or releases such information in violation of this subsection is guilty of a Class III misdemeanor. The disclosure or release of such information regarding an individual is a separate offense from information disclosed or released regarding any other individual.

Source: Laws 1997, LB 752, § 27; Laws 1999, LB 594, § 33; Laws 2007, LB296, § 162.

(c) BANK MATCH SYSTEM

43-3328 Legislative intent.

It is the intent of the Legislature to encourage the use of all proven techniques for the enforcement of support orders. It is also the intent of the Legislature to effectuate reasonable welfare reform and to comply with the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The Legislature finds and declares that a bank match system and the potential for an administrative attachment of personal assets of an obligor held by a payor or held by a financial institution is an effective tool for the collection of unpaid support from obligors who are not in compliance with support orders. It is the intent of the Legislature to encourage obligors to comply with their legal obligations and to add to the tools available for the enforcement of support orders by authorizing the Department of Health and Human Services and county attorneys or authorized attorneys to initiate bank match actions and administrative attachments as described in sections 43-3328 to 43-3339.

Source: Laws 1997, LB 752, § 28.

43-3329 Terms, defined.

For purposes of sections 43-3328 to 43-3339, the following definitions apply:

- (1) Account means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account;
- (2) Authorized attorney has the same meaning as found in section 43-1704;
- (3) Child support has the same meaning as found in section 43-1705;
- (4) Department means the Department of Health and Human Services and if the department designates, includes a county attorney or authorized attorney;
- (5) Financial institution means every federal or state commercial or savings bank, including savings and loan associations and cooperative banks, federal or state chartered credit unions, benefit associations, insurance companies, safe deposit companies, any money-market mutual fund as defined in section 851(a) of the Internal Revenue Code that seeks to maintain a constant net asset value of one dollar in accordance with 17 C.F.R. 270.2a-7, any broker, brokerage firm, trust company, or unit investment trust, or any other similar entity doing business or authorized to do business in the State of Nebraska;
- (6) Match means a comparison by automated or other means by name and social security number of a list of obligors provided to a financial institution by the department and a list of depositors of any financial institution;
- (7) Medical support has the same meaning as found in section 43-512;
- (8) Obligor means a person who owes a duty of support pursuant to a support order;
- (9) Payor includes a person, partnership, limited partnership, limited liability partnership, limited liability company, corporation, or other entity doing business or authorized to do business in the State of Nebraska, including a financial institution, or a department or an agency of state, county, or city government;
- (10) Spousal support has the same meaning as found in section 43-1715;
- (11) Support in the definitions of child support, medical support, and spousal support means providing necessary shelter, food, clothing, care, medical support, medical attention, education expenses, or funeral expenses or any other reasonable and necessary expense; and

(12) Support order has the same meaning as found in section 43-1717.

Source: Laws 1997, LB 752, § 29; Laws 2003, LB 245, § 5; Laws 2007, LB296, § 163.

43-3330 Listing of obligors; financial institution; duties; confidentiality.

A financial institution shall receive from the department a listing of obligors to be used in matches within the financial institution's system. The listing from the department shall include the name and social security number or taxpayer identification number of each obligor to be used in matches within the financial institution's system. The financial institution shall receive the listing within thirty days after the end of each calendar quarter subsequent to January 1, 1998, and shall match the listing to its records of accounts held in one or more individuals' names which are open accounts and such accounts closed within the preceding calendar quarter within thirty days after receiving the listing and provide the department with a match listing of all matches made within five working days of the match. The match listing from the financial institution shall include the name, address, and social security number or taxpayer identification number of each obligor matched. The financial institution shall also provide the names and addresses of all other owners of accounts in the match listing as reflected on a signature card or other similar document on file with the financial institution. The financial institution shall submit all match listings by disk, magnetic tape, or other medium approved by the department. Nothing in this section shall (1) require a financial institution to disclose the account number assigned to the account of any individual or (2) serve to encumber the ownership interest of any person in or impact any right of setoff against an account. The financial institution shall maintain the confidentiality of all records supplied and shall use the records only for the purposes of this section. To maintain the confidentiality of the listing and match listing, the department shall implement appropriate security provisions for the listing and match listing which are as stringent as those established under the Federal Tax Information Security Guidelines for federal, state, and local agencies.

Source: Laws 1997, LB 752, § 30.

43-3331 Financial institution; disclosure or release of information; immunity.

A financial institution is not liable under any state or local law to any individual or to the department for disclosure or release of information to the department for the purpose of establishing, modifying, or enforcing a support order or for any other action taken in good faith to comply with the requirements of section 43-3330. Sections 43-3328 to 43-3339 shall not be construed to make a financial institution responsible or liable to any extent for assuring that the department maintains the confidentiality of information disclosed under section 43-3330.

Source: Laws 1997, LB 752, § 31.

43-3332 Financial institution; fees authorized.

A financial institution may charge a reasonable fee, not to exceed actual cost, to be paid by the department for the service of reporting matches as required by section 43-3330 and may charge a fee, not to exceed actual cost, to be paid by the department for the necessary upgrades to an existing system that are

directly related to compliance with section 43-3330 and that have been approved by the department.

Source: Laws 1997, LB 752, § 32.

43-3333 Seizure of obligor's property; notice of arrearage; contents; appeal.

(1) In a case which is receiving services under Title IV-D of the federal Social Security Act, as amended, when the department has made reasonable efforts to verify and has reason to believe payment on a support order is in arrears in an amount equal to the support due and payable for more than a three-month period of time or upon the request of the state agency of another state which administers Title IV-D of the federal Social Security Act, and therefor determines to seize an obligor's property, the department shall send written notice to the obligor by first-class mail to the last-known address of the obligor or to the last-known address of the obligor available to the court pursuant to section 42-364.13. For purposes of this section, reasonable efforts to verify means reviewing the case file and having written or oral communication with the clerk of the district court.

(2) The notice of arrearage shall:

- (a) Specify the court or agency which issued the support order;
- (b) Specify the arrearage under the support order which the obligor owes as of the date of the notice or other date certain;
- (c) Specify that any enforcement action will incorporate any arrearage which may accrue in the future;
- (d) State clearly, "Your property may be seized without further notice if you do not respond or clear up the arrearage"; and
- (e) Specify that within twenty days after the notice is mailed, the obligor may request, in writing, a hearing to contest a mistake of fact. For purposes of this section, mistake of fact means an error in the amount of the arrearage or an error in the identity of the obligor.

(3) If the obligor files a written request for a hearing based upon a mistake of fact within twenty days after the notice is mailed, the department shall provide an opportunity for a hearing and shall stay enforcement action under sections 43-3333 to 43-3337 until the administrative appeal process is completed.

Source: Laws 1997, LB 752, § 33; Laws 2007, LB296, § 164.

43-3334 Order to withhold and deliver; when; contents; payor; duties; fee.

(1) The department may send a payor an order to withhold and deliver specifically identified property of any kind due, owing, or belonging to an obligor if (a) the department has reason to and does believe that there is in the possession of the payor property which is due, owing, or belonging to an obligor, (b) payment on a support order is in arrears, (c) the department sent a notice of arrearage to the obligor pursuant to section 43-3333 at least thirty days prior to sending the notice to withhold and deliver, and (d) no hearing was requested or after a hearing the department determined that an arrearage did exist or that there was no mistake of fact.

(2) The order to withhold and deliver shall state that notice has been mailed to the obligor in accordance with the requirements of subdivision (1)(c) of this section and that the obligor has not requested a hearing or, after a hearing, the

department has determined that an arrearage exists or that there was no mistake of fact, the amount in arrears, the social security number of the obligor, the court or agency to which the property is to be delivered, instructions for transmitting the property, and information regarding the requirements found in subsection (3) of this section. The order shall include written questions regarding the property of every description, including whether or not any other person has an ownership interest in the property, and the credits of the obligor which are in the possession or under the control of the payor at the time the order is received.

(3) Upon receipt of an order to withhold and deliver, a payor shall:

(a) Hold property that is subject to the order and that is in the possession or under the control of the payor at the time the order to withhold and deliver was received, to the extent of the amount of the arrearage stated in the order until the payor receives further notice from the department;

(b) Answer all of the questions asked of the payor in the order, supply the name and address of any person that has an ownership interest in the property sought to be reached, and return such information to the department within five business days after receiving the order; and

(c) Upon further notice from the department, deliver any property which may be subject to the order to the court or agency designated in the order or release such property or portion thereof.

(4) An order to withhold and deliver shall have the same priority as a garnishment for the support of a person pursuant to subsection (4) of section 25-1056.

(5) If the payor is a financial institution, such financial institution may deduct and retain a processing fee from any amounts turned over to the department under this section. The processing fee shall not exceed ten dollars for each account turned over to the department.

Source: Laws 1997, LB 752, § 34; Laws 2004, LB 999, § 30; Laws 2007, LB296, § 165.

