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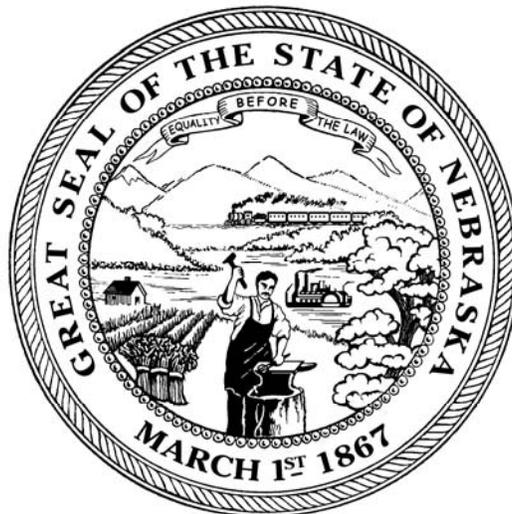


REVISED STATUTES OF NEBRASKA

2011 SUPPLEMENT

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BY THE
REVISOR OF STATUTES

VOLUME 1
CHAPTERS 1 TO 60, INCLUSIVE



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by

Joanne M. Pepperl
Revisor of Statutes

For the benefit of the
State of Nebraska

Errata:

All errors so far discovered in the printing of the Reissue Revised Statutes of Nebraska, and the various supplements thereto, are corrected herein. The Revisor of Statutes would appreciate having reported to her any mistakes or errors of any kind in the Reissue Revised Statutes of Nebraska or in the various supplements thereto.

Reissue of Volumes 1 to 6

The laws enacted subsequent to 1943 which are included in the reissuance of Volumes 1 to 6 are not repeated and duplicated in this supplement. The dates of the latest reissue of such volumes are:

Volumes 1 and 1A	2007
Volumes 2 and 2A	2008
Volume 3.....	2008
Volumes 3A and 3B.....	2010
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Volume 5 and 5A.....	2008
Volume 6.....	2001
Cross Reference Tables.....	2000

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CERTIFICATE OF AUTHENTICATION

I, Joanne M. Pepperl, Revisor of Statutes, do hereby certify that the laws included in the 2011 Supplement to the Revised Statutes of Nebraska are true and correct copies of the original acts enacted by the One Hundred Second Legislature, First Session, 2011, of the Nebraska State Legislature as shown by the enrolled bills on file in the office of the Secretary of State, save and except such compilation changes and omissions as are specifically authorized by sections 49-705 and 49-769.

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Lincoln, Nebraska
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ANNOTATIONS

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CONSTITUTION OF THE STATE OF NEBRASKA

Article I, sec. 3.

The Due Process Clauses of the U.S. and Nebraska Constitutions preclude admissibility of an involuntary confession. *State v. Bormann*, 279 Neb. 320, 777 N.W.2d 829 (2010).

Article I, sec. 11.

Where the testimony is in any way relevant to a case, the knowing use of perjured testimony by the prosecution deprives a criminal defendant of his or her right to a fair trial. *State v. Lotter*, 278 Neb. 466, 771 N.W.2d 551 (2009).

When the reliability of a given witness may be determinative of guilt or innocence, nondisclosure of evidence in the prosecutor's file which is relevant to the witness' credibility violates due process, irrespective of the good faith or bad faith of the prosecution. *State v. Lotter*, 278 Neb. 466, 771 N.W.2d 551 (2009).

Perjury per se is not a ground for collateral attack on a judgment. *State v. Lotter*, 278 Neb. 466, 771 N.W.2d 551 (2009).

A witness' testimony is not the result of unconstitutional coercion simply because it is motivated by a legitimate fear of a death sentence. *State v. Lotter*, 278 Neb. 466, 771 N.W.2d 551 (2009).

True promises of leniency are not proscribed when made by persons authorized to make them. *State v. Lotter*, 278 Neb. 466, 771 N.W.2d 551 (2009).

There is no federal Sixth Amendment constitutional right to effective standby counsel, and there is no right to effective assistance of standby counsel under this provision. *State v. Gunther*, 278 Neb. 173, 768 N.W.2d 453 (2009).

Article I, sec. 16.

Only the clearest proof suffices to establish the unconstitutionality of a statute as a bill of attainder. *State v. Galindo*, 278 Neb. 599, 774 N.W.2d 190 (2009).

STATUTES OF THE STATE OF NEBRASKA

7-102.

The Supreme Court has delegated administrative responsibility for bar admissions solely to the Nebraska State Bar Commission. *In re Application of Ybarra*, 279 Neb. 758, 781 N.W.2d 446 (2010).

10-707.

This section, generally described, requires certification under oath of the procedures and results of a bond election. It does not require certification of the preliminary proceedings that led to the election, including the school board vote that called for it. *Pierce v. Drobny*, 279 Neb. 251, 777 N.W.2d 322 (2010).

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13-804.

Under subsection (6) of this section, a joint entity created under the Interlocal Cooperation Act is subject to the control of its members in accordance with the agreement. *City of Falls City v. Nebraska Mun. Power Pool*, 279 Neb. 238, 777 N.W.2d 327 (2010).

13-910.

When the gravamen of the complaint is negligent performance of operational tasks rather than misrepresentation, a political subdivision cannot rely upon the misrepresentation exception in subdivision (7) of this section of the Political Subdivisions Tort Claims Act. *Stonacek v. City of Lincoln*, 279 Neb. 869, 782 N.W.2d 900 (2010).

18-2538.

The language “whether a measure may be enacted by initiative” does not permit a court to issue an advisory opinion regarding the substance of an initiative measure prior to its adoption. *City of Fremont v. Kotas*, 279 Neb. 720, 781 N.W.2d 456 (2010).

The language “whether a measure may be enacted by initiative” encompasses only procedural challenges. *City of Fremont v. Kotas*, 279 Neb. 720, 781 N.W.2d 456 (2010).

21-2060.

This section provides that shareholders may vote in person or by proxy and establishes the basic rules for appointing a proxy. *Bamford v. Bamford, Inc.*, 279 Neb. 259, 777 N.W.2d 573 (2010).

An appointment made irrevocable under subsection (4) of this section is revoked when the interest with which it is coupled is extinguished. *Bamford v. Bamford, Inc.*, 279 Neb. 259, 777 N.W.2d 573 (2010).

Although subsection (4) of this section lists several examples of “[a]ppointments coupled with an interest,” these examples are not exhaustive and other arrangements may also be held to be “coupled with an interest.” In that regard, subsection (4) incorporates the common-law test, based on principles of agency law, for whether an appointment is coupled with an interest. *Bamford v. Bamford, Inc.*, 279 Neb. 259, 777 N.W.2d 573 (2010).

21-2067.

This section provides generally that one or more shareholders of a corporation may create a voting trust, which confers on the trustee the right to vote or otherwise act for them. The voting trust becomes effective when the first shares subject to the trust are registered in the trustee’s name. A voting trust “shall be valid for not more than ten years after its effective date” unless extended by the parties to it. *Bamford v. Bamford, Inc.*, 279 Neb. 259, 777 N.W.2d 573 (2010).

This section provides that a voting trust agreement cannot, absent an extension, extend longer than ten years. *Bamford v. Bamford, Inc.*, 279 Neb. 259, 777 N.W.2d 573 (2010).

In order to be valid, a voting trust agreement must, by its terms, be limited to a period of ten years or less, or it must be clear from the terms and provisions of the agreement that the voting trust will terminate in ten years or less. *Bamford v. Bamford, Inc.*, 279 Neb. 259, 777 N.W.2d 573 (2010).

This section does not create a “safe harbor” for voting trusts; rather, it clearly imposes substantive limitations on the provisions of such agreements. *Bamford v. Bamford, Inc.*, 279 Neb. 259, 777 N.W.2d 573 (2010).

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23-114.05.

The plain language of this section establishes that an appeal to a board of adjustment is not the exclusive remedy for challenging a land use alleged to be in violation of zoning regulations. *Conley v. Brazer*, 278 Neb. 508, 772 N.W.2d 545 (2009).

23-908.

A county board can use its general budgetary authority to reasonably reduce an officer's overall budget as long as it does not budget the office out of existence or unduly hinder the officer in performing his or her duties. *Wetovick v. County of Nance*, 279 Neb. 773, 782 N.W.2d 298 (2010).

This section does not control a budget dispute when a more specific statute applies. The controlling statute for a budget dispute over salary and working conditions for an elected county official's employees is section 23-1111. *Wetovick v. County of Nance*, 279 Neb. 773, 782 N.W.2d 298 (2010).

23-1111.

Under this section, unless a county board shows by a preponderance of the evidence that an elected officer's employment determination is arbitrary, capricious, or unreasonable, it lacks authority to disapprove it. *Wetovick v. County of Nance*, 279 Neb. 773, 782 N.W.2d 298 (2010).

Section 23-908 does not control a budget dispute when a more specific statute applies. The controlling statute for a budget dispute over salary and working conditions for an elected county official's employees is this section. *Wetovick v. County of Nance*, 279 Neb. 773, 782 N.W.2d 298 (2010).

24-312.

Jurisdiction under subsection (3) of this section is separate from the invocation of jurisdiction under section 25-2740. *Mahmood v. Mahmud*, 279 Neb. 390, 778 N.W.2d 426 (2010).

25-901.

When read in conjunction with this section, section 44-359 prohibits an award of attorney fees to a plaintiff, in a suit against the plaintiff's insurer, who rejects an offer of judgment and later fails to recover more than the amount offered. *Dutton-Lainson Co. v. Continental Ins. Co.*, 279 Neb. 365, 778 N.W.2d 433 (2010).

25-1072.

In a civil contempt proceeding, a district court has inherent power to order compensatory relief when a contemnor has violated its order or judgment; overruling *Kasperek v. May*, 174 Neb. 732, 119 N.W.2d 512 (1963). *Smeal Fire Apparatus Co. v. Kreikemeier*, 279 Neb. 661, 782 N.W.2d 848 (2010).

A court of equity has the power to interpret its own injunctive decree if a party later claims that a provision is unclear. *Smeal Fire Apparatus Co. v. Kreikemeier*, 279 Neb. 661, 782 N.W.2d 848 (2010).

In determining whether a party is in contempt of an order, a court may not expand an earlier order's prohibitory or mandatory language beyond a reasonable interpretation considering the purposes for which the order was entered. *Smeal Fire Apparatus Co. v. Kreikemeier*, 279 Neb. 661, 782 N.W.2d 848 (2010).

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25-1273.01.

The language of this section, in combination with section 27-802, indicates a clear intention by the Legislature to create an independent avenue to admit deposition testimony. *Walton v. Patil*, 279 Neb. 974, 783 N.W.2d 438 (2010).

25-1315.

Where section 25-1315.03 and subsection (1) of this section are in conflict, section 25-1315.03 controls. *R & D Properties v. Altech Constr. Co.*, 279 Neb. 74, 776 N.W.2d 493 (2009).

This section permits a judgment to become final only under the limited circumstances set forth in the statute. *Connelly v. City of Omaha*, 278 Neb. 311, 769 N.W.2d 394 (2009).

By its terms, subsection (1) of this section is implicated only where multiple causes of action are presented or multiple parties are involved, and a final judgment is entered as to one of the parties or causes of action. *Connelly v. City of Omaha*, 278 Neb. 311, 769 N.W.2d 394 (2009).

A “final order” is a prerequisite to an appellate court’s obtaining jurisdiction of an appeal initiated pursuant to subsection (1) of this section. *Connelly v. City of Omaha*, 278 Neb. 311, 769 N.W.2d 394 (2009).

With the enactment of subsection (1) of this section, one may bring an appeal pursuant to such section only when (1) multiple causes of action or multiple parties are present, (2) the court enters a “final order” within the meaning of section 25-1902 as to one or more but fewer than all of the causes of action or parties, and (3) the trial court expressly directs the entry of such final order and expressly determines that there is no just reason for delay of an immediate appeal. Therefore, to be appealable, an order must satisfy the final order requirements of section 25-1902 and, additionally, where implicated, subsection (1) of this section. *Connelly v. City of Omaha*, 278 Neb. 311, 769 N.W.2d 394 (2009).

25-1315.03.

Where this section and section 25-1315(1) are in conflict, this section controls. *R & D Properties v. Altech Constr. Co.*, 279 Neb. 74, 776 N.W.2d 493 (2009).

25-1332.

There is a difference between an issue of fact and a genuine issue as to any material fact within the meaning of this section. *Recio v. Evers*, 278 Neb. 405, 771 N.W.2d 121 (2009).

25-1401.

A survival claim is governed by the 4-year residual statute of limitations for tortious conduct, rather than the 2-year statute of limitations applicable to wrongful death claims. *Corona de Camargo v. Schon*, 278 Neb. 1045, 776 N.W.2d 1 (2009).

25-1506.

When a defendant requests a stay of sale pursuant to this section, the defendant is precluded from appealing from the foreclosure decree. *Deutsche Bank Nat. Trust Co. v. Siegel*, 279 Neb. 174, 777 N.W.2d 259 (2010).

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25-1515.

The date on which a workers' compensation court award is filed in a district court pursuant to section 48-188 is the date of the judgment for purposes of computing when the judgment becomes dormant. *Weber v. Gas 'N Shop*, 278 Neb. 49, 767 N.W.2d 746 (2009).

The dormancy provisions of this section apply to an award of the Nebraska Workers' Compensation Court which is filed in the district court pursuant to section 48-188, and the date on which a workers' compensation award is filed in the district court is the date of judgment for purposes of computing when the judgment becomes dormant. *Allen v. Immanuel Med. Ctr.*, 278 Neb. 41, 767 N.W.2d 502 (2009).

25-1531.

Confirmation of judicial sales rests largely within the discretion of the trial court and will not be reviewed except for manifest abuse of such discretion. *Deutsche Bank Nat. Trust Co. v. Siegel*, 279 Neb. 174, 777 N.W.2d 259 (2010).

25-1902.

An order of contempt in a postjudgment proceeding to enforce a previous final judgment is a final order for appeal purposes; the contempt order affects a substantial right, made upon a summary application in an action after judgment. *Smeal Fire Apparatus Co. v. Kreikemeier*, 279 Neb. 661, 782 N.W.2d 848 (2010).

For appeal purposes, the distinction between criminal and civil contempt sanctions has no relevance to whether a party may appeal from a final order in a supplemental postjudgment contempt proceeding. *Smeal Fire Apparatus Co. v. Kreikemeier*, 279 Neb. 661, 782 N.W.2d 848 (2010).