43-3335 Order to withhold and deliver; notice to obligor; contents; appeal.

(1) Within five days after the issuance of the order to withhold and deliver, the department shall send written notice to the obligor by first-class mail. The notice shall be dated and shall specify the payor to which an order to withhold and deliver was sent, the amount due, the steps to be followed to release the property, the time period in which to respond to such notice, and the court or agency of competent jurisdiction which issued the support order.

(2) The obligor may request a hearing to contest a mistake of fact by sending a written request to the department within seven days after the date of the notice. The department shall provide an opportunity for a hearing within ten days after receipt of the written request and shall stay enforcement actions under sections 43-3333 to 43-3337 until the administrative appeal process is completed.

Source: Laws 1997, LB 752, § 35; Laws 2007, LB296, § 166.

43-3336 Order to withhold and deliver; co-owner; notice; contents; appeal.

(1) If, after receiving the information from the payor in subdivision (3)(b) of section 43-3334, the department has knowledge that another person has an

ownership interest or may claim an ownership interest in any property sought to be reached which is in the possession or under the control of the payor as the property of the obligor, the department shall send written notice to such person or persons by certified mail, return receipt requested. The notice shall be dated and shall specify why the order to withhold and deliver was issued, the payor to which the order to withhold and deliver was sent, and that the person has a right to request a hearing by the department within fifteen days after the date of the notice to establish that the property or any part thereof is not the property of the obligor. The department shall provide an opportunity for hearing to a person making such request and shall stay enforcement actions under sections 43-3333 to 43-3337 until the administrative appeal process is completed.

(2) Any person other than the obligor claiming an ownership interest in any property sought to be reached which is in the possession or under the control of the payor as the property of the obligor has a right to timely request a hearing by the department to establish that the property or any part thereof is not the property of the obligor. The department shall provide an opportunity for hearing to a person making such request and shall stay enforcement actions under sections 43-3333 to 43-3337 until the administrative appeal process is completed. If the property or any part of the property which is in the possession or under the control of the payor is not the property of the obligor, the payor is discharged as to that property which is not the obligor's.

Source: Laws 1997, LB 752, § 36; Laws 2007, LB296, § 167.

43-3337 Order to withhold and deliver; payor's liability.

(1) If a payor fails or refuses to withhold or deliver property subject to an order to withhold and deliver, judgment may be entered by the court which issued or registered the support order for the amount of the arrearages stated in the order or the amount of the property or credits of the obligor in the possession or under the control of the payor at the time the order to withhold and deliver was received, whichever is less, unless the payor can show cause as to why the property was not withheld or delivered.

(2) Compliance with the order by the payor operates as a discharge of the payor's liability to the obligor or beneficiary as to the portion of the obligor's property withheld or delivered.

(3) A payor is not liable to any individual or to the department for responding to an order to withhold and deliver or for holding, refusing to release to the obligor, or delivering any property of an obligor in compliance with an order to withhold and deliver or for any other action taken in good faith to comply with the requirements of sections 43-3328 to 43-3339 regardless of whether such action was specifically authorized or described by such sections.

Source: Laws 1997, LB 752, § 37.

43-3338 Judicial review.

Any person aggrieved by a determination of the department under sections 43-3328 to 43-3339, upon exhaustion of the procedures for administrative review provided in such sections, or the department may seek judicial review in the court in which the support order was issued or registered.

Source: Laws 1997, LB 752, § 38; Laws 2007, LB296, § 168.

43-3339 Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out sections 43-3328 to 43-3339.

Source: Laws 1997, LB 752, § 39.

(d) SOCIAL SECURITY NUMBERS

43-3340 Social security numbers; recorded; when; Department of Health and Human Services; duties.

(1) To aid child support enforcement pursuant to federal law, 42 U.S.C. 666(a), the social security numbers of the following individuals shall be recorded on the application, in the court records, or on the death certificate, as appropriate:

(a) Any applicant for a professional license, commercial driver's license, occupational license, or marriage license;

(b) Any individual who is subject to a divorce decree, support order, or paternity determination or acknowledgment; and

(c) Any individual who has died.

(2) The Department of Health and Human Services shall adopt and promulgate rules and regulations which provide a procedure for the collection of the social security numbers recorded pursuant to this section and for the use of such numbers in the child support enforcement as provided in 42 U.S.C. 666(a).

Source: Laws 1997, LB 752, § 48.

(e) STATE DISBURSEMENT UNIT

43-3341 Terms, defined.

For purposes of sections 43-3341 to 43-3347:

(1) Business day means a day on which state offices are open for regular business;

(2) Child support has the same meaning as found in section 43-1705;

(3) Department means the Department of Health and Human Services;

(4) Medical support has the same meaning as found in section 43-512;

(5) Obligee means a person to whom a duty of support is owed pursuant to a support order;

(6) Obligor means a person who owes a duty of support pursuant to a support order;

(7) Normal business hours means 7 a.m. to 6 p.m. Central Time;

(8) Spousal support has the same meaning as found in section 43-1715;

(9) State Disbursement Unit means the unit established in section 43-3342;

(10) Support has the same meaning as found in section 43-3313;

(11) Support order has the same meaning as found in section 43-1717; and

(12) Title IV-D Division means the Title IV-D Division of the department which is the single organizational unit of the state that has the responsibility for

administering or supervising the administration of the state plan under Title IV-D of the federal Social Security Act.

Source: Laws 1999, LB 637, § 1; Laws 2000, LB 972, § 28.

43-3342 State Disbursement Unit; created.

There is hereby created a State Disbursement Unit for the statewide collection and disbursement of support order payments. The State Disbursement Unit shall be administered and operated directly by a public or private entity or state officer as designated by the Title IV-D Division. The designation shall be subject to confirmation by a majority of the members of the Legislature. The entity or officer as designated shall be directly responsible to the Title IV-D Division.

In employing initial staff for the unit, a hiring preference shall be given to employees of the clerks of the district court.

Source: Laws 1999, LB 637, § 2; Laws 2000, LB 972, § 29.

43-3342.01 State Disbursement Unit; Title IV-D Division; duties; records.

(1) The responsibilities of the State Disbursement Unit shall include the following:

(a) Receipt of payments, except payments made pursuant to subdivisions (1)(a) and (1)(b) of section 42-369, and disbursements of such payments to obligees, the department, and the agencies of other states;

(b) Accurate identification of payments;

(c) Prompt disbursement of the obligee's share of any payments;

(d) Furnishing to any obligor or obligee, upon request, timely information on the current status of support order payments; and

(e) One location for employers to send income withholding payments.

(2) The Title IV-D Division shall maintain records of payments for all cases in which support order payments are made to the central office of the State Disbursement Unit using the statewide automated data processing and retrieval system. The Title IV-D Division shall not be required to convert and maintain records of support order payments kept by the clerk of the district court before the date that the State Disbursement Unit becomes operative or records of payments received by the clerk pursuant to section 42-369.

(3) A true copy of the record of payments, balances, and arrearages maintained by the Title IV-D Division is prima facie evidence, without further proof or foundation, of the balance of any amount of support order payments that are in arrears and of all payments made and disbursed to the person or agency to whom the support order payment is to be made. Such evidence shall be considered to be satisfactorily authenticated, shall be admitted as prima facie evidence of the transactions shown in such evidence, and is rebuttable only by a specific evidentiary showing to the contrary.

(4) A copy of support payment records maintained by the Title IV-D Division shall be considered to be a true copy of the record when certified by a person designated by the division pursuant to the rules and regulations adopted and promulgated pursuant to this section.

Source: Laws 2000, LB 972, § 1; Laws 2002, LB 1062, § 3; Laws 2007, LB554, § 44.

43-3342.02 State Disbursement Unit; timely disbursement required.

(1) Except as provided in subsection (2) of this section, the State Disbursement Unit shall disburse all support order payments received within two business days after receipt.

(2) The State Disbursement Unit may delay the disbursement of collections toward arrearages until the resolution of any timely appeal with respect to such arrearages.

Source: Laws 2000, LB 972, § 2.

43-3342.03 State Disbursement Unit; support order collection; fees authorized; State Disbursement Unit Cash Fund; created; use; investment; electronic remittance by employers.

(1) All support orders shall direct payment of support as provided in section 42-369. Any support order issued prior to the date that the State Disbursement Unit becomes operative for which the payment is to be made to the clerk of the district court shall be deemed to require payment to the State Disbursement Unit after a notice to the obligor is issued.