In determining whether a party can appeal from an order clarifying an injunction, the critical question is whether the order merely interprets the decree or modifies the decree in a way that affects a party's substantial right. A court's order clarifying a permanent injunction is a final order only if it changes the parties' legal relationship by expanding or relaxing the terms, dissolving the injunction, or granting additional injunctive relief. *Smeal Fire Apparatus Co. v. Kreikemeier*, 279 Neb. 661, 782 N.W.2d 848 (2010).

An order denying a motion to vacate or modify a final order affects a substantial right upon a summary application in an action after judgment, and is itself a final, appealable order. *Capitol Construction v. Skinner*, 279 Neb. 419, 778 N.W.2d 721 (2010).

With the enactment of section 25-1315(1), one may bring an appeal pursuant to such section only when (1) multiple causes of action or multiple parties are present, (2) the court enters a "final order" within the meaning of this section as to one or more but fewer than all of the causes of action or parties, and (3) the trial court expressly directs the entry of such final order and expressly determines that there is no just reason for delay of an immediate appeal. Therefore, to be appealable, an order must satisfy the final order requirements of this section and, additionally, where implicated, section 25-1315(1). *Connelly v. City of Omaha*, 278 Neb. 311, 769 N.W.2d 394 (2009).

25-1912.

This section does not expressly require a notice of appeal to display a trial court docket number, or be filed in a particular trial court docket; instead, it requires only a notice of intention to prosecute an appeal from a judgment, decree, or final order of the district court. A notice of appeal filed under the wrong docket number is not fatal to appellate jurisdiction. *Hearst-Argyle Prop. v. Entrex Comm. Servs.*, 279 Neb. 468, 778 N.W.2d 465 (2010).

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25-2001.

A district court sitting as an appellate court has the same power to reconsider its orders, both inherently and under this section, as it does when it is a court of original jurisdiction. *Capitol Construction v. Skinner*, 279 Neb. 419, 778 N.W.2d 721 (2010).

25-21,149.

When the plaintiff's pleadings in a declaratory judgment action put the defendant on notice of the remedy sought, a trial court may order relief which is clearly within the scope of its declaratory judgment. Conversely, when a plaintiff's requested relief is not clearly within the scope of a court's declaratory judgment, the court should grant such relief only for a plaintiff's concurrent or subsequent cause of action or the plaintiff's application for supplemental relief under section 25-21,156. *Wetovick v. County of Nance*, 279 Neb. 773, 782 N.W.2d 298 (2010).

An action for declaratory judgment cannot be used to decide the legal effect of a state of facts which are future, contingent, or uncertain. *City of Fremont v. Kotas*, 279 Neb. 720, 781 N.W.2d 456 (2010).

The existence of a justiciable issue is a fundamental requirement to a court's exercise of its discretion to grant declaratory relief. *City of Fremont v. Kotas*, 279 Neb. 720, 781 N.W.2d 456 (2010).

A justiciable issue requires a present substantial controversy between parties having adverse legal interests susceptible to immediate resolution and capable of present judicial enforcement. *City of Fremont v. Kotas*, 279 Neb. 720, 781 N.W.2d 456 (2010).

25-21,156.

When the plaintiff's pleadings in a declaratory judgment action put the defendant on notice of the remedy sought, a trial court may order relief which is clearly within the scope of its declaratory judgment. Conversely, when a plaintiff's requested relief is not clearly within the scope of a court's declaratory judgment, the court should grant such relief only for a plaintiff's concurrent or subsequent cause of action or the plaintiff's application for supplemental relief under this section. *Wetovick v. County of Nance*, 279 Neb. 773, 782 N.W.2d 298 (2010).

25-21,158.

Under this section, attorney fees are not taxed as "costs." Without another source of statutory authority permitting attorney fees to be taxed as costs, the prevailing party cannot recover attorney fees in a declaratory judgment action. *Wetovick v. County of Nance*, 279 Neb. 773, 782 N.W.2d 298 (2010).

25-21,185.10.

This section contemplates a process by which the finder of fact determines the total noneconomic damages suffered by the plaintiff as the result of injuries proximately caused by the negligence of multiple defendants; then, it allocates a portion of the total to each defendant "in direct proportion to that defendant's percentage of negligence." *Sinsel v. Olsen*, 279 Neb. 38, 777 N.W.2d 54 (2009).

25-21,187.

Maintenance of a building, within the meaning of subsection (1) of this section, does not encompass the ordinary activities associated with management of commercial property. *Kuhn v. Wells Fargo Bank of Neb.*, 278 Neb. 428, 771 N.W.2d 103 (2009).

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25-21,239.

Where the plaintiff's injury resulted from the operation of a truck outside the State of Nebraska, there was no finding of liability under this section. *Erickson v. U-Haul Internat.*, 278 Neb. 18, 767 N.W.2d 765 (2009).

25-2740.

Jurisdiction under section 24-312(3) is separate from the invocation of jurisdiction under this section. *Mahmood v. Mahmud*, 279 Neb. 390, 778 N.W.2d 426 (2010).

27-403.

Under this section, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. *State v. Sellers*, 279 Neb. 220, 777 N.W.2d 779 (2010).

The fact that evidence is prejudicial is not enough to require exclusion under this section, because most, if not all, of the evidence a party offers is calculated to be prejudicial to the opposing party; it is only the evidence which has a tendency to suggest a decision on an improper basis that is unfairly prejudicial under this section. *State v. Daly*, 278 Neb. 903, 775 N.W.2d 47 (2009).

27-406.

Evidence was insufficient to show a routine or habit within the meaning of this section, because a single incident did not establish a routine, and the relevance of the evidence depended on the claim that the actor engaged in a deliberate volitional act, not a habit. *State v. Edwards*, 278 Neb. 55, 767 N.W.2d 784 (2009).

27-702.

Fundamentally, it is always the burden of the proponent of the evidence to establish the necessary foundation for its admission, including its scientific reliability under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001). *State v. Casillas*, 279 Neb. 820, 782 N.W.2d 882 (2010).

To sufficiently call specialized knowledge into question under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001), is to object with enough specificity so that the court understands what is being challenged and can accordingly determine the necessity and extent of any pretrial proceeding. *State v. Casillas*, 279 Neb. 820, 782 N.W.2d 882 (2010).

The horizontal gaze nystagmus test involves scientific knowledge and falls generally under the rules of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001). *State v. Casillas*, 279 Neb. 820, 782 N.W.2d 882 (2010).

27-801.

Before the trier of facts may consider testimony under the coconspirator exception to the hearsay rule, a prima facie case establishing the existence of the conspiracy must be shown by independent evidence. *State v. Hudson*, 279 Neb. 6, 775 N.W.2d 429 (2009).

To be admissible, the statements of the coconspirator must have been made while the conspiracy was pending and in furtherance of its objects. *State v. Hudson*, 279 Neb. 6, 775 N.W.2d 429 (2009).

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The coconspirator exception to the hearsay rule is applicable regardless of whether a conspiracy has been charged in the information or not. *State v. Hudson*, 279 Neb. 6, 775 N.W.2d 429 (2009).

The purpose of requiring independent evidence to establish a conspiracy is to prevent the danger of hearsay evidence being lifted by its own bootstraps, i.e., relying on the hearsay statements to establish the conspiracy, and then using the conspiracy to permit the introduction of what would otherwise be hearsay testimony in evidence. *State v. Hudson*, 279 Neb. 6, 775 N.W.2d 429 (2009).

27-802.

The language of section 25-1273.01, in combination with this section, indicates a clear intention by the Legislature to create an independent avenue to admit deposition testimony. *Walton v. Patil*, 279 Neb. 974, 783 N.W.2d 438 (2010).

27-804.

Neb. Ct. R. Disc. section 6-332 creates an exception to the hearsay rule as it applies to depositions, and a deposition need no longer satisfy the requirements of subdivision (2)(a) of this section to be admissible under the rules of discovery. *Walton v. Patil*, 279 Neb. 974, 783 N.W.2d 438 (2010).

28-311.09.

A proper form under this section is not a prerequisite for subject matter jurisdiction, and this section does not change the rules of notice pleading generally applicable to civil actions. *Mahmood v. Mahmud*, 279 Neb. 390, 778 N.W.2d 426 (2010).

28-318.

In the context of a conviction for third degree sexual assault under section 28-320, evidence of physical contact between the defendant's penis and the victim's shin was sufficient to support a finding of "sexual contact" as defined in subdivision (5) of this section. *State v. Fuller*, 279 Neb. 568, 779 N.W.2d 112 (2010).

28-320.

In the context of a conviction for third degree sexual assault under this section, evidence of physical contact between the defendant's penis and the victim's shin was sufficient to support a finding of "sexual contact" as defined in section 28-318(5). *State v. Fuller*, 279 Neb. 568, 779 N.W.2d 112 (2010).

28-320.02.

This section does not implicate speech regarding otherwise legal activity; it targets only speech used for the purpose of enticing a child to engage in illegal sexual conduct, and such speech is not protected by the First Amendment. *State v. Rung*, 278 Neb. 855, 774 N.W.2d 621 (2009).

28-321.

Subsection (2)(a) of this section permits evidence of prior sexual behavior with persons other than the defendant only when offered by the defendant "upon the issue whether the defendant was or was not, with respect to the victim, the source of any physical evidence, including but not limited to, semen, injury, blood, saliva, and hair." *State v. Ford*, 279 Neb. 453, 778 N.W.2d 473 (2009).

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28-922.

The crime of tampering with physical evidence, as defined by subdivision (1)(a) of this section, does not include mere abandonment of physical evidence in the presence of law enforcement. *State v. Lasu*, 278 Neb. 180, 768 N.W.2d 447 (2009).

To conceal or remove physical evidence, within the meaning of subdivision (1)(a) of this section, is to act in a way that will prevent it from being disclosed or recognized. *State v. Lasu*, 278 Neb. 180, 768 N.W.2d 447 (2009).

28-1205.

A defendant must commit an underlying or predicate felony before he or she can be convicted of use of a deadly weapon to commit a felony. *State v. Sepulveda*, 278 Neb. 972, 775 N.W.2d 40 (2009).

28-1463.02.

While copies of images obtained during a law enforcement investigation may be used to establish probable cause to search for evidence of crimes involving visual depiction of sexually explicit conduct involving minors, they are not absolutely required. *State v. Nuss*, 279 Neb. 648, 781 N.W.2d 60 (2010).

Probable cause to search for evidence of crimes involving visual depiction of sexually explicit conduct involving minors may be established by a detailed verbal description of the conduct depicted in the images. *State v. Nuss*, 279 Neb. 648, 781 N.W.2d 60 (2010).

29-1817.

A plea in bar pursuant to this section may be filed to assert any nonfrivolous double jeopardy claim arising from a prior prosecution, including a claim that jeopardy was terminated by entry of a mistrial without manifest necessity. *State v. Williams*, 278 Neb. 841, 774 N.W.2d 384 (2009).

29-1819.02.

Subsection (2) of this section establishes a statutory procedure whereby a convicted person may file a motion to have the criminal judgment vacated and the plea withdrawn when the advisement required by subsection (1) was not given and the conviction may have the consequences for the defendant of removal from the United States, or denial of naturalization pursuant to the laws of the United States. *State v. Yos-Chiguil*, 278 Neb. 591, 772 N.W.2d 574 (2009).

The remedy created by subsection (2) of this section extends to those serving sentences at the time the motion to withdraw the plea is filed. *State v. Yos-Chiguil*, 278 Neb. 591, 772 N.W.2d 574 (2009).

29-2002.

A defendant is not considered prejudiced by a joinder where the evidence relating to both offenses would be admissible in a trial of either offense separately. *State v. Schroeder*, 279 Neb. 199, 777 N.W.2d 793 (2010).

29-2004.

Under this section, a court may discharge a regular juror because of sickness and replace him or her with an alternate juror. *State v. Hilding*, 278 Neb. 115, 769 N.W.2d 326 (2009).

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29-2006.

Under subdivision (2) of this section, only if the juror's opinion was formed based upon conversations with witnesses of the transactions or reading reports of their testimony or hearing them testify is dismissal of the juror for cause mandatory. *State v. Galindo*, 278 Neb. 599, 774 N.W.2d 190 (2009).

Under subdivision (2) of this section, the mere fact that a prospective juror is personally acquainted with the victim or the victim's family does not automatically disqualify a person from sitting on a criminal jury. *State v. Galindo*, 278 Neb. 599, 774 N.W.2d 190 (2009).

29-2022.

Under this section, the defendant has the right to have the jury kept together until the jury agrees on a verdict or is discharged by the court. *State v. Barranco*, 278 Neb. 165, 769 N.W.2d 343 (2009).

The basic purpose of this section is to preserve the right to a fair trial by shielding the jury from improper contact by others and restricting the opportunities for improper conduct by jurors during the course of their deliberations. In the absence of express agreement or consent by the defendant, a failure to comply with this section by permitting the jurors to separate after submission of the case is erroneous, creates a rebuttable presumption of prejudice, and places the burden upon the prosecution to show that no injury resulted. *State v. Barranco*, 278 Neb. 165, 769 N.W.2d 343 (2009).

29-2270.

This section does not authorize the detention of a juvenile placed on probation by a juvenile court. *In re Interest of Dakota M.*, 279 Neb. 802, 781 N.W.2d 612 (2010).

29-2308.

Whether an assigned error is prejudicial, requiring reversal, is at issue in every appeal. *State v. McKinney*, 279 Neb. 297, 777 N.W.2d 555 (2010).

29-2315.01.

This section allows the county attorney to request appellate review of an adverse decision or ruling in a criminal case in district court after a final order or judgment in the criminal case has been entered, but it does not allow an appellate court to review issues upon which no ruling was made. *State v. Figueroa*, 278 Neb 98, 767 N.W.2d 775 (2009).

The purpose of appellate review pursuant to this section is to provide an authoritative exposition of the law to serve as precedent in future cases. *State v. Figueroa*, 278 Neb 98, 767 N.W.2d 775 (2009).

29-2320.

A sentence that falls below the sentencing limits prescribed by law may be appealed by the State as excessively lenient. *State v. Alford*, 278 Neb. 818, 774 N.W.2d 394 (2009).

Under this section, a prosecuting attorney may appeal sentences imposed in felony cases when he or she reasonably believes the sentence is excessively lenient. Under this section, an appellate court lacks the authority to review a sentence imposed for a misdemeanor conviction. *State v. Stafford*, 278 Neb. 109, 767 N.W.2d 507 (2009).