(2) The unit may collect a fee equal to the actual cost of processing any payments for returned check charges or charges for electronic payments not accepted, except that the fee shall not exceed thirty dollars. After a payor has originated two payments resulting in returned check charges or charges for electronic payments not accepted within a period of two years, the unit may issue a notice to the originator that, for the following year, any payment shall be required to be paid by money order, cashier's check, or certified check. After a payor has originated two payments resulting in returned check charges or electronic payments not accepted, the unit may issue a notice to the originator that all future payments shall be paid by money order, cashier's check, or certified check, except that pursuant to rule and regulation and at least two years after such issuance of notice, the unit may waive for good cause shown such requirements for methods of payment. The fees shall be remitted to the State Treasurer for credit to the State Disbursement Unit Cash Fund, which is hereby created, which funds shall be used to offset the expenses incurred in the collection of child support bad debt. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3) The State Disbursement Unit shall use automated procedures, electronic processes, and computer-driven technology to the maximum extent feasible, efficient, and economical for the collection and disbursement of support payments.

(4) Employers with more than fifty employees who have an employee with a child support order shall remit child support payments electronically.

Source: Laws 2000, LB 972, § 3; Laws 2002, LB 1062, § 4; Laws 2005, LB 116, § 21; Laws 2008, LB620, § 1.
Effective date July 18, 2008.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

43-3342.04 Title IV-D Division; establish Customer Service Unit; duties; report.

(1) The Title IV-D Division shall establish a Customer Service Unit. In hiring the initial staff for the unit, a hiring preference shall be given to employees of the clerks of the district court. The duties of the Customer Service Unit include, but are not limited to:

(a) Providing account information as well as addressing inquiries made by customers of the State Disbursement Unit; and

(b) Administering two statewide toll-free telephone systems, one for use by employers and one for use by all other customers, to provide responses to inquiries regarding income withholding, the collection and disbursement of support order payments made to the State Disbursement Unit, and other child support enforcement issues, including establishing a call center with sufficient telephone lines, a voice response unit, and adequate personnel available during normal business hours to ensure that responses to inquiries are made by the division's personnel or the division's designee.

(2) The physical location of the Customer Service Unit shall be in Nebraska and shall result in the hiring of a number of new employees or contractor's staff equal to at least one-fourth of one percent of the labor force in the county or counties in which the Customer Service Unit is located. Customer service staff responsible for providing account information related to the State Disbursement Unit may be located at the same location as the State Disbursement Unit.

(3) The department shall issue a report to the Governor and to the Legislature on or before January 31 of each year which discloses information relating to the operation of the State Disbursement Unit for the preceding calendar year including, but not limited to:

(a) The number of transactions processed by the State Disbursement Unit;

(b) The dollar amount collected by the State Disbursement Unit;

(c) The dollar amount disbursed by the State Disbursement Unit;

(d) The percentage of identifiable collections disbursed within two business days;

(e) The percentage of identifiable collections that are matched to the correct case;

(f) The number and dollar amount of insufficient funds checks received by the State Disbursement Unit;

(g) The number and dollar amount of insufficient funds checks received by the State Disbursement Unit for which restitution is subsequently made to the State Disbursement Unit;

(h) The number of incoming telephone calls processed through the Customer Service Unit;

(i) The average length of incoming calls from employers;

(j) The average length of incoming calls from all other customers;

(k) The percentage of incoming calls resulting in abandonment by the customer;

(l) The percentage of incoming calls resulting in a customer receiving a busy signal;

(m) The average holding time for all incoming calls; and

(n) The percentage of calls handled by employees of the Customer Service Unit that are resolved within twenty-four hours.

Source: Laws 2000, LB 972, § 4; Laws 2007, LB296, § 169.

43-3342.05 Child Support Advisory Commission; created; members; terms; expenses; personnel; duties; Supreme Court; duties.

(1) The Child Support Advisory Commission is created. Commission members shall include:

(a) Two district court judges whose jurisdiction includes domestic relations, to be appointed by the Supreme Court;

(b) One member of the Nebraska State Bar Association who practices primarily in the area of domestic relations;

(c) One county attorney who works in child support;

(d) One professional who works in the field of economics or mathematics or another field of expertise relevant to child support;

(e) One custodial parent who has a court order to receive child support;

(f) One noncustodial parent who is under a support order to pay child support;

(g) The chairperson of the Judiciary Committee of the Legislature, who shall serve as the chairperson of the commission;

(h) The chairperson of the Health and Human Services Committee of the Legislature;

(i) The State Treasurer or his or her designee;

(j) The State Court Administrator or his or her designee; and

(k) The director of the Title IV-D Division or his or her designee.

(2)(a) The Supreme Court shall notify the Executive Board of the Legislative Council of its intent to review the child support guidelines pursuant to section 42-364.16. Following such notification, the chairperson of the commission shall call a meeting of the commission.

(b) Each time the commission meets pursuant to subdivision (2)(a) of this section, the Supreme Court shall make appointments to fill the membership under subdivision (1)(a) of this section and the chairperson of the Executive Board shall make appointments to fill each membership under subdivisions (1)(b) through (f) of this section. The terms of these members shall expire after the commission has fulfilled its duties pursuant to subsection (3) of this section.

(c) Members shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177.

(d) If determined to be necessary to perform the duties of the commission, the commission may hire, contract, or otherwise obtain the services of consultants, researchers, aides, and other necessary support staff with prior approval of the chairperson of the Executive Board.

(e) For administrative purposes, the commission shall be managed and administered by the Legislative Council.

(3) The duties of the commission shall include, but are not limited to:

(a) Reviewing the child support guidelines adopted by the Supreme Court and recommending, if appropriate, any changes to the guidelines. Whenever practicable, the commission shall base its recommendations on economic data and statistics collected in the State of Nebraska. In reviewing the guidelines and formulating recommendations, the commission may conduct public hearings around the state; and

(b) Presenting reports, as deemed necessary, of its activities and recommendations to the Supreme Court and the Executive Board.

(4) The Supreme Court shall review the commission's reports. The Supreme Court may amend the child support guidelines established pursuant to section 42-364.16 based upon the commission's recommendations.

Source: Laws 2000, LB 972, § 5; Laws 2002, LB 1062, § 5; Laws 2006, LB 1113, § 43.

43-3342.06 Restriction on advertising and promotional materials.

Any advertising or promotional materials relating to the State Disbursement Unit may include references to a public office but shall not refer to an officeholder by name.

Source: Laws 2000, LB 972, § 6.

43-3342.07 Repealed. Laws 2004, LB 1005, § 143.

43-3343 Repealed. Laws 2004, LB 1005, § 143.

43-3344 Support order payments; considered abandoned property; when; disposition.

Support order payments placed in the Title IV-D Support Payment Distributive Fund shall be exempt from the Uniform Disposition of Unclaimed Property Act. If, within three years after the date of receipt, the Title IV-D Division is unable to disburse support order payments collected pursuant to law and also unable to return the collected payments to the noncustodial parent, such payments shall be considered abandoned property. This abandoned property shall be used by the state for child support enforcement as provided by the rules and regulations of the division.

Source: Laws 1999, LB 637, § 4; Laws 2000, LB 972, § 30; Laws 2004, LB 1005, § 5.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

43-3345 District courts; compliance required.

For purposes of the establishment, modification, or enforcement of a support order, all district courts shall utilize the Title IV-D Division's statewide automated data processing and information retrieval system. The Title IV-D Division may withhold IV-D funds from any county whose district court is not in compliance with this section.

Source: Laws 1999, LB 637, § 5.

43-3346 Title IV-D Support Payment Distributive Fund; created; use.

The Title IV-D Support Payment Distributive Fund is created. The fund shall be used for the collection and disbursement of support payments as provided in sections 43-3341 to 43-3347.

Source: Laws 1999, LB 637, § 6; Laws 2000, LB 972, § 31; Laws 2004, LB 1005, § 6.

43-3347 Rules and regulations.

The Title IV-D Division shall adopt and promulgate rules and regulations to carry out sections 43-3341 to 43-3347.

Source: Laws 1999, LB 637, § 7; Laws 2000, LB 972, § 32.

ARTICLE 34

EARLY CHILDHOOD INTERAGENCY COORDINATING COUNCIL

Section

- 43-3401. Early Childhood Interagency Coordinating Council; created; membership; terms; expenses.
 43-3402. Council; advisory duties.
 43-3403. Council; Early Intervention Act; duties.

43-3401 Early Childhood Interagency Coordinating Council; created; membership; terms; expenses.

The Early Childhood Interagency Coordinating Council is created. The council shall advise and assist the collaborating agencies in carrying out the provisions of the Early Intervention Act, the Quality Child Care Act, sections 79-1101 to 79-1104, and other early childhood care and education initiatives under state supervision. Membership and activities of the council shall comply with all applicable provisions of federal law. Members of the council shall be appointed by the Governor and shall include, but not be limited to:

(1) Parents of children who require early intervention services, early childhood special education, and other early childhood care and education services; and

(2) Representatives of school districts, social services, health and medical services, family child care and center-based early childhood care and education programs, agencies providing training to staff of child care programs, resource and referral agencies, mental health services, developmental disabilities services, educational service units, Head Start, higher education, physicians, the Legislature, business persons, and the collaborating agencies.

Terms of the members shall be for three years, and a member shall not serve more than two consecutive three-year terms. Members shall be reimbursed for their actual and necessary expenses, including child care expenses, with funds provided for such purposes through the Early Intervention Act, the Quality Child Care Act, and sections 79-1101 to 79-1104.

Members of the Nebraska Interagency Coordinating Council serving on July 13, 2000, shall constitute the Early Childhood Interagency Coordinating Council and shall serve for the remainder of their terms. The Governor shall make additional appointments as required by this section and to fill vacancies as needed. The Governor shall set the initial terms of additional appointees to result in staggered terms for members of the council. The Department of Health

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and Human Services and the State Department of Education shall provide and coordinate staff assistance to the council.

Source: Laws 2000, LB 1135, § 6; Laws 2006, LB 994, § 63; Laws 2007, LB296, § 170.

Cross References

Early Intervention Act, see section 43-2501.
Quality Child Care Act, see section 43-2601.

43-3402 Council; advisory duties.

With respect to the Early Intervention Act, the Quality Child Care Act, and sections 79-1101 to 79-1104, the Early Childhood Interagency Coordinating Council shall serve in an advisory capacity to state agencies responsible for early childhood care and education, including care for school-age children, in order to:

- (1) Promote the policies set forth in the Early Intervention Act, the Quality Child Care Act, and sections 79-1101 to 79-1104;
- (2) Facilitate collaboration with the federally administered Head Start program;
- (3) Make recommendations to the Department of Health and Human Services, the State Department of Education, and other state agencies responsible for the regulation or provision of early childhood care and education programs on the needs, priorities, and policies relating to such programs throughout the state;
- (4) Make recommendations to the lead agency or agencies which prepare and submit applications for federal funding;
- (5) Review new or proposed revisions to rules and regulations governing the registration or licensing of early childhood care and education programs;
- (6) Study and recommend additional resources for early childhood care and education programs; and
- (7) Report biennially to the Governor and Legislature on the status of early intervention and early childhood care and education in the state. Such report shall include (a) the number of license applications received under section 71-1911, (b) the number of such licenses issued, (c) the number of such license applications denied, (d) the number of complaints investigated regarding such licensees, (e) the number of such licenses revoked, (f) the number and dollar amount of civil penalties levied pursuant to section 71-1920, and (g) information which may assist the Legislature in determining the extent of cooperation provided to the Department of Health and Human Services by other state and local agencies pursuant to section 71-1914.

Source: Laws 2000, LB 1135, § 7; Laws 2006, LB 994, § 64; Laws 2007, LB296, § 171.

Cross References

Early Intervention Act, see section 43-2501.
Quality Child Care Act, see section 43-2601.

43-3403 Council; Early Intervention Act; duties.

With respect to the Early Intervention Act, the Early Childhood Interagency Coordinating Council and collaborating agencies shall make recommendations to the lead agency or agencies relating to:

- (1) The general administration, supervision, and monitoring of programs and activities receiving federal funds under the federal early intervention program to ensure compliance with federal law;
- (2) The identification and coordination of all available resources within the state from federal, state, local, and private sources;
- (3) The development of procedural safeguards, including procedures for complaints and appeals, to ensure that services coordination is provided to eligible infants or toddlers with disabilities or possible disabilities and their families in a timely manner pending the resolution of any disputes among public agencies or service providers;
- (4) The entry into formal interagency agreements that include components necessary to ensure meaningful cooperation and coordination; and
- (5) The coordination of interagency rules and regulations pursuant to the Early Intervention Act.

Source: Laws 2000, LB 1135, § 8.

Cross References

Early Intervention Act, see section 43-2501.

ARTICLE 35

NEBRASKA COUNTY JUVENILE SERVICES PLAN ACT

Section

- 43-3501. Act, how cited.
- 43-3502. Definitions.
- 43-3503. Legislative intent; county powers and duties.
- 43-3504. County juvenile services plan; multicounty plan; regional plan.
- 43-3505. County; powers; local juvenile justice advisory committee.
- 43-3506. County level data on juveniles.
- 43-3507. Legislative findings.

43-3501 Act, how cited.

Sections 43-3501 to 43-3507 shall be known and may be cited as the Nebraska County Juvenile Services Plan Act.

Source: Laws 2000, LB 1167, § 1.

43-3502 Definitions.

For purposes of the Nebraska County Juvenile Services Plan Act, the definitions shall be the same as those in sections 43-245 and 43-403.

Source: Laws 2000, LB 1167, § 2.

43-3503 Legislative intent; county powers and duties.

- (1) It is the intent of the Legislature to encourage counties to develop a continuum of nonsecure detention services for the purpose of enhancing, developing, and expanding the availability of such services to juveniles requiring nonsecure detention.

(2) A county may enhance, develop, or expand nonsecure detention services as needed with private or public providers. Grants from the Commission Grant Program and aid from the County Juvenile Services Aid Program under the Juvenile Services Act and the federal Juvenile Justice and Delinquency Prevention Act of 1974 may be used to fund nonsecure detention services. Each county shall routinely review services provided by contract providers and modify services as needed.

Source: Laws 2000, LB 1167, § 3; Laws 2001, LB 640, § 13.

Cross References

Juvenile Services Act, see section 43-2401.

43-3504 County juvenile services plan; multicounty plan; regional plan.

(1) Each county shall develop a county juvenile services plan by January 1, 2003. Two or more counties may establish a multicounty juvenile services plan. Such plan should include input from individuals comprising a local juvenile justice advisory committee as provided for in subdivision (1) of section 43-3505 or a similar committee or group of individuals. The plan shall be submitted to the Nebraska Commission on Law Enforcement and Criminal Justice and shall include:

(a) Identification of the risk factors for delinquency that exist in the county or counties and service needs;

(b) Identification of juvenile services available within the county or counties, including, but not limited to, programs for assessment and evaluation, the prevention of delinquent behavior, diversion, detention, shelter care, intensive juvenile probation services, restitution, family support services, and community centers for the care and treatment of juveniles in need of services;

(c) Identification of juvenile services within close proximity of the county or counties that may be utilized if community-based programs are not available within the county or counties;

(d) Identification of the facilities the county primarily uses for juvenile secure detention and for nonsecure detention, including the costs associated with use of such facilities; and

(e) A coordination plan and an enhancement, development, and expansion plan of community services within the county, counties, or region to help prevent delinquency by providing intervention services when behavior that leads to delinquency is first exhibited. Examples of intervention services include, but are not limited to, alternative schools, school truancy programs, volunteer programs, family preservation and counseling, drug and alcohol counseling, diversion programs, and Parents Anonymous.

(2) Following or in conjunction with the development of a county juvenile services plan, each county may develop regional service plans and establish regional juvenile services boards when appropriate. The regional service plan shall be submitted to the Nebraska Commission on Law Enforcement and Criminal Justice.

(3) Plans developed under this section shall be updated no less than every five years after the date the plan is submitted to the commission.

Source: Laws 2000, LB 1167, § 4.

43-3505 County; powers; local juvenile justice advisory committee.

Each county may:

(1) Establish a local juvenile justice advisory committee for the purpose of meeting quarterly to discuss trends and issues related to juvenile offenders and service needs. Such committee should include representation from the courts, law enforcement, community service providers, schools, detention or shelter care, county elected and administrative officials, probation officials, health and human services representatives, and state officials or agency representatives. The committee should discuss state and local policy initiatives, use of detention and other regional services, commitment to state custody, and impacts of policy initiatives and trends on county juvenile justice systems. Notwithstanding any other provision of law regarding the confidentiality of records, information from the various representative agencies can be shared about juveniles under their supervision for the purposes of this subdivision. The information shared shall be in the form of statistical data which does not disclose the identity of any particular individual;

(2) Collect and review data on an ongoing basis to understand the service needs of the juvenile offender population; and

(3) Compile, review, and forward county level data collected pursuant to section 43-3506.

Source: Laws 2000, LB 1167, § 5.

43-3506 County level data on juveniles.

County level data on juveniles shall be maintained and compiled by the Nebraska Commission on Law Enforcement and Criminal Justice on arrest rates; petition rates; detention rates and utilization; offender profile data, such as offense, race, age, and sex; and admissions to staff secure and temporary holdover facilities.

Source: Laws 2000, LB 1167, § 6.

43-3507 Legislative findings.

(1) The Legislature finds that there is a need for additional secure detention and detention services, including transportation services, for juveniles in the state. The need can be met by enhancing and expanding the existing secure detention facilities and detention services as needed in the future and by constructing new juvenile detention facilities to serve the southeastern, central, and west central areas of the state.

(2) The Legislature further finds that in order for probation officers to adequately perform the function of providing juvenile intake services statewide, existing probation staff resources need to be expanded and, additionally, program services that enhance a juvenile's successful reintegration into the community need to readily be available and at the disposal of juvenile probation.