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29-2521.

Under subsection (3) of this section, the aggravation hearing record is relevant to mitigation. *State v. Galindo*, 278 Neb. 599, 774 N.W.2d 190 (2009).

29-3001.

Postconviction relief is not available to individuals who are no longer in custody but are subject to noncustodial registration requirements pursuant to the Sex Offender Registration Act. *State v. York*, 278 Neb. 306, 770 N.W.2d 614 (2009).

29-4005.

Under the Sex Offender Registration Act, pursuant to the former subsection (2) of this section, a convicted sex offender whose offense is determined to be an “aggravated offense” is subject to the lifetime registration requirement. *State v. Simmick*, 279 Neb. 499, 779 N.W.2d 335 (2010).

29-4118.

The DNA Testing Act was not intended to be an alternative vehicle for raising claims of ineffective assistance of counsel. *State v. Haas*, 279 Neb. 812, 782 N.W.2d 584 (2010).

29-4120.

Evidence which was available but not pursued is not considered to have been unavailable at the time of trial. *State v. Haas*, 279 Neb. 812, 782 N.W.2d 584 (2010).

30-810.

Under this section, the only possible purpose of an attorney-client agreement to pursue claims for wrongful death is to benefit those persons specifically designated as statutory beneficiaries. *Perez v. Stern*, 279 Neb. 187, 777 N.W.2d 545 (2010).

30-2207.

This section sets forth the evidence that can be used to prove the fact of death in proceedings under the Nebraska Probate Code, not the Nebraska Criminal Code. *State v. Edwards*, 278 Neb. 55, 767 N.W.2d 784 (2009).

This section does not preclude the establishment of death by circumstantial evidence before the expiration of the 5-year statutory period. *State v. Edwards*, 278 Neb. 55, 767 N.W.2d 784 (2009).

30-2314.

Subdivision (a)(1)(i) of this section does not include the word “document” or even require a writing evidencing a transfer. *In re Estate of Fries*, 279 Neb. 887, 782 N.W.2d 596 (2010).

What is significant for purposes of subdivision (a)(1)(i) of this section is whether the parties to a transfer intended the decedent to functionally retain possession or enjoyment of, or the right to income from, the property—not whether the written instrument of transfer reflects that intent. *In re Estate of Fries*, 279 Neb. 887, 782 N.W.2d 596 (2010).

Under subdivision (a)(1)(i) of this section, a transfer “under which the decedent retained at death the possession or enjoyment of, or right to income from, the property” does not require that the decedent’s right to possession of,

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enjoyment of, or income from the property be recorded in the instrument of transfer. A decedent retains possession or enjoyment of, or the right to income from, property when it is understood that the decedent will retain such an interest despite the transfer. And such an understanding need not be express; it can be implied from the circumstances surrounding the transfer. In re Estate of Fries, 279 Neb. 887, 782 N.W.2d 596 (2010).

The dual purpose of the elective share provisions is to prevent a spouse from being denied a fair share of the decedent's estate and also to prevent the surviving spouse from obtaining more than a fair share of the estate when he or she has already received a share of the estate through some other means. To achieve this purpose, the value of certain property transferred by the decedent during marriage is included in the decedent's augmented estate under subdivision (a)(1) of this section. In re Estate of Fries, 279 Neb. 887, 782 N.W.2d 596 (2010).

Under subdivision (c)(2) of this section, if a spouse had agreed to a transfer, the value of the transferred property is not included in the transferring spouse's augmented estate. In re Estate of Fries, 279 Neb. 887, 782 N.W.2d 596 (2010).

30-2351.

The only way to prove the existence of a contract to make a will or not to revoke a will or devise is by producing a will or signed writing in satisfaction of one of the three subsections of this section. Johnson v. Anderson, 278 Neb. 500, 771 N.W.2d 565 (2009).

30-2403.

Under the Nebraska Probate Code, the right and duty to sue and recover assets for an estate reside in the estate's appointed personal representative, not the devisees. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

30-2457.

When an estate lacks a personal representative, this section anticipates the problem by providing for the appointment of a special administrator to administer an estate when a personal representative cannot or should not act. Thus, devisees do not have standing to sue on behalf of an estate merely because the estate lacks a personal representative. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

30-2464.

Under the Nebraska Probate Code, the right and duty to sue and recover assets for an estate reside in the estate's appointed personal representative, not the devisees. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

30-2470.

Under the Nebraska Probate Code, the right and duty to sue and recover assets for an estate reside in the estate's appointed personal representative, not the devisees. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

30-2476.

Under the Nebraska Probate Code, the right and duty to sue and recover assets for an estate reside in the estate's appointed personal representative, not the devisees. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

30-24,109.

If a county court finds that certain property is subject to partition, it may direct the personal representative to sell the property. The personal representative is to perform the duties and responsibilities otherwise incumbent upon a referee. In re Estate of Failla, 278 Neb. 770, 773 N.W.2d 793 (2009).

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30-3812.

A beneficiary of property left to a trust has standing to raise the trustee's self-dealing and to seek damages, an accounting, and a constructive trust. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

30-3836.

When a trust does not contain a termination clause, its termination date is implied from its terms. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

Where a trust did not contain a termination clause, the trust impliedly terminated with the settlor's death, because the settlor's beneficial interests in the trust ended upon her death when providing for her care and support was the only purpose for the trust. The trustee's payments for a settlor's outstanding debts, taxes, and expenses upon the settlor's death are part of the trustee's winding-up duties after a trust terminates. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

30-3867.

Unless an exception under this section applies, a trust beneficiary establishes a prima facie case of fraud by showing that a trustee's transaction benefited the trustee at the beneficiary's expense. The burden of going forward with evidence then shifts to the trustee to establish the following by clear and convincing evidence: The transaction was made under a power expressly granted in the trust and the clear intent of the settlor and the transaction was in the beneficiary's best interests. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

30-3868.

A trustee's duty of impartiality in administering trust property plays particular importance in distributing assets. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

30-3875.

A trustee's failure to keep required records is reason, among other things, for a court reviewing a judicial accounting to resolve doubts against the trustee. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

30-3881.

After a trust terminates, a trustee continues to have a nonbeneficial interest in the trust for timely winding up the trust and distributing its assets. But after a trust terminates, a trustee's property management powers are limited to those that are reasonable and appropriate in preserving the trust property, pending the winding up and distribution of assets. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

A trustee's duty of impartiality in administering trust property plays particular importance in distributing assets. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

30-3882.

Under this section, a trustee's duty to pay the settlor's debts, expenses, and taxes does not normally justify a trustee's failure to make distributions. An unduly delayed distribution is a breach of the duty of care unless the trustee shows that some realistic complication prevented the trustee from determining in a timely manner a reasonable sum to reserve for winding-up costs. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

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30-3890.

A beneficiary of property left to a trust has standing to raise the trustee's self-dealing and to seek damages, an accounting, and a constructive trust. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

30-3891.

A beneficiary of property left to a trust has standing to raise the trustee's self-dealing and to seek damages, an accounting, and a constructive trust. In re Estate of Hedke, 278 Neb. 727, 775 N.W.2d 13 (2009).

31-1019.

This section does not create a duty giving rise to civil tort liability. Stonacek v. City of Lincoln, 279 Neb. 869, 782 N.W.2d 900 (2010).

32-1101.

Once an election takes place, a challenge under the Open Meetings Act to preliminary stages leading up to the election is effectively subsumed by the election contest provisions of sections 32-1101 through 32-1117. An election contest is the exclusive remedy under such circumstances, and a separate challenge under the Open Meetings Act does not exist once the issue is voted upon by the public. Pierce v. Drobny, 279 Neb. 251, 777 N.W.2d 322 (2010).

38-1,106.

The evidentiary privilege under this section belongs to the Department of Health and Human Services, not the credential holder, and is limited to protecting the department's incident reports, complaints, and investigatory records when they are not included in a contested hearing. It does not preclude discovery of information available independent of the department's investigation. Stetson v. Silverman, 278 Neb. 389, 770 N.W.2d 632 (2009).

43-104.

Pursuant to subsection (3) of this section, for an adoption to proceed, the consent of the biological father who has established a familial relationship with his child is required unless, under subsection (2) of this section, the party seeking adoption has established that the biological parent: (1) has relinquished the child for adoption by a written instrument, (2) has abandoned the child for at least six months next preceding the filing of the adoption petition, (3) has been deprived of his or her parental rights to such child by the order of any court of competent jurisdiction, or (4) is incapable of consenting. In re Adoption of Corbin J., 278 Neb. 1057, 775 N.W.2d 404 (2009).

43-104.04.

For an adoption to proceed, the consent of the biological father who has established a familial relationship with his child is required unless, under section 43-104(2), the party seeking adoption has established that the biological parent: (1) has relinquished the child for adoption by a written instrument, (2) has abandoned the child for at least six months next preceding the filing of the adoption petition, (3) has been deprived of his or her parental rights to such child by the order of any court of competent jurisdiction, or (4) is incapable of consenting. In re Adoption of Corbin J., 278 Neb. 1057, 775 N.W.2d 404 (2009).

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43-104.15.

This section permits the State to approve out-of-state placement with prospective adoptive parents without the biological father's consent or notification if the prospective adoptive parents have signed an at-risk placement form. *Ashby v. State*, 279 Neb. 509, 779 N.W.2d 343 (2010).

43-104.22.

Pursuant to subdivision (7) of this section, for an adoption to proceed, the consent of the biological father who has established a familial relationship with his child is required unless, under section 43-104(2), the party seeking adoption has established that the biological parent: (1) has relinquished the child for adoption by a written instrument, (2) has abandoned the child for at least six months next preceding the filing of the adoption petition, (3) has been deprived of his or her parental rights to such child by the order of any court of competent jurisdiction, or (4) is incapable of consenting. *In re Adoption of Corbin J.*, 278 Neb. 1057, 775 N.W.2d 404 (2009).

43-247.

Pursuant to subdivision (1) of this section, a juvenile court does not have the statutory authority to order detention while a juvenile remains on probation. *In re Interest of Dakota M.*, 279 Neb. 802, 781 N.W.2d 612 (2010).

43-276.

When a court's basis for retaining jurisdiction over a juvenile is supported by appropriate evidence, it cannot be said that the court abused its discretion in refusing to transfer the case to the juvenile court. *State v. Goodwin*, 278 Neb. 945, 774 N.W.2d 733 (2009).

43-292.

Past neglect, along with facts relating to current family circumstances which go to best interests, are all properly considered in a parental rights termination case under subdivision (2) of this section. *In re Interest of Sir Messiah T. et al.*, 279 Neb. 900, 782 N.W.2d 320 (2010).

For purposes of subdivision (1) of this section, "abandonment" 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 Chance J.*, 279 Neb. 81, 776 N.W.2d 519 (2009).

Whether a parent has abandoned a child within the meaning of subdivision (1) of this section is a question of fact and depends upon parental intent, which may be determined by circumstantial evidence. *In re Interest of Chance J.*, 279 Neb. 81, 776 N.W.2d 519 (2009).

Reasonable efforts to preserve and reunify a family are required when the State seeks to terminate parental rights under subdivision (6) of this section. But reasonable efforts to reunify the family are required under the juvenile code only when termination is sought under subdivision (6) of this section, not when termination is based on other grounds. *In re Interest of Chance J.*, 279 Neb. 81, 776 N.W.2d 519 (2009).

Reasonable efforts to reunify a family are required under the juvenile code only when termination of parental rights is sought under subsection (6) of this section. *In re Interest of Hope L. et al.*, 278 Neb. 869, 775 N.W.2d 384 (2009).

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43-512.05.

To the extent that a county board has already appropriated sufficient funding to pay the necessary salaries and expenses for performing child support enforcement duties, the board is entitled to deposit federal reimbursement funds into its general fund. But for any reimbursement funds that the county is not entitled to keep, subsection (3) of this section plainly requires such funds to be carried over from year to year in the county attorney's budget when his or her office is performing all of the child support enforcement duties. *Wetovick v. County of Nance*, 279 Neb. 773, 782 N.W.2d 298 (2010).

43-2924.

In a paternity case subject to the Parenting Act where neither party has requested joint custody, if the court determines that joint custody is, or may be, in the best interests of the child, the court shall give the parties notice and an opportunity to be heard by holding an evidentiary hearing on the issue of joint custody. *State ex rel. Amanda M. v. Justin T.*, 279 Neb. 273, 777 N.W.2d 565 (2010).

44-359.

When read in conjunction with section 25-901, this section prohibits an award of attorney fees to a plaintiff, in a suit against the plaintiff's insurer, who rejects an offer of judgment and later fails to recover more than the amount offered. *Dutton-Lainson Co. v. Continental Ins. Co.*, 279 Neb. 365, 778 N.W.2d 433 (2010).

45-103.02.

Prejudgment interest may be awarded only as provided in subsection (2) of this section. *Dutton-Lainson Co. v. Continental Ins. Co.*, 279 Neb. 365, 778 N.W.2d 433 (2010).

Prejudgment interest is recoverable only when the claim is liquidated, that is, when there is no reasonable controversy as to the plaintiff's right to recover and the amount of such recovery. This determination requires a two-pronged inquiry. There must be no dispute as to the amount due and to the plaintiff's right to recover. *Dutton-Lainson Co. v. Continental Ins. Co.*, 279 Neb. 365, 778 N.W.2d 433 (2010).

This section provides the sole means for recovery of interest costs. Interest is not otherwise recoverable as a separate element of damages. *R & D Properties v. Altech Constr. Co.*, 279 Neb. 74, 776 N.W.2d 493 (2009).

47-503.

Pursuant to this section, a sentencing court is required to separately determine, state, and grant credit for time served. *State v. Clark*, 278 Neb. 557, 772 N.W.2d 559 (2009).

The court has no discretion to grant a defendant more or less credit than is established by the record. *State v. Clark*, 278 Neb. 557, 772 N.W.2d 559 (2009).

When a court grants a defendant more or less credit for time served than the defendant actually served, that portion of the pronouncement of sentence is erroneous and may be corrected to reflect the accurate amount of credit as verified objectively by the record. *State v. Clark*, 278 Neb. 557, 772 N.W.2d 559 (2009).

48-125.

An employer's appeal from a postjudgment proceeding to enforce a workers' compensation award does not disturb the finality of an award imposing a continuing obligation on the employer to pay benefits. *Russell v. Kerry, Inc.*, 278 Neb. 981, 775 N.W.2d 420 (2009).