(3) The Legislature further finds that juvenile diversion programs should be available throughout the state as a means of providing consequences without the formal involvement of the courts.

Source: Laws 2000, LB 1167, § 7.

ARTICLE 36**JUVENILE DIVERSION, DETENTION, AND PROBATION
SERVICES IMPLEMENTATION TEAM**

Section

- 43-3601. Repealed. Laws 2004, LB 940, § 4.
 43-3602. Repealed. Laws 2004, LB 940, § 4.
 43-3603. Repealed. Laws 2004, LB 940, § 4.

43-3601 Repealed. Laws 2004, LB 940, § 4.

43-3602 Repealed. Laws 2004, LB 940, § 4.

43-3603 Repealed. Laws 2004, LB 940, § 4.

ARTICLE 37**COURT APPOINTED SPECIAL ADVOCATE ACT**

Section

- 43-3701. Act, how cited.
 43-3702. Definitions, where found.
 43-3703. Child, defined.
 43-3704. Court appointed special advocate program, defined.
 43-3705. Court appointed special advocate volunteer, defined.
 43-3706. Court appointed special advocate programs; authorized; requirements.
 43-3707. Program director; duties.
 43-3708. Volunteers; requirements.
 43-3709. Volunteers; minimum qualifications.
 43-3710. Appointment of volunteer; procedure.
 43-3711. Volunteer; prohibited acts.
 43-3712. Volunteer; duties.
 43-3713. Cooperation; notice required.
 43-3714. Confidentiality; violation; penalty.
 43-3715. Attorney-client privilege; applicability.
 43-3716. Volunteer; immunity.

43-3701 Act, how cited.

Sections 43-3701 to 43-3716 shall be known and may be cited as the Court Appointed Special Advocate Act.

Source: Laws 2000, LB 1167, § 24.

43-3702 Definitions, where found.

For purposes of the Court Appointed Special Advocate Act, the definitions in sections 43-3703 to 43-3705 apply.

Source: Laws 2000, LB 1167, § 25.

43-3703 Child, defined.

Child means an individual under nineteen years of age.

Source: Laws 2000, LB 1167, § 26.

43-3704 Court appointed special advocate program, defined.

Court appointed special advocate program means a program established pursuant to the Court Appointed Special Advocate Act.

Source: Laws 2000, LB 1167, § 27.

43-3705 Court appointed special advocate volunteer, defined.

Court appointed special advocate volunteer or volunteer means an individual appointed by a court pursuant to the Court Appointed Special Advocate Act.

Source: Laws 2000, LB 1167, § 28.

43-3706 Court appointed special advocate programs; authorized; requirements.

(1) Court appointed special advocate programs may be established and shall operate pursuant to the Court Appointed Special Advocate Act.

(2) A court appointed special advocate program shall:

(a) Be an organization that screens, trains, and supervises court appointed special advocate volunteers to advocate for the best interests of children when appointed by a court as provided in section 43-3710. Each court may be served by a court appointed special advocate program. One program may serve more than one court;

(b) Hold regular case conferences with volunteers to review case progress and conduct annual performance reviews for all volunteers;

(c) Provide staff and volunteers with written program policies, practices, and procedures; and

(d) Provide the training required pursuant to section 43-3708.

Source: Laws 2000, LB 1167, § 29.

43-3707 Program director; duties.

The program director of the court appointed special advocate program shall be responsible for the administration of the program, including recruitment, selection, training, supervision, and evaluation of staff and court appointed special advocate volunteers.

Source: Laws 2000, LB 1167, § 30.

43-3708 Volunteers; requirements.

(1) All court appointed special advocate volunteers shall participate fully in preservice training, including, but not limited to, instruction on recognizing child abuse and neglect, cultural awareness, socioeconomic issues, child development, the juvenile court process, permanency planning, volunteer roles and responsibilities, advocacy, information gathering, and documentation. Volunteers shall be required to participate in observation of court proceedings prior to appointment.

(2) All volunteers shall receive a training manual that includes guidelines for service and duties.

(3) Each court appointed special advocate program shall provide a minimum of ten hours of inservice training per year to volunteers.

Source: Laws 2000, LB 1167, § 31.

43-3709 Volunteers; minimum qualifications.

(1) The minimum qualifications for any prospective court appointed special advocate volunteer are that he or she shall:

- (a) Be at least twenty-one years of age or older and have demonstrated an interest in children and their welfare;
 - (b) Be willing to commit to the court for a minimum of one year of service to a child;
 - (c) Complete an application, including providing background information required pursuant to subsection (2) of this section;
 - (d) Participate in a screening interview; and
 - (e) Participate in the training required pursuant to section 43-3708.
- (2) As required background screening, the program director shall obtain the following information regarding a volunteer applicant:
- (a) A check of the applicant's criminal history record information maintained by the Identification Division of the Federal Bureau of Investigation through the Nebraska State Patrol;
 - (b) A check of his or her record with the central register of child protection cases maintained under section 28-718;
 - (c) A check of his or her driving record; and
 - (d) At least three references who will attest to the applicant's character, judgment, and suitability for the position of a court appointed special advocate volunteer.
- (3) If the applicant has lived in Nebraska for less than twelve months, the program director shall obtain the records required in subdivisions (2)(a) through (2)(c) of this section from all other jurisdictions in which the applicant has lived during the preceding year.

Source: Laws 2000, LB 1167, § 32; Laws 2005, LB 116, § 22.

43-3710 Appointment of volunteer; procedure.

- (1) A judge may appoint a court appointed special advocate volunteer in any proceeding brought pursuant to section 43-247 or 43-292 when, in the opinion of the judge, a child who may be affected by such proceeding requires services that a volunteer can provide and the court finds that the appointment is in the best interests of the child.
- (2) A volunteer shall be appointed pursuant to a court order. The court order shall specify the volunteer as a friend of the court acting on the authority of the judge. The volunteer acting as a friend of the court may offer as evidence a written report with recommendations consistent with the best interests of the child, subject to all pertinent objections.
- (3) A memorandum of understanding between a court and a court appointed special advocate program is required in any county where a program is established and shall set forth the roles and responsibilities of the court appointed special advocate volunteer.
- (4) The volunteer's appointment shall conclude:
- (a) When the court's jurisdiction over the child terminates;
 - (b) Upon discharge by the court on its own motion;
 - (c) With the approval of the court, at the request of the program director of the court appointed special advocate program to which the volunteer is assigned; or

(d) Upon successful motion of a party to the action for the removal of the volunteer because the party believes the volunteer has acted inappropriately, is unqualified, or is unsuitable for the appointment.

Source: Laws 2000, LB 1167, § 33.

43-3711 Volunteer; prohibited acts.

A court appointed special advocate volunteer shall not:

- (1) Accept any compensation for the duties and responsibilities of his or her appointment;
- (2) Have any association that creates a conflict of interest with his or her duties;
- (3) Be related to any party or attorney involved in a case;
- (4) Be employed in a position that could result in a conflict of interest or give rise to the appearance of a conflict; or
- (5) Use the position to seek or accept gifts or special privileges.

Source: Laws 2000, LB 1167, § 34.

43-3712 Volunteer; duties.

(1) Upon appointment in a proceeding, a court appointed special advocate volunteer shall:

(a) Conduct an independent examination regarding the best interests of the child that will provide factual information to the court regarding the child and the child's family. The examination may include interviews with and observations of the child, interviews with other appropriate individuals, and the review of relevant records and reports; and

(b) Determine if an appropriate permanency plan has been created for the child, whether appropriate services are being provided to the child and the child's family, and whether the treatment plan is progressing in a timely manner.

(2) The volunteer, with the support and supervision of the court appointed special advocate program staff, shall make recommendations consistent with the best interests of the child regarding placement, visitation, and appropriate services for the child and the child's family and shall prepare a written report to be distributed to the court and the parties to the proceeding.

(3) The volunteer shall monitor the case to which he or she has been appointed to assure that the child's essential needs are being met.

(4) The volunteer shall make every effort to attend all hearings, meetings, and any other proceeding concerning the case to which he or she has been appointed.

(5) The volunteer may be called as a witness in a proceeding by any party or the court.

Source: Laws 2000, LB 1167, § 35.

43-3713 Cooperation; notice required.

(1) All government agencies, service providers, professionals, parents, and families shall cooperate with all reasonable requests of the court appointed

special advocate volunteer. The volunteer shall cooperate with all government agencies, service providers, professionals, parents, and families.

(2) The volunteer shall be notified in a timely manner of all hearings, meetings, and any other proceeding concerning the case to which he or she has been appointed. The court in its discretion may proceed notwithstanding failure to notify the volunteer or failure of the volunteer to appear.

Source: Laws 2000, LB 1167, § 36.

43-3714 Confidentiality; violation; penalty.

The contents of any document, record, or other information relating to a case to which the court appointed special advocate volunteer has access are confidential, and the volunteer shall not disclose such information to persons other than the court, the parties to the action, and other persons authorized by the court. A violation of this section is a Class III misdemeanor.

Source: Laws 2000, LB 1167, § 37.

43-3715 Attorney-client privilege; applicability.

Nothing in the Court Appointed Special Advocate Act affects the attorney-client privilege.

Source: Laws 2000, LB 1167, § 38.

43-3716 Volunteer; immunity.

A court appointed special advocate volunteer shall be immune from civil liability to the full extent provided in the federal Volunteer Protection Act of 1997.

Source: Laws 2000, LB 1167, § 39.

ARTICLE 38

**FOREIGN NATIONAL MINORS AND MINORS
HAVING MULTIPLE NATIONALITIES**

Section

- 43-3801. Purpose of sections.
- 43-3802. Terms, defined.
- 43-3803. Early identification; department; duties.
- 43-3804. Ward of department; department; determination required; information provided to minor and parent or custodian; notify consulate; release of information.
- 43-3805. Interview by consular representative.
- 43-3806. Ward of department; special immigrant juvenile status; documentation.
- 43-3807. Minor in custody of department; birth certificate; application.
- 43-3808. Home studies; other steps to ensure minor's welfare; department; duties.
- 43-3809. Court appearance; cooperation of consulate.
- 43-3810. Coordination of activities; chief executive officer of the department; duties.
- 43-3811. Rules and regulations.
- 43-3812. Sections; how construed.

43-3801 Purpose of sections.

(1) The purpose of sections 43-3801 to 43-3812 is to protect foreign national minors or minors having multiple nationalities within the State of Nebraska.

(2) The Legislature recognizes that:

(a) Foreign national minors and minors having multiple nationalities are essential to the maintenance of their culture, traditions, and values;

(b) The governments of foreign countries have a duty to care for the interests of their nationals and citizens abroad, particularly foreign national minors and minors having multiple nationalities;

(c) The governments of foreign countries have the right to information and access in all cases involving minors who are children of foreign nationals and minors having multiple nationalities; and

(d) The state should be able to identify foreign national minors and minors having multiple nationalities and their families in order to provide services for them.

Source: Laws 2006, LB 1113, § 1; Laws 2008, LB92, § 1.
Effective date July 18, 2008.

43-3802 Terms, defined.

For purposes of sections 43-3801 to 43-3812:

(1) Agency means the agency in a foreign country charged with ensuring the welfare of minors who are nationals of that country or who have multiple nationalities in that country and the United States;

(2) Custodian means the nonparental caretaker of a foreign national minor or minor having multiple nationalities who has been entrusted by the parent of the minor with the day-to-day care of the minor;

(3) Department means the Department of Health and Human Services;

(4) Foreign national minor means an unmarried person who is under the age of eighteen years and was born in a country other than the United States; and

(5) Minor having multiple nationalities means an unmarried person who is under the age of eighteen years and who holds citizenship simultaneously in the United States and one other country.

Source: Laws 2006, LB 1113, § 2; Laws 2008, LB92, § 2.
Effective date July 18, 2008.

43-3803 Early identification; department; duties.

The department, in conjunction with the appropriate consulate, shall provide a method of early identification of foreign national minors and minors having multiple nationalities and their families in order to provide services which assure all the protections afforded by all applicable treaties and laws.

Source: Laws 2006, LB 1113, § 3; Laws 2008, LB92, § 3.
Effective date July 18, 2008.

43-3804 Ward of department; department; determination required; information provided to minor and parent or custodian; notify consulate; release of information.

(1) When a court makes a minor a ward of the department, the department shall determine whether the minor is a foreign national minor or a minor having multiple nationalities. If such minor is a foreign national minor or a minor having multiple nationalities, the department shall provide such minor and his or her parent or custodian with the following information:

(a) Written information in English and the minor's native language, explaining the juvenile court process and the rights of the minor and his or her parents or custodian; and

(b) The address and telephone number of the nearest consulate serving the minor.

(2) The department shall notify the appropriate consulate in writing within ten working days after (a) the initial date the department takes custody of a foreign national minor or a minor having multiple nationalities or the date the department learns that a minor in its custody is a foreign national minor or a minor having multiple nationalities, whichever occurs first, (b) the parent of a foreign national minor or a minor having multiple nationalities has requested that the consulate be notified, or (c) the department determines that a noncustodial parent of a foreign national minor or a minor having multiple nationalities in its custody resides in the country represented by the consulate.

(3) The department shall provide the consulate with the name and date of birth of the foreign national minor or the minor having multiple nationalities, the name of his or her parent or custodian, and the name and telephone number of the departmental caseworker directly responsible for the case.

(4) If the consulate needs additional specific information regarding the case of the foreign national minor or the minor having multiple nationalities, the consulate may contact the department and the department may release any information not required to be kept confidential under the Nebraska Juvenile Code or other state or federal statutes.

Source: Laws 2006, LB 1113, § 4; Laws 2008, LB92, § 4.
Effective date July 18, 2008.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

43-3805 Interview by consular representative.

A consular representative may interview a foreign national minor or minor having multiple nationalities who is a citizen of the country represented by the consulate. The consular representative shall contact the department to arrange for an interview of a foreign national minor or a minor having multiple nationalities.

Source: Laws 2006, LB 1113, § 5; Laws 2008, LB92, § 5.
Effective date July 18, 2008.

43-3806 Ward of department; special immigrant juvenile status; documentation.

If a court makes a foreign national minor or a minor having multiple nationalities a ward of the department and the minor has become eligible for special immigrant juvenile status as defined in 8 U.S.C. 1101(a)(27)(J), the consulate will assist the department in obtaining the necessary documentation for completion of the application for special immigrant juvenile status.

Source: Laws 2006, LB 1113, § 6; Laws 2008, LB92, § 6.
Effective date July 18, 2008.

43-3807 Minor in custody of department; birth certificate; application.

The department may obtain a birth certificate from the appropriate country for a foreign national minor or a minor having multiple nationalities in the custody of the department. The department may request the assistance of the consulate in obtaining the necessary documentation to complete the application for a birth certificate under this section.

Source: Laws 2006, LB 1113, § 7; Laws 2008, LB92, § 7.
Effective date July 18, 2008.

43-3808 Home studies; other steps to ensure minor's welfare; department; duties.

(1) Upon notification to a consulate pursuant to section 43-3804, the department shall request that the consulate obtain through the agency the appropriate home studies of potential families in such country who may be involved in the case and forward the information to the departmental caseworker directly responsible for the case.

(2) When a foreign national minor is placed in his or her country or a minor having multiple nationalities is placed in the country other than the United States in which he or she holds citizenship, the department shall take all steps necessary to obtain the cooperation of the consulate and the agency to ensure the minor's welfare and provide whatever services are needed. The department shall request copies of the monitoring reports prepared by the agency concerning the welfare of the minor.

Source: Laws 2006, LB 1113, § 8; Laws 2008, LB92, § 8.
Effective date July 18, 2008.

43-3809 Court appearance; cooperation of consulate.

The department will request the cooperation of the appropriate consulate in order to notify a person who resides in a foreign country and is required to appear in a court in this state regarding the case of a foreign national minor or a minor having multiple nationalities.

Source: Laws 2006, LB 1113, § 9; Laws 2008, LB92, § 9.
Effective date July 18, 2008.

43-3810 Coordination of activities; chief executive officer of the department; duties.

The chief executive officer of the department or his or her designee shall meet as necessary with consular officials to discuss, clarify, and coordinate activities, ideas and concerns of a high-profile nature, timely media attention, and joint prevention efforts regarding the protection and well-being of foreign national minors and minors having multiple nationalities and families.

Source: Laws 2006, LB 1113, § 10; Laws 2007, LB296, § 172; Laws 2008, LB92, § 10.
Effective date July 18, 2008.

43-3811 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out sections 43-3801 to 43-3810.

Source: Laws 2006, LB 1113, § 11.

43-3812 Sections; how construed.

Nothing in sections 43-3801 to 43-3811 shall be construed as a waiver of immunities to which a consulate and its consular agents are entitled under international law, the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. 1602 et seq., and international treaties in force between the United States and foreign countries.

Source: Laws 2006, LB 1113, § 12.

ARTICLE 39**UNIFORM CHILD ABDUCTION PREVENTION ACT**

Section

- 43-3901. Act, how cited.
- 43-3902. Definitions.
- 43-3903. Cooperation and communication among courts.
- 43-3904. Actions for abduction prevention measures.
- 43-3905. Jurisdiction.
- 43-3906. Contents of petition.
- 43-3907. Factors to determine risk of abduction.
- 43-3908. Provisions and measures to prevent abduction.
- 43-3909. Warrant to take physical custody of child.
- 43-3910. Duration of abduction prevention order.
- 43-3911. Uniformity of application and construction.
- 43-3912. Relation to federal Electronic Signatures in Global and National Commerce Act.