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A workers' compensation trial judge has continuing jurisdiction to enforce an employer's obligation to pay benefits pending the employer's appeal of the judge's previous order imposing a penalty and costs for a delayed payment. *Russell v. Kerry, Inc.*, 278 Neb. 981, 775 N.W.2d 420 (2009).

Preaward interest, as assessed by an enforcement order in a workers' compensation proceeding, is not a penalty but a means of fully compensating the claimant for not having use of the money that the employer owed. *Russell v. Kerry, Inc.*, 278 Neb. 981, 775 N.W.2d 420 (2009).

Interest that is assessed when a claimant is awarded attorney fees on an enforcement motion is calculated from the time each installment of benefits became due to the date of payment, rather than being assessed on the full amount of benefits owed from the first date that compensation was payable. *Russell v. Kerry, Inc.*, 278 Neb. 981, 775 N.W.2d 420 (2009).

48-134.01.

Pursuant to subsection (3) of this section, the "reasonableness and necessity" of medical treatment and "causality and relatedness of the medical condition to the employment" are separate and distinct questions upon which an independent examiner may be asked to opine. *Miller v. Regional West Med. Ctr.*, 278 Neb. 676, 722 N.W.2d 872 (2009).

48-161.

Ancillary jurisdiction is the power of a court to adjudicate and determine matters incidental to the exercise of its primary jurisdiction of an action. *Midwest PMS v. Olsen*, 279 Neb. 492, 778 N.W.2d 727 (2010).

The final resolution of an employee's right to workers' compensation benefits does not preclude an issue from being ancillary to the resolution of the employee's right to benefits within the meaning of this section. *Midwest PMS v. Olsen*, 279 Neb. 492, 778 N.W.2d 727 (2010).

48-188.

The date on which a workers' compensation court award is filed in a district court pursuant to this section is the date of the judgment for purposes of computing when the judgment becomes dormant under section 25-1515. *Weber v. Gas 'N Shop*, 278 Neb. 49, 767 N.W.2d 746 (2009).

The dormancy provisions of section 25-1515 apply to an award of the Nebraska Workers' Compensation Court which is filed in the district court pursuant to this section, and the date on which a workers' compensation award is filed in district court is the date of judgment for purposes of computing when the judgment becomes dormant. *Allen v. Immanuel Med. Ctr.*, 278 Neb. 41, 767 N.W.2d 502 (2009).

48-191.

The plain language of this section is broad enough to include not only transactions between a party and the court, but also transactions between the parties. *Herrington v. P.R. Ventures*, 279 Neb. 754, 781 N.W.2d 196 (2010).

54-601.

1992 Neb. Laws, L.B. 1011, was prompted by a court decision in which an injured person had been unable to recover for a broken hip that had allegedly been caused by a dog, because it was not a "wound" within the meaning of this section. *Underhill v. Hobelman*, 279 Neb. 30, 776 N.W.2d 786 (2009).

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The purpose of 1992 Neb. Laws, L.B. 1011, was to expand the scope of this section to include “internal damages even if there are no external damages caused by the owner’s dog.” *Underhill v. Hobelman*, 279 Neb. 30, 776 N.W.2d 786 (2009).

60-498.01.

An arresting officer’s sworn report triggers the administrative license revocation process by establishing a prima facie basis for revocation. The sworn report must, at a minimum, contain the information specified in this section in order to confer jurisdiction. *Murray v. Neth*, 279 Neb. 947, 783 N.W.2d 424 (2010).

The Department of Motor Vehicles has the power, in an administrative license revocation proceeding, to evaluate the jurisdictional averments in a sworn report and, if necessary, solicit a sworn addendum to that report if necessary to establish jurisdiction to proceed. *Murray v. Neth*, 279 Neb. 947, 783 N.W.2d 424 (2010).

60-4,108.

The language “from the date ordered by the court” means “from the date selected by the court.” *State v. Fuller*, 278 Neb. 585, 772 N.W.2d 868 (2009).

60-6,196.

As used in this section, the phrase “under the influence of alcoholic liquor or of any drug” requires the ingestion of alcohol or drugs in an amount sufficient to impair to any appreciable degree the driver’s ability to operate a motor vehicle in a prudent and cautious manner. *State v. Daly*, 278 Neb. 903, 775 N.W.2d 47 (2009).

This section only requires proof that the defendant was under the influence of any drug and does not require the drug to be identified by the arresting officer. *State v. Daly*, 278 Neb. 903, 775 N.W.2d 47 (2009).

Whether impairment is caused by alcohol or drugs, a conviction for a violation of this section may be sustained by either a law enforcement officer’s observations of a defendant’s intoxicated behavior or the defendant’s poor performance on field sobriety tests. *State v. Daly*, 278 Neb. 903, 775 N.W.2d 47 (2009).

61-206.

The Department of Natural Resources does not lose jurisdiction to determine the validity of a power district’s appropriation right even if an owner of a superior preference right who is challenging the validity of the power district’s right has also initiated condemnation proceedings as outlined in section 70-672. *In re 2007 Appropriations of Niobrara River Waters*, 278 Neb. 137, 768 N.W.2d 420 (2009).

70-672.

An owner of a superior preference right who initiates condemnation proceedings to enforce that right is not barred from also challenging the validity of a power district’s appropriation right. *In re 2007 Appropriations of Niobrara River Waters*, 278 Neb. 137, 768 N.W.2d 420 (2009).

71-902.

The Nebraska Mental Health Commitment Act applies to any person who is mentally ill and dangerous. *In re Interest of G.H.*, 279 Neb. 708, 781 N.W.2d 438 (2010).

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71-907.

Substance dependence can be considered for purposes of determining that an individual is a dangerous sex offender. In re Interest of G.H., 279 Neb. 708, 781 N.W.2d 438 (2010).

71-1202.

The Sex Offender Commitment Act applies specifically to convicted sex offenders who have completed their jail sentences but continue to pose a threat of harm to others. In re Interest of G.H., 279 Neb. 708, 781 N.W.2d 438 (2010).

71-7202.

The Uniform Determination of Death Act does not establish a rule of evidence requiring that in all cases involving an alleged decedent, the fact of death must be medically established. State v. Edwards, 278 Neb. 55, 767 N.W.2d 784 (2009).

76-2422.

One of the enumerated activities covered by subsection (6) of this section is the exchange of property, based on the plain language of section 81-885.01(2). McCully, Inc. v. Baccaro Ranch, 279 Neb. 443, 778 N.W.2d 115 (2010).

This section does not act as a statute of frauds. McCully, Inc. v. Baccaro Ranch, 279 Neb. 443, 778 N.W.2d 115 (2010).

79-829.

The intent of the tenured teacher statutes is to guarantee a tenured, or permanent certificated, teacher continued employment except where specific statutory grounds for termination of the teacher's contract are demonstrated. Miller v. School Dist. No. 18-0011 of Clay Cty., 278 Neb. 1018, 775 N.W.2d 413 (2009).

Although this section does not specifically define the phrase "reduction in force" as used in the teacher tenure statutes, it involves terminating a teacher's contract due to a surplus of staff. Miller v. School Dist. No. 18-0011 of Clay Cty., 278 Neb. 1018, 775 N.W.2d 413 (2009).

79-846.

A school district is legally prohibited by Nebraska's teacher tenure statutes from terminating a permanent certificated teacher's contract and then hiring a probationary teacher to replace him or her. Miller v. School Dist. No. 18-0011 of Clay Cty., 278 Neb. 1018, 775 N.W.2d 413 (2009).

81-885.01.

One of the enumerated activities covered by section 76-2422(6) is the exchange of property, based on the plain language of subdivision (2) of this section. McCully, Inc. v. Baccaro Ranch, 279 Neb. 443, 778 N.W.2d 115 (2010).

83-174.03.

When a crime is committed before the enactment of a statute which imposed an additional punishment of lifetime community supervision, inclusion of that punishment violates the Ex Post Facto Clauses of the Nebraska and federal Constitutions. State v. Simnick, 279 Neb. 499, 779 N.W.2d 335 (2010).

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83-178.

When a defendant in a capital sentencing proceeding places his or her mental health at issue either by asserting mental retardation or by asserting mental illness, there is good cause under subsection (2) of this section for the prosecution to obtain access to the defendant's mental health records in the possession of the Department of Correctional Services. *State v. Vela*, 279 Neb. 94, 777 N.W.2d 266 (2009).

83-1,126.

Communications to the Board of Pardons are protected by absolute privilege. *Kocontes v. McQuaid*, 279 Neb. 335, 778 N.W.2d 410 (2010).

84-712.

A party seeking a writ of mandamus under section 84-712.03 has the burden to satisfy three elements: (1) The requesting party is a citizen of the state or the other person interested in the examination of the public records; (2) the document sought is a public record as defined by section 84-712.01; and (3) the requesting party has been denied access to the public record as guaranteed by this section. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

84-712.01.

Under this section, requested materials in a private party's possession are public records if the following requirements are met: (1) The public body, through a delegation of its authority to perform a government function, contracted with a private party to carry out the government function; (2) the private party prepared the records under the public body's delegation of authority; (3) the public body was entitled to possess the materials to monitor the private party's performance; and (4) the records are used to make a decision affecting public interest. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

Under subsection (1) of this section, the reference to "data" in the last sentence shows that the Legislature intended public records to include a public body's component information, not just its completed reports or documents. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

Subsection (1) of this section does not require a citizen to show that a public body has actual possession of a requested record. Subsection (3) of this section requires that the "of or belonging to" language be construed liberally; this broad definition includes any documents or records that a public body is entitled to possess—regardless of whether the public body takes possession. The public's right of access should not depend on where the requested records are physically located. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

A party seeking a writ of mandamus under section 84-712.03 has the burden to satisfy three elements: (1) The requesting party is a citizen of the state or other person interested in the examination of the public records; (2) the document sought is a public record as defined by this section; and (3) the requesting party has been denied access to the public record as guaranteed by section 84-712. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

84-712.03.

A party seeking a writ of mandamus under this section has the burden to satisfy three elements: (1) The requesting party is a citizen of the state or other person interested in the examination of the public records; (2) the document sought is a public record as defined by section 84-712.01; and (3) the requesting party has been denied access to the public record as guaranteed by section 84-712. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

ANNOTATIONS

If a requesting party satisfies its prima facie claim for release of public records under this section, the public body opposing disclosure must show by clear and convincing evidence that section 84-712.05 or 84-712.08 exempts the records from disclosure. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

84-712.05.

If a requesting party satisfies its prima facie claim for release of public records under section 84-712.03, the public body opposing disclosure must show by clear and convincing evidence that this section or section 84-712.08 exempts the records from disclosure. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

Because the Legislature has expressed a strong public policy for disclosure, Nebraska courts must narrowly construe statutory exemptions shielding public records from disclosure. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

Under subdivision (5) of this section, a public record is an investigatory record where (1) the activity giving rise to the document sought is related to the duty of investigation or examination with which the public body is charged and (2) the relationship between the investigation or examination and that public body's duty to investigate or examine supports a colorable claim of rationality. This two-part test provides a deferential burden-of-proof rule for a public body performing an investigation or examination with which it is charged. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

The investigatory record exception does not apply to protect material compiled ancillary to an agency's routine administrative functions or oversight activities. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

Under subdivision (5) of this section, a public body can withhold from the public records of its investigation into an employee's conduct only if the investigation focuses on specifically alleged illegal acts. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

84-712.08.

If a requesting party satisfies its prima facie claim for release of public records under section 84-712.03, the public body opposing disclosure must show by clear and convincing evidence that section 84-712.05 or this section exempts the records from disclosure. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

Because the Legislature has expressed a strong public policy for disclosure, Nebraska courts must narrowly construe statutory exemptions shielding public records from disclosure. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

86-457.

Subsections (1) through (3) of this section exclusively apply to postpaid wireless services, while subsections (4) through (6) apply to prepaid wireless services. *TracFone Wireless v. Nebraska Pub. Serv. Comm.*, 279 Neb. 426, 778 N.W.2d 452 (2010).

The plain language of subsection (5) of this section permits the Public Service Commission to require compliance with the surcharges and methods for collection and remittance that it establishes. *TracFone Wireless v. Nebraska Pub. Serv. Comm.*, 279 Neb. 426, 778 N.W.2d 452 (2010).

NEBRASKA UNIFORM COMMERCIAL CODE

UCC 2-316.

The use of an "as is" clause to exclude the implied warranty of merchantability cannot be against the public policy of this state when it mirrors the statutory requirements specifically allowing for such exclusion. *Wilke v. Woodhouse Ford*, 278 Neb. 800, 774 N.W.2d 370 (2009).



**CONSTITUTION OF THE STATE OF
NEBRASKA OF 1875,
AND SUBSEQUENT AMENDMENTS**

ARTICLE XIII

STATE, COUNTY, AND MUNICIPAL INDEBTEDNESS

Section

2. Industrial and economic development; powers of counties and municipalities.

Sec. 2 Industrial and economic development; powers of counties and municipalities.

Notwithstanding any other provision in the Constitution, the Legislature may authorize any county or incorporated city or village, including cities operating under home rule charters, to acquire, own, develop, and lease real and personal property suitable for use by manufacturing or industrial enterprises and to issue revenue bonds for the purpose of defraying the cost of acquiring and developing such property by construction, purchase, or otherwise. The Legislature may also authorize such county, city, or village to acquire, own, develop, and lease real and personal property suitable for use by enterprises as determined by law if such property is located in blighted areas as determined by law and to issue revenue bonds for the purpose of defraying the cost of acquiring and developing or financing such property by construction, purchase, or otherwise. Such bonds shall not become general obligation bonds of the governmental subdivision by which such bonds are issued. Any real or personal property acquired, owned, developed, or used by any such county, city, or village pursuant to this section shall be subject to taxation to the same extent as private property during the time it is leased to or held by private interests, notwithstanding the provisions of Article VIII, section 2, of the Constitution. The acquiring, owning, developing, and leasing of such property shall be deemed for a public purpose, but the governmental subdivision shall not have the right to acquire such property by condemnation. The principal of and interest on any bonds issued may be secured by a pledge of the lease and the revenue therefrom and by mortgage upon such property. No such governmental subdivision shall have the power to operate any such property as a business or in any manner except as the lessor thereof.