43-3901 Act, how cited.

Sections 43-3901 to 43-3912 may be cited as the Uniform Child Abduction Prevention Act.

Source: Laws 2007, LB341, § 1.

43-3902 Definitions.

For purposes of the Uniform Child Abduction Prevention Act:

- (1) Abduction means the wrongful removal or wrongful retention of a child;
- (2) Child means an unemancipated individual who is less than eighteen years of age;
- (3) Child custody determination means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order;
- (4) Child custody proceeding means a proceeding in which legal custody, physical custody, or visitation with respect to a child is at issue. The term includes a proceeding for divorce, dissolution of marriage, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, or protection from domestic violence;
- (5) Court means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination;
- (6) Petition includes a motion or its equivalent;
- (7) 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;

(8) 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 a federally recognized Indian tribe or nation;

(9) Travel document means records relating to a travel itinerary, including travel tickets, passes, reservations for transportation, or accommodations. The term does not include a passport or visa;

(10) Wrongful removal means the taking of a child that breaches rights of custody or visitation given or recognized under the law of this state; and

(11) Wrongful retention means the keeping or concealing of a child that breaches rights of custody or visitation given or recognized under the law of this state.

Source: Laws 2007, LB341, § 2.

43-3903 Cooperation and communication among courts.

Sections 43-1235, 43-1236, and 43-1237 apply to cooperation and communications among courts in proceedings under the Uniform Child Abduction Prevention Act.

Source: Laws 2007, LB341, § 3.

43-3904 Actions for abduction prevention measures.

(a) A court on its own motion may order abduction prevention measures in a child custody proceeding if the court finds that the evidence establishes a credible risk of abduction of the child.

(b) A party to a child custody determination or another individual or entity having a right under the law of this state or any other state to seek a child custody determination for the child may file a petition seeking abduction prevention measures to protect the child under the Uniform Child Abduction Prevention Act.

(c) A county attorney or the Attorney General may seek a warrant to take physical custody of a child under section 43-3909 or other appropriate prevention measures.

Source: Laws 2007, LB341, § 4.

43-3905 Jurisdiction.

(a) A petition under the Uniform Child Abduction Prevention Act may be filed only in a court that has jurisdiction to make a child custody determination with respect to the child at issue under the Uniform Child Custody Jurisdiction and Enforcement Act.

(b) A court of this state has temporary emergency jurisdiction under section 43-1241 if the court finds a credible risk of abduction.

Source: Laws 2007, LB341, § 5.

Cross References

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

43-3906 Contents of petition.

A petition under the Uniform Child Abduction Prevention Act must be verified and include a copy of any existing child custody determination, if available. The petition must specify the risk factors for abduction, including the relevant factors described in section 43-3907. Subject to subsection (e) of section 43-1246, if reasonably ascertainable, the petition must contain:

- (1) the name, date of birth, and gender of the child;
- (2) the customary address and current physical location of the child;
- (3) the identity, customary address, and current physical location of the respondent;
- (4) a statement of whether a prior action to prevent abduction or domestic violence has been filed by a party or other individual or entity having custody of the child, and the date, location, and disposition of the action;
- (5) a statement of whether a party to the proceeding has been arrested for a crime related to domestic violence, stalking, or child abuse or neglect, and the date, location, and disposition of the case; and
- (6) any other information required to be submitted to the court for a child custody determination under section 43-1246.

Source: Laws 2007, LB341, § 6.

43-3907 Factors to determine risk of abduction.

(a) In determining whether there is a credible risk of abduction of a child, the court shall consider any evidence that the petitioner or respondent:

- (1) has previously abducted or attempted to abduct the child;
- (2) has threatened to abduct the child;
- (3) has recently engaged in activities that may indicate a planned abduction, including:
 - (A) abandoning employment;
 - (B) selling a primary residence;
 - (C) terminating a lease;
 - (D) closing bank or other financial management accounts, liquidating assets, hiding or destroying financial documents, or conducting any unusual financial activities;
 - (E) applying for a passport or visa or obtaining travel documents for the respondent, a family member, or the child; or
 - (F) seeking to obtain the child's birth certificate or school or medical records;
- (4) has engaged in domestic violence, stalking, or child abuse or neglect;
- (5) has refused to follow a child custody determination;
- (6) lacks strong familial, financial, emotional, or cultural ties to the state or the United States;
- (7) has strong familial, financial, emotional, or cultural ties to another state or country;
- (8) is likely to take the child to a country that:
 - (A) is not a party to the Hague Convention on the Civil Aspects of International Child Abduction and does not provide for the extradition of an abducting parent or for the return of an abducted child;

(B) is a party to the Hague Convention on the Civil Aspects of International Child Abduction but:

(i) the Hague Convention on the Civil Aspects of International Child Abduction is not in force between the United States and that country;

(ii) is noncompliant according to the most recent compliance report issued by the United States Department of State; or

(iii) lacks legal mechanisms for immediately and effectively enforcing a return order under the Hague Convention on the Civil Aspects of International Child Abduction;

(C) poses a risk that the child's physical or emotional health or safety would be endangered in the country because of specific circumstances relating to the child or because of human rights violations committed against children;

(D) has laws or practices that would:

(i) enable the respondent, without due cause, to prevent the petitioner from contacting the child;

(ii) restrict the petitioner from freely traveling to or exiting from the country because of the petitioner's gender, nationality, marital status, or religion; or

(iii) restrict the child's ability legally to leave the country after the child reaches the age of majority because of a child's gender, nationality, or religion;

(E) is included by the United States Department of State on a current list of state sponsors of terrorism;

(F) does not have an official United States diplomatic presence in the country; or

(G) is engaged in active military action or war, including a civil war, to which the child may be exposed;

(9) is undergoing a change in immigration or citizenship status that would adversely affect the respondent's ability to remain in the United States legally;

(10) has had an application for United States citizenship denied;

(11) has forged or presented misleading or false evidence on government forms or supporting documents to obtain or attempt to obtain a passport, a visa, travel documents, a Social Security card, a driver's license, or other government-issued identification card or has made a misrepresentation to the United States government;

(12) has used multiple names to attempt to mislead or defraud;

(13) is likely to disregard a determination by a court of this state to not recognize and enforce a foreign child custody determination pursuant to subsection (d) of section 43-1230; or

(14) has engaged in any other conduct the court considers relevant to the risk of abduction.

(b) In the hearing on a petition under the Uniform Child Abduction Prevention Act, the court shall consider any evidence that the respondent believed in good faith that the respondent's conduct was necessary to avoid imminent harm to the child or respondent and any other evidence that may be relevant to whether the respondent may be permitted to remove or retain the child.

Source: Laws 2007, LB341, § 7.

43-3908 Provisions and measures to prevent abduction.

(a) If a petition is filed under the Uniform Child Abduction Prevention Act, the court may enter an order that must include:

- (1) the basis for the court's exercise of jurisdiction;
- (2) the manner in which notice and opportunity to be heard were given to the persons entitled to notice of the proceeding;
- (3) a detailed description of each party's custody and visitation rights and residential arrangements for the child;
- (4) a provision stating that a violation of the order may subject the party in violation to civil and criminal penalties; and
- (5) identification of the child's country of habitual residence at the time of the issuance of the order.

(b) If, at a hearing on a petition under the act or on the court's own motion, the court after reviewing the evidence finds a credible risk of abduction of the child, the court shall enter an abduction prevention order. The order must include the provisions required by subsection (a) of this section, and measures and conditions, including those in subsections (c), (d), and (e) of this section, that are reasonably calculated to prevent abduction of the child, giving due consideration to the custody and visitation rights of the parties. The court shall consider the age of the child, the potential harm to the child from an abduction, the legal and practical difficulties of returning the child to the jurisdiction if abducted, and the reasons for the potential abduction, including evidence of domestic violence, stalking, or child abuse or neglect.