Notwithstanding any other provision in the Constitution, the Legislature may also authorize any incorporated city or village, including cities operating under home rule charters, to appropriate such funds as may be deemed necessary for an economic or industrial development project or program subject to approval by a vote of a majority of the registered voters of such city or village voting upon the question. Subject to such vote, funds may be derived from property tax, local option sales tax, or any other general tax levied by the city or village or generated from municipally owned utilities or grants, donations, or state and federal funds received by the city or village subject to any restrictions of the grantor, donor, or state or federal law.

Source: Neb. Const. art. XII, sec. 2 (1875); Transferred by Constitutional Convention, 1919-1920, art. XIII, sec. 2; Amended 1972, Laws

1971, LB 688, sec. 1; Amended 1982, Laws 1982, LB 634, sec. 1; Amended 1990, Laws 1990, LR 11, sec. 1; Amended 2010, Laws 2010, LR 297CA, sec. 1.

CHAPTER 2 AGRICULTURE

Article.

- 15. Nebraska Natural Resources Commission.
 - (b) Nebraska Soil and Water Conservation Act. 2-1579.
- 32. Natural Resources. 2-3215 to 2-3256.
- 37. Dry Bean Resources. 2-3745 to 2-3749.
- 38. Marketing, Development, and Promotion of Agricultural Products.
 - (c) Agricultural Products Promotion and Development. 2-3815.
- 40. Grain Sorghum Development. 2-4004 to 2-4007.
- 50. Aquaculture. 2-5003.
- 54. Agricultural Opportunities and Value-Added Partnerships Act. Repealed.

ARTICLE 15

NEBRASKA NATURAL RESOURCES COMMISSION

(b) NEBRASKA SOIL AND WATER CONSERVATION ACT

Section

- 2-1579. Fund; grants; conditions; acceptance, how construed.

(b) NEBRASKA SOIL AND WATER CONSERVATION ACT

2-1579 Fund; grants; conditions; acceptance, how construed.

(1) Except as provided in subsection (2) of this section, expenditures may be made from the Nebraska Soil and Water Conservation Fund as grants to individual landowners of not to exceed seventy-five percent of the actual cost of eligible projects and practices for soil and water conservation or water quality protection, with priority given to those projects and practices providing the greatest number of public benefits.

(2) The department shall reserve at least two percent of the funds credited to the fund for grants to landowners ordered by a natural resources district pursuant to the Erosion and Sediment Control Act to install permanent soil and water conservation practices. Such funds shall be made available for ninety percent of the actual cost of the required practices and shall be granted on a first-come, first-served basis until exhausted. Applications not served shall receive priority in ensuing fiscal years.

(3) The commission shall determine which specific projects and practices are eligible for the funding assistance authorized by this section and shall adopt, by reference or otherwise, appropriate standards and specifications for carrying out such projects and practices. A natural resources district assisting the department in the administration of the program may, with commission approval, further limit the types of projects and practices eligible for funding assistance in that district.

(4) As a condition for receiving any cost-share funds pursuant to this section, the landowner shall be required to enter into an agreement that if a conservation practice is terminated or a project is removed, altered, or modified so as to lessen its effectiveness, without prior approval of the department or its delegated agent, for a period of ten years after the date of receiving payment, the

landowner shall refund to the fund any public funds used for the practice or project. When deemed necessary by the department or its delegated agent, the landowner may as a further condition for receiving such funds be required to grant a right of access for the operation and maintenance of any eligible project constructed with such assistance. Acceptance of money from the fund shall not in any other manner be construed as affecting land ownership rights unless the landowner voluntarily surrenders such rights.

(5) To the extent feasible, the department and the commission shall administer the fund so that federal funds available within the state for the same general purposes are supplemented and not replaced with state funds.

Source: Laws 1977, LB 450, § 5; Laws 1978, LB 707, § 1; Laws 1979, LB 326, § 1; Laws 1980, LB 687, § 1; Laws 1983, LB 236, § 5; Laws 1986, LB 474, § 15; Laws 1990, LB 906, § 1; Laws 1993, LB 247, § 2; Laws 2000, LB 900, § 29; Laws 2002, LB 1003, § 11; Laws 2011, LB2, § 1.

Effective date August 27, 2011.

Cross References

Erosion and Sediment Control Act, see section 2-4601.

**ARTICLE 32
NATURAL RESOURCES**

Section

- 2-3215. Board; vacancy; how filled.
 2-3225. Districts; tax; levies; limitation; use; collection.
 2-3228. Districts; powers; Nebraska Association of Resources Districts; retirement plan reports; duties.
 2-3256. Structural works; supervision by licensed engineer; when.

2-3215 Board; vacancy; how filled.

(1) In addition to the events listed in section 32-560, a vacancy on the board shall exist in the event of the removal from the district or subdistrict of any director. After notice and hearing, a vacancy shall also exist in the event of the absence of any director from more than two consecutive regular meetings of the board unless such absences are excused by a majority of the remaining board members.

(2) In the event of a vacancy from any of such causes or otherwise, the board of directors shall give notice of the date the vacancy occurred, the office vacated, and the length of the unexpired term (a) in writing to the Secretary of State and (b) to the public by a notice published in a newspaper of general circulation within the district or by posting in three public places in the district. The vacancy shall be filled by the board of directors. The person so appointed shall have the same qualifications as the person whom he or she succeeds. Such appointments shall be in writing and until a successor is elected and qualified. The written appointment shall be filed with the Secretary of State.

(3)(a) If the vacancy occurs during the first year of the unexpired term or prior to August 1 of the second year of the unexpired term, the appointee shall serve until the first Thursday after the first Tuesday in January next succeeding the next regular general election and at such regular general election a director

shall be elected to succeed the appointee and serve the remainder of the unexpired term.

(b) If the vacancy occurs on or after August 1 of the second year of the unexpired term or during the third or fourth year of the unexpired term, the appointee shall serve until the term expires.

Source: Laws 1969, c. 9, § 15, p. 112; Laws 1972, LB 543, § 8; Laws 1985, LB 569, § 1; Laws 1988, LB 1045, § 11; Laws 1994, LB 76, § 460; Laws 2011, LB154, § 1.
Effective date August 27, 2011.

2-3225 Districts; tax; levies; limitation; use; collection.

(1)(a) Each district shall have the power and authority to levy a tax of not to exceed four and one-half cents on each one hundred dollars of taxable valuation annually on all of the taxable property within such district unless a higher levy is authorized pursuant to section 77-3444.

(b) Each district shall also have the power and authority to levy a tax equal to the dollar amount by which its restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed its restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2003-04, not to exceed one cent on each one hundred dollars of taxable valuation annually on all of the taxable property within the district.

(c) In addition to the power and authority granted in subdivisions (1)(a) and (b) of this section, each district located in a river basin, subbasin, or reach that has been determined to be fully appropriated pursuant to section 46-714 or designated overappropriated pursuant to section 46-713 by the Department of Natural Resources shall also have the power and authority to levy a tax equal to the dollar amount by which its restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed its restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2005-06, not to exceed three cents on each one hundred dollars of taxable valuation on all of the taxable property within the district for fiscal year 2006-07 and each fiscal year thereafter through fiscal year 2017-18.

(d) In addition to the power and authority granted in subdivisions (a) through (c) of this subsection, a district with jurisdiction that includes a river subject to an interstate compact among three or more states and that also includes one or more irrigation districts within the compact river basin may annually levy a tax not to exceed ten cents per one hundred dollars of taxable valuation of all taxable property in the district. The proceeds of such tax may be used for the payment of principal and interest on bonds and refunding bonds issued pursuant to section 2-3226.01 or for the repayment of financial assistance received by the district pursuant to section 2-3226.07. Such levy is not includable in the computation of other limitations upon the district's tax levy.

(2) The proceeds of the tax levies authorized in subdivisions (1)(a) through (c) of this section shall be used, together with any other funds which the district may receive from any source, for the operation of the district. When adopted by the board, the tax levies authorized in subdivisions (1)(a) through (d) of this

section shall be certified by the secretary to the county clerk of each county which in whole or in part is included within the district. Such levy shall be handled by the counties in the same manner as other levies, and proceeds shall be remitted to the district treasurer. Such levy shall not be considered a part of the general county levy and shall not be considered in connection with any limitation on levies of such counties.

Source: Laws 1969, c. 9, § 25, p. 115; Laws 1972, LB 540, § 1; Laws 1975, LB 577, § 19; Laws 1979, LB 187, § 10; Laws 1981, LB 110, § 1; Laws 1987, LB 148, § 4; Laws 1992, LB 719A, § 10; Laws 1993, LB 734, § 14; Laws 1996, LB 1114, § 17; Laws 2004, LB 962, § 3; Laws 2006, LB 1226, § 4; Laws 2007, LB701, § 11; Laws 2008, LB1094, § 1; Laws 2011, LB400, § 1.
Effective date August 27, 2011.

Cross References

Nebraska Ground Water Management and Protection Act, see section 46-701.

2-3228 Districts; powers; Nebraska Association of Resources Districts; retirement plan reports; duties.

(1) Each district shall have the power and authority to:

(a) Receive and accept donations, gifts, grants, bequests, appropriations, or other contributions in money, services, materials, or otherwise from the United States or any of its agencies, from the state or any of its agencies or political subdivisions, or from any person as defined in section 49-801 and use or expend all such contributions in carrying on its operations;

(b) Establish advisory groups by appointing persons within the district, pay necessary and proper expenses of such groups as the board shall determine, and dissolve such groups;

(c) Employ such persons as are necessary to carry out its authorized purposes and, in addition to other compensation provided, establish and fund a pension plan designed and intended for the benefit of all permanent full-time employees of the district. Any recognized method of funding a pension plan may be employed. Employee contributions shall be required to fund at least fifty percent of the benefits, and past service benefits may be included. The district shall pay all costs of any such past service benefits, which may be retroactive to July 1, 1972, and the plan may be integrated with old age and survivors' insurance, generally known as social security. A uniform pension plan, including the method for jointly funding such plan, shall be established for all districts in the state. A district may elect not to participate in such a plan but shall not establish an independent plan;

(d) Purchase liability, property damage, workers' compensation, and other types of insurance as in the judgment of the board are necessary to protect the assets of the district;

(e) Borrow money to carry out its authorized purposes;

(f) Adopt and promulgate rules and regulations to carry out its authorized purposes; and

(g) Invite the local governing body of any municipality or county to designate a representative to advise and counsel with the board on programs and policies that may affect the property, water supply, or other interests of such municipality or county.

(2)(a) Beginning December 31, 1998, and each December 31 thereafter, the Nebraska Association of Resources Districts as organized under the Interlocal Cooperation Act shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;
- (vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and
- (viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the association may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the association shall cause to be prepared a quadrennial report and shall file the same with the Public Employees Retirement Board and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan.

Source: Laws 1969, c. 9, § 28, p. 118; Laws 1975, LB 404, § 5; Laws 1983, LB 36, § 4; Laws 1985, LB 387, § 1; Laws 1991, LB 15, § 2; Laws 1994, LB 480, § 10; Laws 1998, LB 1191, § 2; Laws 1999, LB 436, § 5; Laws 1999, LB 795, § 1; Laws 2000, LB 891, § 1; Laws 2011, LB474, § 1.
Effective date August 27, 2011.

Cross References

Interlocal Cooperation Act, see section 13-801.

2-3256 Structural works; supervision by licensed engineer; when.

All design or construction by a district of structural works costing more than one hundred thousand dollars shall be under the supervision of a licensed engineer except as otherwise provided in the Engineers and Architects Regulation Act. The Board of Engineers and Architects shall adjust the dollar amount in this section every fifth year. The first such adjustment after August 27, 2011, shall be effective on July 1, 2014. The adjusted amount shall be equal to the then current amount adjusted by the cumulative percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the five-year period preceding the adjustment date. The amount shall be rounded to the next highest one-thousand-dollar amount.

Source: Laws 1969, c. 9, § 56, p. 133; Laws 1978, LB 420, § 1; Laws 1997, LB 622, § 56; Laws 1999, LB 253, § 1; Laws 2004, LB 599, § 1; Laws 2011, LB45, § 1.
Effective date August 27, 2011.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

ARTICLE 37**DRY BEAN RESOURCES**

Section

- 2-3745. Dry Bean Commission; created; members; qualifications.
- 2-3746. Commission; grower members; districts; processor members.
- 2-3747. Commission; appointment of grower member; candidacy list; petition.
- 2-3748. Commission; members; terms.
- 2-3749. Commission; vacancy.

2-3745 Dry Bean Commission; created; members; qualifications.

There is hereby created the Dry Bean Commission which shall be composed of nine members, two of whom shall be selected by the commission and seven of whom shall be appointed by the Governor. Commission members shall be appointed on a nonpartisan basis. Six members shall be growers who (1) are citizens of Nebraska, (2) are at least twenty-one years of age, (3) have actually been engaged in growing dry beans in this state for at least three years, and (4) derive a substantial portion of their income from growing dry beans. Three members shall be dry bean processors who have been in business in Nebraska for at least three years, and the Director of the University of Nebraska Panhandle Research and Extension Center shall be an ex officio member but shall have no vote in commission matters.

Source: Laws 1987, LB 145, § 11; Laws 2003, LB 219, § 1; Laws 2011, LB394, § 1.
Effective date May 18, 2011.

2-3746 Commission; grower members; districts; processor members.

(1) The Governor shall appoint one grower member from each of the following four districts:

(a) District 1 which shall consist of the counties of Sioux, Dawes, Sheridan, and Box Butte;

- (b) District 2 which shall consist of the county of Scotts Bluff;
- (c) District 3 which shall consist of the counties of Banner, Morrill, Kimball, Cheyenne, Garden, and Deuel; and
- (d) District 4 which shall consist of the remaining counties in which dry bean production occurs in the state.

(2) The commission shall appoint two grower members to the commission, one of whom resides within district 1 or 2 who shall represent districts 1 and 2 and one of whom resides within district 3 or 4 who shall represent districts 3 and 4. Members serving as representatives of such districts on May 18, 2011, shall continue as members of the commission until the end of their terms and until their successors are appointed and qualified and, except as provided in section 2-3748, shall be eligible for reappointment.

(3) The three processor members of the commission shall be appointed by the Governor. Insofar as possible, the geographic locations of such appointed members shall be representative of the Nebraska dry bean industry. Any processor may place his or her name on a candidacy list for appointment by written notice to the commission.

Source: Laws 1987, LB 145, § 12; Laws 2011, LB394, § 2.
Effective date May 18, 2011.

2-3747 Commission; appointment of grower member; candidacy list; petition.