(c) An abduction prevention order may include one or more of the following:

(1) an imposition of travel restrictions that require that a party traveling with the child outside a designated geographical area provide the other party with the following:

- (A) the travel itinerary of the child;
 - (B) a list of physical addresses and telephone numbers at which the child can be reached at specified times; and
 - (C) copies of all travel documents;
- (2) a prohibition of the respondent directly or indirectly:

(A) removing the child from this state, the United States, or another geographic area without permission of the court or the petitioner's written consent;

(B) removing or retaining the child in violation of a child custody determination;

(C) removing the child from school or a child care or similar facility; or

(D) approaching the child at any location other than a site designated for supervised visitation;

(3) a requirement that a party register the order in another state as a prerequisite to allowing the child to travel to that state;

(4) with regard to the child's passport:

(A) a direction that the petitioner place the child's name in the United States Department of State's Child Passport Issuance Alert Program;

(B) a requirement that the respondent surrender to the court or the petitioner's attorney any United States or foreign passport issued in the child's name, including a passport issued in the name of both the parent and the child; and

(C) a prohibition upon the respondent from applying on behalf of the child for a new or replacement passport or visa;

(5) as a prerequisite to exercising custody or visitation, a requirement that the respondent provide:

(A) to the United States Department of State Office of Children's Issues and the relevant foreign consulate or embassy, an authenticated copy of the order detailing passport and travel restrictions for the child;

(B) to the court:

(i) proof that the respondent has provided the information in subdivision (5)(A) of this section; and

(ii) an acknowledgment in a record from the relevant foreign consulate or embassy that no passport application has been made, or passport issued, on behalf of the child;

(C) to the petitioner, proof of registration with the United States Embassy or other United States diplomatic presence in the destination country and with the Central Authority for the Hague Convention on the Civil Aspects of International Child Abduction, if that Convention is in effect between the United States and the destination country, unless one of the parties objects; and

(D) a written waiver under the Privacy Act, 5 U.S.C. section 552a, with respect to any document, application, or other information pertaining to the child authorizing its disclosure to the court and the petitioner; and

(6) upon the petitioner's request, a requirement that the respondent obtain an order from the relevant foreign country containing terms identical to the child custody determination issued in the United States.

(d) In an abduction prevention order, the court may impose conditions on the exercise of custody or visitation that:

(1) limit visitation or require that visitation with the child by the respondent be supervised until the court finds that supervision is no longer necessary and order the respondent to pay the costs of supervision;

(2) require the respondent to post a bond or provide other security in an amount sufficient to serve as a financial deterrent to abduction, the proceeds of which may be used to pay for the reasonable expenses of recovery of the child, including reasonable attorney's fees and costs if there is an abduction; and

(3) require the respondent to obtain education on the potentially harmful effects to the child from abduction.

(e) To prevent imminent abduction of a child, a court may:

(1) issue a warrant to take physical custody of the child under section 43-3909 or the law of this state other than the act;

(2) direct the use of law enforcement to take any action reasonably necessary to locate the child, obtain return of the child, or enforce a custody determination under the act or the law of this state other than the act; or

(3) grant any other relief allowed under the law of this state other than the act.

(f) The remedies provided in the act are cumulative and do not affect the availability of other remedies to prevent abduction.

Source: Laws 2007, LB341, § 8.

43-3909 Warrant to take physical custody of child.

(a) If a petition under the Uniform Child Abduction Prevention Act contains allegations, and the court finds that there is a credible risk that the child is imminently likely to be wrongfully removed, the court may issue an ex parte warrant to take physical custody of the child.

(b) The respondent on a petition under subsection (a) of this section must be afforded an opportunity to be heard at the earliest possible time after the ex parte warrant is executed, but not later than the next judicial day unless a hearing on that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible.

(c) An ex parte warrant under subsection (a) of this section to take physical custody of a child must:

(1) recite the facts upon which a determination of a credible risk of imminent wrongful removal of the child is based;

(2) direct law enforcement officers to take physical custody of the child immediately;

(3) state the date and time for the hearing on the petition; and

(4) provide for the safe interim placement of the child pending further order of the court.

(d) If feasible, before issuing a warrant and before determining the placement of the child after the warrant is executed, the court may order a search of the relevant data bases of the National Crime Information Center system and similar state data bases to determine if either the petitioner or respondent has a history of domestic violence, stalking, or child abuse or neglect.

(e) The petition and warrant must be served on the respondent when or immediately after the child is taken into physical custody.

(f) A warrant to take physical custody of a child, issued by this state or another state, is enforceable throughout this state. If the court finds that a less intrusive remedy will not be effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances, the court may authorize law enforcement officers to make a forcible entry at any hour.

(g) If the court finds, after a hearing, that a petitioner sought an ex parte warrant under subsection (a) of this section for the purpose of harassment or in bad faith, the court may award the respondent reasonable attorney's fees, costs, and expenses.

(h) The act does not affect the availability of relief allowed under the law of this state other than the act.

Source: Laws 2007, LB341, § 9.

43-3910 Duration of abduction prevention order.

An abduction prevention order remains in effect until the earliest of:

(1) the time stated in the order;

(2) the emancipation of the child;

(3) the child's attaining eighteen years of age; or

(4) the time the order is modified, revoked, vacated, or superseded by a court with jurisdiction under sections 43-1238 to 43-1240.

Source: Laws 2007, LB341, § 10.

43-3911 Uniformity of application and construction.

In applying and construing the Uniform Child Abduction Prevention Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2007, LB341, § 11.

43-3912 Relation to federal Electronic Signatures in Global and National Commerce Act.

The Uniform Child Abduction Prevention Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of such act, 15 U.S.C. 7001(c), of such act or authorize electronic delivery of any of the notices described in section 103(b) of such act, 15 U.S.C. 7003(b).

Source: Laws 2007, LB341, § 12.

ARTICLE 40

CHILDREN'S BEHAVIORAL HEALTH

Section

- 43-4001. Children's Behavioral Health Task Force; created; members; expenses; chairperson.
 43-4002. Children's Behavioral Health Task Force; prepare children's behavioral health plan; contents; department; duties; implementation.
 43-4003. Children's Behavioral Health Task Force; duties.

43-4001 Children's Behavioral Health Task Force; created; members; expenses; chairperson.

(1) The Children's Behavioral Health Task Force is created. The task force shall consist of the following members:

(a) The chairperson of the Health and Human Services Committee of the Legislature or another member of the committee as his or her designee;

(b) The chairperson of the Appropriations Committee of the Legislature or another member of the committee as his or her designee;

(c) Two providers of community-based behavioral health services to children, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(d) One regional administrator appointed under section 71-808, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(e) Two representatives of organizations advocating on behalf of consumers of children's behavioral health services and their families, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(f) One juvenile court judge, appointed by the Chief Justice of the Supreme Court;

(g) Two representatives of the Department of Health and Human Services, appointed by the Governor; and

(h) The Administrator of the Office of Juvenile Services.

(2) Members of the task force shall serve without compensation but shall be reimbursed from the Nebraska Health Care Cash Fund for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3) The chairperson of the Health and Human Services Committee of the Legislature or his or her designee shall serve as chairperson of the task force. Administrative and staff support for the task force shall be provided by the Health and Human Services Committee of the Legislature and the Appropriations Committee of the Legislature.

Source: Laws 2007, LB542, § 1; Laws 2008, LB928, § 14.
Operative date July 1, 2008.

43-4002 Children's Behavioral Health Task Force; prepare children's behavioral health plan; contents; department; duties; implementation.

(1) The Children's Behavioral Health Task Force, under the direction of and in consultation with the Health and Human Services Committee of the Legislature and the Department of Health and Human Services, shall prepare a children's behavioral health plan and shall submit such plan to the Governor and the committee on or before December 4, 2007. The scope of the plan shall include juveniles accessing public behavioral health resources.

(2) The plan shall include, but not be limited to:

(a) Plans for the development of a statewide integrated system of care to provide appropriate educational, behavioral health, substance abuse, and support services to children and their families. The integrated system of care should serve both adjudicated and nonadjudicated juveniles with behavioral health or substance abuse issues;

(b) Plans for the development of community-based inpatient and subacute substance abuse and behavioral health services and the allocation of funding for such services to the community pursuant to subdivision (4) of section 43-406;

(c) Strategies for effectively serving juveniles assessed in need of substance abuse or behavioral health services upon release from the Youth Rehabilitation and Treatment Center-Kearney or Youth Rehabilitation and Treatment Center-Geneva;

(d) Plans for the development of needed capacity for the provision of community-based substance abuse and behavioral health services for children;

(e) Strategies and mechanisms for the integration of federal, state, local, and other funding sources for the provision of community-based substance abuse and behavioral health services for children;

(f) Measurable benchmarks and timelines for the development of a more comprehensive and integrated system of substance abuse and behavioral health services for children;

(g) Identification of necessary and appropriate statutory changes for consideration by the Legislature; and

(h) Development of a plan for a data and information system for all children receiving substance abuse and behavioral health services shared among all parties involved in the provision of services for children.

(3) The department shall provide a written implementation and appropriations plan for the children's behavioral health plan to the Governor and the committee by January 4, 2008. The chairperson of the Health and Human Services Committee of the Legislature shall prepare legislation or amendments to legislation to implement this subsection for introduction in the 2008 legislative session.

Source: Laws 2007, LB542, § 2.

43-4003 Children's Behavioral Health Task Force; duties.

The Children's Behavioral Health Task Force will oversee implementation of the children's behavioral health plan until June 30, 2010, at which time the task force shall submit to the Governor and the Legislature a recommendation regarding the necessity of continuing the task force.

Source: Laws 2007, LB542, § 3.