Any grower may place his or her name on a candidacy list for appointment as a grower member of the commission by filing a petition signed by at least ten resident bean growers (1) from the district in which he or she resides for an appointment under subsection (1) of section 2-3746 or (2) from the district in which he or she resides or the other district to be represented for an appointment under subsection (2) of section 2-3746. The petition shall be filed with the commission. The Governor and the commission shall make appointments from the candidacy list unless there are no names on the list.

Source: Laws 1987, LB 145, § 13; Laws 2011, LB394, § 3.
Effective date May 18, 2011.

2-3748 Commission; members; terms.

The term of a member of the commission shall be three years and until his or her successor is appointed and qualified. No member shall serve more than three consecutive three-year terms.

Source: Laws 1987, LB 145, § 14; Laws 2003, LB 219, § 2; Laws 2011, LB394, § 4.
Effective date May 18, 2011.

2-3749 Commission; vacancy.

Whenever a vacancy occurs on the commission for any reason, the Governor shall appoint a person with the same qualifications as the initial appointee unless the vacant position is that of a member appointed by the commission, in which case the appointment to fill such vacancy shall be made by the commission.

Source: Laws 1987, LB 145, § 15; Laws 2011, LB394, § 5.
Effective date May 18, 2011.

ARTICLE 38

**MARKETING, DEVELOPMENT, AND PROMOTION
OF AGRICULTURAL PRODUCTS**

(c) AGRICULTURAL PRODUCTS PROMOTION AND DEVELOPMENT

Section

2-3815. Agriculture promotion and development program; established; purposes; employment of specialists; advisory committee.

(c) AGRICULTURAL PRODUCTS PROMOTION AND DEVELOPMENT

2-3815 Agriculture promotion and development program; established; purposes; employment of specialists; advisory committee.

The Department of Agriculture shall establish an agriculture promotion and development program. The department shall employ a program director and one specialist in research techniques and market development. Both individuals shall report directly to the Director of Agriculture.

The program shall concentrate on the identification and development of opportunities to enhance profitability in agriculture and to stimulate agriculture-related economic development. Program activities may include, but not be limited to, (1) promotion and market development, (2) value-added processing of alternative and traditional commodities, (3) agricultural diversification, including poultry development and aquaculture, (4) agricultural cooperatives, and (5) alternative crops.

In order to carry out the purposes of this section, the program director may, if he or she deems necessary, convene an advisory committee to assist the program director in developing and implementing program activities. Representatives from the Nebraska Food Processing Center, the Cooperative Extension Service of the University of Nebraska, the commodity boards, the Department of Economic Development, the United States Department of Agriculture grant programs, and the private sector may serve on such committee at the request of the program director. If an advisory committee is convened, committee members shall not receive any reimbursement for expenses.

The Department of Agriculture shall serve as the facilitator, coordinator, and catalyst for developments through and with the Nebraska Food Processing Center, the Cooperative Extension Service of the University of Nebraska, the commodity boards, the Department of Economic Development, other state agencies, the United States Department of Agriculture grant programs, and the private sector. It is the intent of the Legislature that the department foster close working relationships between production agriculture and existing programs for the purposes of agricultural development and promotion. The department may enter into such contracts as may be necessary to carry out the purposes of this section.

For purposes of this section, unless the context otherwise requires, private sector shall include, but not be limited to, representatives of food industry associations, lenders, or venture capital groups.

Source: Laws 1987, LB 561, § 1; R.S.1943, (1987), § 2-2516; Laws 2011, LB334, § 1.
Effective date March 11, 2011.

ARTICLE 40

GRAIN SORGHUM DEVELOPMENT

Section

- 2-4004. Board; members; membership districts; officers; terms; vacancy; how filled.
 2-4005. Board; appointment of members; procedure.
 2-4006. Board; membership; transitional provisions.
 2-4007. Board; responsibility; powers.

2-4004 Board; members; membership districts; officers; terms; vacancy; how filled.

(1) The board shall be composed of grower members who (a) are citizens of Nebraska, (b) are at least twenty-one years of age, and (c) derive a portion of their income from growing grain sorghum. The Director of Agriculture and the vice chancellor of the University of Nebraska Institute of Agriculture and Natural Resources shall be ex officio members of the board but shall have no vote in board matters.

(2) Except as provided in section 2-4006 or 2-4007, the members shall be appointed as follows:

(a) One member shall be appointed by the Governor from each of the following districts:

(i) District 1: The counties of Cedar, Dixon, Dakota, Wayne, Thurston, Stanton, Cuming, Burt, Colfax, Dodge, Washington, Douglas, Butler, Saunders, Sarpy, Seward, Saline, Lancaster, Cass, Otoe, Jefferson, Gage, Johnson, Nemaha, Pawnee, and Richardson;

(ii) District 2: The counties of Knox, Antelope, Pierce, Madison, Boone, Platte, Nance, Merrick, Polk, Hamilton, York, Adams, Clay, Fillmore, Webster, Nuckolls, and Thayer;

(iii) District 3: The counties of Keya Paha, Boyd, Brown, Rock, Holt, Blaine, Loup, Garfield, Wheeler, Custer, Valley, Greeley, Sherman, Howard, Dawson, Buffalo, Hall, Gosper, Phelps, Kearney, Furnas, Harlan, and Franklin; and

(iv) District 4: The counties of Sioux, Dawes, Box Butte, Sheridan, Cherry, Scotts Bluff, Banner, Kimball, Morrill, Cheyenne, Garden, Deuel, Grant, Hooker, Thomas, Arthur, McPherson, Logan, Keith, Perkins, Lincoln, Chase, Hayes, Frontier, Dundy, Hitchcock, and Red Willow; and

(b) Three members shall be appointed from the state at large, two of whom shall be appointed by the Governor and one appointed by the board. When making at-large appointments, the Governor and the board shall, to the extent practicable, seek to achieve an equitable representation of grain sorghum producers in terms of the geographic distribution of grain sorghum production in the state. No more than two at-large members may reside in a single district as defined by subdivision (a) of this subsection.

(3) The board shall elect from its members a chairperson, treasurer, and such other officers as may be necessary. Except as provided in section 2-4006, the term of office for members of the board shall be three years and until their successors are appointed and qualified.

(4) Whenever a vacancy occurs on the board for any reason, the remaining board members shall appoint an individual to fill such vacancy from the district in which the vacancy exists. If the vacant position is that of an at-large member,

the appointment to fill such vacancy shall be made at large subject to subdivision (2)(b) of this section.

Source: Laws 1981, LB 11, § 4; Laws 2011, LB107, § 1.
Effective date May 18, 2011.

2-4005 Board; appointment of members; procedure.

Members shall be appointed to the board on a nonpartisan basis. Candidates for appointment to the board may place their names on a candidacy list for the respective district or for at-large appointment by submitting to the board an application for gubernatorial appointment obtained from the Governor's office, a statement of interest in serving on the board, two letters of endorsement of the candidate's appointment by grain sorghum growers, and documentation substantiating qualification to serve as a member of the board. The board may publish guidelines regarding the forms of documentation suitable to substantiate qualification to serve on the board. The board shall perform a review of each candidate's qualification to serve and shall without undue delay forward all applications for appointment to the Governor along with the board's assessment of the candidate's qualification to serve the appointment. Qualified individuals residing within their district shall be eligible for nomination as candidates from such district, and qualified individuals residing in the state shall be eligible for at-large appointment.

Source: Laws 1981, LB 11, § 5; Laws 2011, LB107, § 2.
Effective date May 18, 2011.

2-4006 Board; membership; transitional provisions.

The member serving district 1 as it existed prior to May 18, 2011, shall assume the role of serving district 1 as defined by section 2-4004, and his or her term shall expire on July 1, 2014. The member serving district 3 as it existed prior to May 18, 2011, shall assume the role of serving new district 2 as defined by section 2-4004, and his or her term shall expire on July 1, 2013. The member serving as the at-large member prior to May 18, 2011, shall assume the role of serving district 3 as defined by section 2-4004, and his or her term shall expire on July 1, 2013. The Governor shall appoint a member to serve district 4 as defined by section 2-4004, and the term of such member shall expire on July 1, 2012. The member serving district 2 as it existed prior to May 18, 2011, shall assume the role of serving as the at-large member appointed by the board as defined by section 2-4004, and his or her term shall expire on July 1, 2012. The member serving district 4 as it existed prior to May 18, 2011, shall assume the role of serving as an at-large member appointed by the Governor as defined by section 2-4004, and the term of such member shall expire on July 1, 2013. The member serving district 5 as it existed prior to May 18, 2011, shall assume the role of serving as an at-large member appointed by the Governor as defined by section 2-4004, and the term of such member shall expire on July 1, 2014.

Source: Laws 1981, LB 11, § 6; Laws 2011, LB107, § 3.
Effective date May 18, 2011.

2-4007 Board; responsibility; powers.

The board shall be responsible for the administration of all subsequent appointments and may adopt rules and regulations to carry out such responsibility. The composition of the board as defined by section 2-4004 shall continue

until such time as the board determines that the districts and at-large membership as defined by such section are incompatible with an equitable representation of producers of grain sorghum due to changing geographic distribution of grain sorghum production in the state, changing marketing patterns, or availability of qualified individuals to serve as board members. The board may, from time to time as appropriate, by rule and regulation, redesignate districts and the number of at-large members to provide for an equitable representation of producers of grain sorghum, except that the number of appointed members of the board shall be either seven or five and the number of districts shall be no greater than six nor fewer than three.

Source: Laws 1981, LB 11, § 7; Laws 2011, LB107, § 4.
Effective date May 18, 2011.

ARTICLE 50 AQUACULTURE

Section

2-5003. Nebraska Aquaculture Board; created; members; terms; expenses.

2-5003 Nebraska Aquaculture Board; created; members; terms; expenses.

There is hereby created the Nebraska Aquaculture Board. The board shall consist of (1) one employee of the commission who is familiar with aquatic disease, appointed by the secretary of the commission, (2) one employee of the department appointed by the director, (3) three aquaculturists, appointed by the Governor, and (4) a representative of an industry or product which is related to or used in aquaculture, appointed by the Governor. The board shall elect from its members a chairperson. The terms of the members of the board shall be three years, except that the terms of the initial aquaculturist members of the board appointed by the Governor shall be staggered so that one member is appointed for a term of one year, one for a term of two years, and one for a term of three years, as determined by the Governor. Members appointed under subdivisions (3) and (4) of this section shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1993, LB 830, § 3; Laws 1994, LB 1165, § 2; Laws 1999, LB 405, § 1; Laws 2011, LB334, § 2.
Effective date March 11, 2011.

ARTICLE 54 AGRICULTURAL OPPORTUNITIES AND VALUE- ADDED PARTNERSHIPS ACT

Section

2-5413. Repealed. Laws 2011, LB 387, § 18.
2-5414. Repealed. Laws 2011, LB 387, § 18.
2-5415. Repealed. Laws 2011, LB 387, § 18.
2-5416. Repealed. Laws 2011, LB 387, § 18.
2-5417. Repealed. Laws 2011, LB 387, § 18.
2-5418. Repealed. Laws 2011, LB 387, § 18.
2-5419. Repealed. Laws 2011, LB 387, § 18.
2-5420. Repealed. Laws 2011, LB 387, § 18.
2-5421. Repealed. Laws 2011, LB 387, § 18.
2-5422. Repealed. Laws 2011, LB 387, § 18.
2-5423. Repealed. Laws 2011, LB 387, § 18.

§ 2-5413

AGRICULTURE

Section

2-5424. Repealed. Laws 2011, LB 387, § 18.

2-5413 Repealed. Laws 2011, LB 387, § 18.
Operative date October 1, 2011.

2-5414 Repealed. Laws 2011, LB 387, § 18.
Operative date October 1, 2011.

2-5415 Repealed. Laws 2011, LB 387, § 18.
Operative date October 1, 2011.

2-5416 Repealed. Laws 2011, LB 387, § 18.
Operative date October 1, 2011.

2-5417 Repealed. Laws 2011, LB 387, § 18.
Operative date October 1, 2011.

2-5418 Repealed. Laws 2011, LB 387, § 18.
Operative date October 1, 2011.

2-5419 Repealed. Laws 2011, LB 387, § 18.
Operative date October 1, 2011.

2-5420 Repealed. Laws 2011, LB 387, § 18.
Operative date October 1, 2011.

2-5421 Repealed. Laws 2011, LB 387, § 18.
Operative date October 1, 2011.

2-5422 Repealed. Laws 2011, LB 387, § 18.

Note: This section was amended by Laws 2011, LB404, section 1, and repealed by Laws 2011, LB387, section 18.

Note: LB387 became operative October 1, 2011. LB404 became operative January 1, 2012.

2-5423 Repealed. Laws 2011, LB 387, § 18.
Operative date October 1, 2011.

2-5424 Repealed. Laws 2011, LB 387, § 18.
Operative date October 1, 2011.

CHAPTER 4

ALIENS

Section

4-108. Public benefits; state agency or political subdivision; verification of lawful presence; employee; participation in retirement system; restriction.

4-108 Public benefits; state agency or political subdivision; verification of lawful presence; employee; participation in retirement system; restriction.

(1) Notwithstanding any other provisions of law, unless exempted from verification under section 4-110 or pursuant to federal law, no state agency or political subdivision of the State of Nebraska shall provide public benefits to a person not lawfully present in the United States.

(2) Except as provided in section 4-110 or if exempted by federal law, every agency or political subdivision of the State of Nebraska shall verify the lawful presence in the United States of any person who has applied for public benefits administered by an agency or a political subdivision of the State of Nebraska. This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(3) On and after October 1, 2009, no employee of a state agency or political subdivision of the State of Nebraska shall be authorized to participate in any retirement system, including, but not limited to, the systems provided for in the Class V School Employees Retirement Act, the County Employees Retirement Act, the Judges Retirement Act, the Nebraska State Patrol Retirement Act, the School Employees Retirement Act, and the State Employees Retirement Act, unless the employee (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

Source: Laws 2009, LB403, § 1; Laws 2011, LB509, § 1.
Operative date July 1, 2011.

Cross References

Class V School Employees Retirement Act, see section 79-978.01.

County Employees Retirement Act, see section 23-2331.

Judges Retirement Act, see section 24-701.01.

Nebraska State Patrol Retirement Act, see section 81-2014.01.

School Employees Retirement Act, see section 79-901.

State Employees Retirement Act, see section 84-1331.



CHAPTER 8

BANKS AND BANKING

Article.

1. General Provisions. 8-132.01, 8-1,140.
3. Building and Loan Associations. 8-355.
6. Assessments and Fees. 8-602.
7. State-Federal Cooperation Acts; Capital Notes.
 - (a) Federal Banking Act of 1933. 8-702.
11. Securities Act of Nebraska. 8-1101 to 8-1111.
15. Acquisition or Merger of Financial Institutions.
 - (c) Cross-Industry Acquisition or Merger of Financial Institution. 8-1510.
17. Commodity Code. 8-1704, 8-1707.

ARTICLE 1

GENERAL PROVISIONS

Section

- 8-132.01. Repealed. Laws 2011, LB 74, § 9.
- 8-1,140. Federally chartered bank; bank organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

8-132.01 Repealed. Laws 2011, LB 74, § 9.

Operative date August 27, 2011.

8-1,140 Federally chartered bank; bank organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

Notwithstanding any of the other provisions of the Nebraska Banking Act or any other Nebraska statute, any bank incorporated under the laws of this state and organized under the provisions of the act, or under the laws of this state as they existed prior to May 9, 1933, shall directly, or indirectly through a subsidiary or subsidiaries, have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2011, by a federally chartered bank doing business in Nebraska, including the exercise of all powers and activities that are permitted for a financial subsidiary of a federally chartered bank. Such rights, powers, privileges, benefits, and immunities shall not relieve such bank from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1999, LB 396, § 5; Laws 2000, LB 932, § 4; Laws 2001, LB 53, § 2; Laws 2002, LB 957, § 7; Laws 2003, LB 217, § 9; Laws 2004, LB 999, § 3; Laws 2005, LB 533, § 11; Laws 2006, LB 876, § 12; Laws 2007, LB124, § 6; Laws 2008, LB851, § 7; Laws 2009, LB327, § 6; Laws 2010, LB890, § 6; Laws 2011, LB74, § 1. Operative date February 23, 2011.

ARTICLE 3

BUILDING AND LOAN ASSOCIATIONS

Section

8-355. Federal savings and loan; associations organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

8-355 Federal savings and loan; associations organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

Notwithstanding any of the provisions of Chapter 8, article 3, or any other Nebraska statute, except as provided in section 8-345.02, any association incorporated under the laws of the State of Nebraska and organized under the provisions of such article shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2011, by a federal savings and loan association doing business in Nebraska. Such rights, powers, privileges, benefits, and immunities shall not relieve such association from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1971, LB 185, § 1; Laws 1972, LB 1288, § 1; Laws 1973, LB 351, § 1; Laws 1974, LB 784, § 1; Laws 1975, LB 201, § 1; Laws 1976, LB 763, § 2; Laws 1977, LB 224, § 1; Laws 1978, LB 717, § 6; Laws 1979, LB 154, § 2; Laws 1980, LB 865, § 1; Laws 1981, LB 71, § 1; Laws 1982, LB 646, § 1; Laws 1983, LB 144, § 1; Laws 1984, LB 923, § 1; Laws 1985, LB 128, § 1; Laws 1986, LB 1052, § 1; Laws 1987, LB 115, § 1; Laws 1988, LB 858, § 1; Laws 1989, LB 207, § 1; Laws 1990, LB 1016, § 1; Laws 1991, LB 98, § 1; Laws 1992, LB 470, § 4; Laws 1992, LB 985, § 1; Laws 1993, LB 288, § 1; Laws 1994, LB 876, § 1; Laws 1995, LB 41, § 1; Laws 1996, LB 949, § 1; Laws 1997, LB 35, § 1; Laws 1998, LB 1321, § 67; Laws 1999, LB 396, § 12; Laws 2000, LB 932, § 16; Laws 2001, LB 53, § 6; Laws 2002, LB 957, § 8; Laws 2003, LB 217, § 11; Laws 2004, LB 999, § 4; Laws 2005, LB 533, § 19; Laws 2006, LB 876, § 13; Laws 2007, LB124, § 7; Laws 2008, LB851, § 11; Laws 2009, LB327, § 9; Laws 2010, LB890, § 8; Laws 2011, LB74, § 2.

Operative date February 23, 2011.

ARTICLE 6

ASSESSMENTS AND FEES

Section

8-602. Department of Banking and Finance; services; schedule of fees.

8-602 Department of Banking and Finance; services; schedule of fees.

The Director of Banking and Finance shall charge and collect fees for certain services rendered by the Department of Banking and Finance according to the following schedule:

(1) For filing and examining articles of incorporation, articles of association, and bylaws, except credit unions, one hundred dollars, and for credit unions, fifty dollars;

(2) For filing and examining an amendment to articles of incorporation, articles of association, and bylaws, except credit unions, fifty dollars, and for credit unions, fifteen dollars;

(3) For issuing to banks, credit card banks, trust companies, and building and loan associations a charter, authority, or license to do business in this state, a sum which shall be determined on the basis of one dollar and fifty cents for each one thousand dollars of authorized capital, except that the minimum fee in each case shall be two hundred twenty-five dollars;

(4) For issuing an executive officer's or loan officer's license, fifty dollars at the time of the initial license and fifteen dollars on or before January 15 each year thereafter, except credit unions for which the fee shall be twenty-five dollars at the time of the initial license and fifteen dollars on or before January 15 each year thereafter;

(5) For affixing certificate and seal, five dollars;

(6) For making substitution of securities held by it and issuing a receipt, fifteen dollars;

(7) For issuing a certificate of approval to a credit union, ten dollars;

(8) For investigating the applications required by sections 8-117, 8-120, 8-331, and 8-2402 and the documents required by section 8-201, the cost of such examination, investigation, and inspection, including all legal expenses and the cost of any hearing transcript, with a minimum fee under (a) sections 8-117, 8-120, and 8-2402 of two thousand five hundred dollars, (b) section 8-331 of two thousand dollars, and (c) section 8-201 of one thousand dollars. The department may require the applicant to procure and give a surety bond in such principal amount as the department may determine and conditioned for the payment of the fees provided in this subdivision;

(9) For registering a statement of intention to engage in the business of making personal loans pursuant to section 8-816, fifty dollars;

(10) For the handling of pledged securities as provided in sections 8-210 and 8-1006, at the time of the initial deposit of such securities, one dollar and fifty cents for each thousand dollars of securities deposited and a like amount on or before January 15 each year thereafter. The fees shall be paid by the company, national bank, federal savings association, federally chartered trust company, out-of-state trust company authorized under the Interstate Trust Company Office Act, or state-chartered bank pledging the securities;

(11) For investigating an application to move its location within the city or village limits of its original license or charter for banks, trust companies, and building and loan associations, two hundred fifty dollars;

(12) For investigating an application under subdivision (6) of section 8-115.01, five hundred dollars;

(13) For investigating an application for approval to establish or acquire a branch or to establish a mobile branch pursuant to section 8-157, two hundred fifty dollars;

(14) For investigating a notice of acquisition of control under subsection (1) of section 8-1502, five hundred dollars;

(15) For investigating an application for a cross-industry merger under section 8-1510, five hundred dollars;

(16) For investigating an application for a merger of two state banks or a merger of a state bank and a national bank in which the state bank is the surviving entity, five hundred dollars;

(17) For investigating an application or a notice to establish a branch trust office, five hundred dollars;

(18) For investigating an application or a notice to establish a representative trust office, five hundred dollars;

(19) For investigating an application to establish a credit union branch under section 21-1725.01, two hundred fifty dollars;

(20) For investigating an applicant under section 8-1513, five thousand dollars; and

(21) For investigating a request to extend a conditional bank charter under section 8-117, one thousand dollars.

Source: Laws 1937, c. 20, § 2, p. 129; C.S.Supp., 1941, § 8-702; R.S. 1943, § 8-602; Laws 1957, c. 10, § 5, p. 132; Laws 1961, c. 15, § 8, p. 113; Laws 1967, c. 23, § 2, p. 127; Laws 1969, c. 43, § 1, p. 252; Laws 1972, LB 1194, § 1; Laws 1973, LB 164, § 21; Laws 1976, LB 561, § 3; Laws 1987, LB 642, § 1; Laws 1992, LB 470, § 5; Laws 1992, LB 757, § 11; Laws 1993, LB 81, § 54; Laws 1995, LB 599, § 4; Laws 1998, LB 1321, § 68; Laws 1999, LB 396, § 13; Laws 2000, LB 932, § 17; Laws 2002, LB 1089, § 7; Laws 2002, LB 1094, § 7; Laws 2003, LB 131, § 8; Laws 2003, LB 217, § 14; Laws 2004, LB 999, § 5; Laws 2005, LB 533, § 20; Laws 2007, LB 124, § 9; Laws 2009, LB 327, § 10; Laws 2010, LB 891, § 3; Laws 2011, LB 74, § 3.

Operative date August 27, 2011.

Cross References

Interstate Trust Company Office Act, see section 8-2301.

ARTICLE 7

STATE-FEDERAL COOPERATION ACTS; CAPITAL NOTES

(a) FEDERAL BANKING ACT OF 1933

Section

8-702. Banking institutions; maintain insurance or provide notice; notice requirements; violation; penalty; proof of compliance filed with Department of Banking and Finance; employment of mortgage loan originators; requirements; automatic forfeiture of charter.

(a) FEDERAL BANKING ACT OF 1933

8-702 Banking institutions; maintain insurance or provide notice; notice requirements; violation; penalty; proof of compliance filed with Department of Banking and Finance; employment of mortgage loan originators; requirements; automatic forfeiture of charter.

(1) Except as provided in subsection (2) of this section, any banking institution organized under the laws of this state shall, before a charter may be issued, enter into such contracts, incur such obligations, and generally do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to obtain membership in the Federal Deposit Insurance Corporation and provide for insurance of deposits in the banking institution. Any banking institution may take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights, or privileges which may at any time be

available or inure to banking institutions or to their depositors, creditors, stockholders, conservators, receivers, or liquidators by virtue of those provisions of section 8 of the Federal Banking Act of 1933 (section 12B of the Federal Reserve Act, as amended) which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits or of any other provisions of that or of any other act or resolution of Congress to aid, regulate, or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor. Any banking institution may also subscribe for and acquire any stock, debentures, bonds, or other types of securities of the Federal Deposit Insurance Corporation and comply with the lawful regulations and requirements from time to time issued or made by such corporation.

(2)(a) A banking institution which has not complied with subsection (1) of this section and which was in operation on September 4, 2005, may continue to operate if it provides notice to depositors and holders of savings certificates, certificates of indebtedness, or other similar instruments that such deposits or instruments are not insured. Such notice shall be given (i) on the date any such deposit, savings certificate, certificate of indebtedness, or similar instrument is created for deposits made and instruments created on or after October 1, 1984, and (ii) annually on October 1 thereafter as follows: AS PROVIDED BY THE LAWS OF THE STATE OF NEBRASKA YOU ARE HEREBY NOTIFIED THAT YOUR DEPOSIT, SAVINGS CERTIFICATE, CERTIFICATE OF INDEBTEDNESS, OR OTHER SIMILAR INSTRUMENT IS NOT INSURED. Any advertising conducted by such banking institution shall in each case state: THE DEPOSITS, SAVINGS CERTIFICATES, CERTIFICATES OF INDEBTEDNESS, OR SIMILAR INSTRUMENTS OF THIS INSTITUTION ARE NOT INSURED. The banking institution shall also display such notice in one or more prominent places in all facilities in which the institution operates. All such notices and statements shall be given in large or contrasting type in such a manner that such notices shall be conspicuous. Each willful failure to give the notice prescribed in subdivision (2)(a) of this section shall constitute a Class II misdemeanor. All officers and directors of any such banking institution shall be jointly and severally responsible for the issuance of the notices described in subdivision (2)(a) of this section in the form and manner described. The banking institution shall annually by November 1 file proof of compliance with subdivision (2)(a) of this section with the Department of Banking and Finance.

(b) Effective July 31, 2010, or within one hundred eighty days after the Nationwide Mortgage Licensing System and Registry is capable of accepting such registrations, whichever occurs later, any banking institution described in subdivision (a) of this subsection that employs mortgage loan originators, as defined in section 45-702, shall register such employees with the Nationwide Mortgage Licensing System and Registry, as defined in section 45-702, by furnishing the following information concerning the employees' identities to the Nationwide Mortgage Licensing System and Registry:

(i) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information, for a state and national criminal history background check; and

(ii) Personal history and experience, including authorization for the Nationwide Mortgage Licensing System and Registry to obtain information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(3) The charter of any banking institution which fails to comply with the provisions of this section shall be automatically forfeited and such banking institution shall be liquidated and dissolved, either voluntarily by its board of directors under the supervision of the department or involuntarily by the department as in cases of insolvency, except that such charter shall not be automatically forfeited for failure to comply with subdivision (2)(b) of this section if the banking institution cures such violation within sixty days after receipt of notice of such violation from the Department of Banking and Finance. Any banking institution whose charter is automatically forfeited under the provisions of this subsection which continues to engage in the business for which it had been chartered after such forfeiture, as well as the directors and officers thereof, shall be subject to the penalties provided by law for illegally engaging in the business of banking.

Source: Laws 1935, c. 8, § 2, p. 73; C.S.Supp.,1941, § 8-402; R.S.1943, § 8-702; Laws 1963, c. 31, § 2, p. 190; Laws 1983, LB 252, § 5; Laws 1984, LB 899, § 3; Laws 2005, LB 533, § 22; Laws 2009, LB328, § 2; Laws 2010, LB892, § 1; Laws 2011, LB75, § 1. Effective date February 23, 2011.

ARTICLE 11

SECURITIES ACT OF NEBRASKA

Section

- 8-1101. Terms, defined.
 8-1110. Securities exempt from registration.
 8-1111. Transactions exempt from registration.

8-1101 Terms, defined.

For purposes of the Securities Act of Nebraska, unless the context otherwise requires:

(1) Agent means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but agent does not include an individual who represents (a) an issuer in (i) effecting a transaction in a security exempted by subdivision (6), (7), or (8) of section 8-1110, (ii) effecting certain transactions exempted by section 8-1111, (iii) effecting transactions in a federal covered security as described in section 18(b)(3) of the Securities Act of 1933, or (iv) effecting transactions with existing employees, limited liability company members, partners, or directors of the issuer or any of its subsidiaries if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state or (b) a broker-dealer in effecting transactions described in section 15(h)(2) of the Securities Exchange Act of 1934. A partner, limited liability company member, officer, or director of a broker-dealer is an agent only if he or she otherwise comes within this definition;

(2) Broker-dealer means any person engaged in the business of effecting transactions in securities for the account of others or for his or her own account. Broker-dealer does not include (a) an issuer-dealer, agent, bank, savings institution, or trust company, (b) an issuer effecting a transaction in its own security exempted by subdivision (5) of section 8-1110 or which qualifies as a federal covered security pursuant to section 18(b)(1) of the Securities Act of 1933, (c) a person who has no place of business in this state if he or she

effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (d) a person who has no place of business in this state if during any period of twelve consecutive months he or she does not direct more than five offers to sell or to buy into this state in any manner to persons other than those specified in subdivision (2)(c) of this section;

(3) Director means the Director of Banking and Finance of the State of Nebraska except as further provided in section 8-1120;

(4) Federal covered adviser means a person who is (a) registered under section 203 of the Investment Advisers Act of 1940 or (b) is excluded from the definition of investment adviser under section 202 of the Investment Advisers Act of 1940;

(5) Federal covered security means any security described as a covered security under section 18(b) of the Securities Act of 1933 or rules and regulations promulgated thereunder;

(6) Guaranteed means guaranteed as to payment of principal, interest, or dividends;

(7) Investment adviser means any person who for compensation engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who for compensation and as a part of a regular business issues or promulgates analyses or reports concerning securities. Investment adviser also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. Investment adviser does not include (a) an investment adviser representative, (b) a bank, savings institution, or trust company, (c) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession, (d) a broker-dealer or its agent whose performance of these services is solely incidental to its business as a broker-dealer and who receives no special compensation for them, (e) an issuer-dealer, (f) a publisher of any bona fide newspaper, news column, news letter, news magazine, or business or financial publication or service, whether communicated in hard copy form, by electronic means, or otherwise which does not consist of the rendering of advice on the basis of the specific investment situation of each client, (g) a person who has no place of business in this state if (i) his or her only clients in this state are other investment advisers, federal covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (ii) during the preceding twelve-month period, he or she has had five or fewer clients who are residents of this state other than those persons specified in subdivision (g)(i) of this subdivision, (h) any person that is a federal covered adviser, or (i) such

other persons not within the intent of this subdivision as the director may by rule, regulation, or order designate;

(8) Investment adviser representative means any partner, limited liability company member, officer, or director or any person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is registered or required to be registered under the Securities Act of Nebraska or who has a place of business located in this state and is employed by or associated with a federal covered adviser, and who (a) makes any recommendations or otherwise renders advice regarding securities, (b) manages accounts or portfolios of clients, (c) determines which recommendation or advice regarding securities should be given, (d) solicits, offers, or negotiates for the sale of or sells investment advisory services, or (e) supervises employees who perform any of the foregoing;

(9) Issuer means any person who issues or proposes to issue any security, except that (a) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued and (b) with respect to a fractional or pooled interest in a viatical settlement contract, issuer means the person who creates, for the purpose of sale, the fractional or pooled interest. In the case of a viatical settlement contract that is not fractionalized or pooled, issuer means the person effecting a transaction with a purchaser of such contract;

(10) Issuer-dealer means (a) any issuer located in the State of Nebraska or (b) any issuer which registered its securities by qualification who proposes to sell to the public of the State of Nebraska the securities that it issues without the benefit of another registered broker-dealer. Such securities shall have been approved for sale in the State of Nebraska pursuant to section 8-1104;

(11) Nonissuer means not directly or indirectly for the benefit of the issuer;

(12) Person means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

(13) Sale or sell includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value. Offer or offer to sell includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock shall be considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, shall be considered to include an offer of the other security;

(14) Securities Act of 1933, Securities Exchange Act of 1934, Investment Advisers Act of 1940, Investment Company Act of 1940, and Commodity Exchange Act means the federal statutes of those names as amended on or before January 1, 2011;

(15) Security means any note, stock, treasury stock, bond, debenture, units of beneficial interest in a real estate trust, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, viatical settlement contract or any fractional or pooled interest in such contract, membership interest in any limited liability company organized under Nebraska law or any other jurisdiction unless otherwise excluded from this definition, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, in general any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. Security does not include any insurance or endowment policy or annuity contract issued by an insurance company. Security also does not include a membership interest in a limited liability company when all of the following exist: (a) The member enters into a written commitment to be engaged actively and directly in the management of the limited liability company; and (b) all members of the limited liability company are actively engaged in the management of the limited liability company;

(16) State means any state, territory, or possession of the United States as well as the District of Columbia and Puerto Rico; and

(17) Viatical settlement contract means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of all or any portion of the death benefit or ownership of a life insurance policy or contract for consideration which is less than the expected death benefit of the life insurance policy or contract. Viatical settlement contract does not include (a) the assignment, transfer, sale, devise, or bequest of a death benefit of a life insurance policy or contract made by the viator to an insurance company or to a viatical settlement provider or broker licensed pursuant to the Viatical Settlements Act, (b) the assignment of a life insurance policy or contract to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan, or (c) the exercise of accelerated benefits pursuant to the terms of a life insurance policy or contract and consistent with applicable law.

Source: Laws 1965, c. 549, § 1, p. 1763; Laws 1973, LB 167, § 1; Laws 1977, LB 263, § 1; Laws 1978, LB 760, § 1; Laws 1989, LB 60, § 1; Laws 1991, LB 305, § 2; Laws 1993, LB 216, § 1; Laws 1993, LB 121, § 96; Laws 1994, LB 884, § 10; Laws 1995, LB 119, § 1; Laws 1996, LB 1053, § 7; Laws 1997, LB 335, § 1; Laws 2001, LB 52, § 43; Laws 2001, LB 53, § 19; Laws 2011, LB76, § 1.

Effective date February 23, 2011.

Cross References

Viatical Settlements Act, see section 44-1101.

8-1110 Securities exempt from registration.

Sections 8-1104 to 8-1109 shall not apply to any of the following securities:

(1) Any security, including a revenue obligation, issued or guaranteed by the State of Nebraska, any political subdivision, or any agency or corporate or other instrumentality thereof or any certificate of deposit for any of the foregoing;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) Any security issued or guaranteed by any federal credit union or any credit union or similar association organized and supervised under the laws of this state;

(4) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (a) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality or (b) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(5)(a) Any security listed on the Chicago Stock Exchange, the Chicago Board Options Exchange, Tier I of the Pacific Stock Exchange, Tier I of the Philadelphia Stock Exchange, or any other stock exchange or market system approved by the director, if, in each case, quotations have been available and public trading has taken place for such class of security prior to the offer or sale of that security in reliance on the exemption; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing or to any security listed on the New York Stock Exchange, the American Stock Exchange, or the NASDAQ Global Market.

(b) The issuer of any security which has been approved for listing or designation on notice of issuance on such exchanges or market systems, and for which no quotations have been available and no public trading has taken place for any of such issuer's securities, may rely upon the exemption stated in subdivision (5)(a) of this section, if a notice is filed with the director, together with a filing fee of two hundred dollars, prior to first use of a disclosure document covering such securities in this state, except that failure to file such notice in a timely manner may be cured by the director in his or her discretion.

(c) The director may adopt and promulgate rules and regulations which, after notice to such exchange or market system and an opportunity to be heard, remove any such exchange or market system from the exemption stated in subdivision (5)(a) of this section if the director finds that the listing requirements or market surveillance of such exchange or market system is such that the continued availability of such exemption for such exchange or market system is not in the public interest and that removal is necessary for the protection of investors;

(6) Any security which meets all of the following conditions:

(a) The issuer is organized under the laws of the United States or a state or has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus;

(b) A class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been so registered for the three years immediately preceding the offering date;

(c) Neither the issuer nor a significant subsidiary has had a material default during the last seven years, or during the issuer's existence if such existence is less than seven years, in the payment of (i) principal, interest, dividends, or sinking-fund installments on preferred stock or indebtedness for borrowed money or (ii) rentals under leases with terms of three or more years;

(d) The issuer has had consolidated net income, without taking into account extraordinary items and the cumulative effect of accounting changes, of at least one million dollars in four of its last five fiscal years, including its last fiscal year, and if the offering is of interest-bearing securities the issuer has had for its last fiscal year net income before deduction for income taxes and depreciation of at least one and one-half times the issuer's annual interest expense, taking into account the proposed offering and the intended use of the proceeds. However, if the issuer of the securities is a finance company which has liquid assets of at least one hundred five percent of its liabilities, other than deferred income taxes, deferred investment tax credit, capital stock, and surplus, at the end of its last five fiscal years, the net income requirement before deduction for interest expense shall be one and one-fourth times its annual interest expense. For purposes of this subdivision: (i) Last fiscal year means the most recent year for which audited financial statements are available, if such statements cover a fiscal period ending not more than fifteen months from the commencement of the offering; (ii) finance company means a company engaged primarily in the business of wholesale, retail, installment, mortgage, commercial, industrial, or consumer financing, banking, or factoring; and (iii) liquid assets means (A) cash, (B) receivables payable on demand or not more than twelve months following the close of the company's last fiscal year less applicable reserves and unearned income, and (C) readily marketable securities less applicable reserves and unearned income;

(e) If the offering is of stock or shares other than preferred stock or shares, such securities have voting rights which include (i) the right to have at least as many votes per share and (ii) the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law; and

(f) If the offering is of stock or shares other than preferred stock or shares, such securities are owned beneficially or of record on any date within six months prior to the commencement of the offering by at least one thousand two hundred persons, and on such date there are at least seven hundred fifty thousand such shares outstanding with an aggregate market value of at least three million seven hundred fifty thousand dollars based on the average bid price for such day. When determining the number of persons who are beneficial owners of the stock or shares of an issuer, for purposes of this subdivision, the issuer or broker-dealer may rely in good faith upon written information furnished by the record owners;

(7) Any security issued or guaranteed as to both principal and interest by an international bank of which the United States is a member; or

(8) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, as a chamber of commerce, or as a trade or professional association.

Source: Laws 1965, c. 549, § 10, p. 1785; Laws 1973, LB 167, § 5; Laws 1980, LB 912, § 1; Laws 1989, LB 391, § 1; Laws 1992, LB 758, § 1; Laws 1993, LB 216, § 6; Laws 1994, LB 942, § 1; Laws 1996, LB 1053, § 8; Laws 1997, LB 335, § 6; Laws 2001, LB 53, § 23; Laws 2003, LB 131, § 9; Laws 2009, LB113, § 1; Laws 2011, LB76, § 2.

Effective date February 23, 2011.

8-1111 Transactions exempt from registration.

Except as provided in this section, sections 8-1103 to 8-1109 shall not apply to any of the following transactions:

- (1) Any isolated transaction, whether effected through a broker-dealer or not;
- (2)(a) Any nonissuer transaction by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days if, at the time of the transaction:
 - (i) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;
 - (ii) The security is sold at a price reasonably related to the current market price of the security;
 - (iii) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;
 - (iv) A nationally recognized securities manual designated by rule and regulation or order of the director or a document filed with the Securities and Exchange Commission which is publicly available through the Electronic Data Gathering and Retrieval System (EDGAR) contains:
 - (A) A description of the business and operations of the issuer;
 - (B) The names of the issuer's officers and the names of the issuer's directors, if any, or, in the case of a non-United-States issuer, the corporate equivalents of such persons in the issuer's country of domicile;
 - (C) An audited balance sheet of the issuer as of a date within eighteen months or, in the case of a reorganization or merger when parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and
 - (D) An audited income statement for each of the issuer's immediately preceding two fiscal years, or for the period of existence of the issuer if in existence for less than two years, or, in the case of a reorganization or merger when the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and

(v) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System (NASDAQ), unless:

(A) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

(B) The issuer of the security has been engaged in continuous business, including predecessors, for at least three years; or

(C) The issuer of the security has total assets of at least two million dollars based on an audited balance sheet as of a date within eighteen months or, in the case of a reorganization or merger when parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; or

(b) Any nonissuer transaction in a security by a registered agent of a registered broker-dealer if:

(i) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons; and

(ii) The security is senior in rank to the common stock of the issuer both as to payment of dividends or interest and upon dissolution or liquidation of the issuer and such security has been outstanding at least three years and the issuer or any predecessor has not defaulted within the current fiscal year or the three immediately preceding fiscal years in the payment of any dividend, interest, principal, or sinking fund installment on the security when due and payable;

(3) Any nonissuer transaction effected by or through a registered agent of a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the director may by rule or regulation require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust or by an agreement for the sale of real estate or chattels if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, are offered and sold as a unit. Such exemption shall not apply to any transaction in a bond or other evidence of indebtedness secured by a real estate mortgage or deed of trust or by an agreement for the sale of real estate if the real estate securing the evidences of indebtedness are parcels of real estate the sale of which requires the subdivision in which the parcels are located to be registered under the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701 et seq., as the act existed on January 1, 2011;

(6) Any transaction by an executor, personal representative, administrator, sheriff, marshal, receiver, guardian, or conservator;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading the Securities Act of Nebraska;

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of

1940, pension or profit-sharing trust, or other financial institution or institutional buyer, to an individual accredited investor, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity. For purposes of this subdivision, the term "individual accredited investor" means (a) any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer, (b) any manager of a limited liability company that is the issuer of the securities being offered or sold, (c) any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his or her purchase, exceeds one million dollars, or (d) any natural person who had an individual income in excess of two hundred thousand dollars in each of the two most recent years or joint income with that person's spouse in excess of three hundred thousand dollars in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(9)(a) Any transaction pursuant to an offering in which sales are made to not more than fifteen persons, other than those designated in subdivisions (8), (11), and (17) of this section, in this state during any period of twelve consecutive months if (i) the seller reasonably believes that all the buyers are purchasing for investment, (ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer, (iii) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (iv) no general or public advertisements or solicitations are made.

(b) If a seller (i) makes sales pursuant to this subdivision for five consecutive twelve-month periods or (ii) makes sales of at least one million dollars from an offering or offerings pursuant to this subdivision, the seller shall, within ninety days after the earlier of either such occurrence, file with the director audited financial statements and a sales report which lists the names and addresses of all purchasers and holders of the seller's securities and the amount of securities held by such persons. Subsequent thereto, such seller shall file audited financial statements and sales reports with the director each time an additional one million dollars in securities is sold pursuant to this subdivision or after the elapse of each additional sixty-month period during which sales are made pursuant to this subdivision;

(10) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten, and (c) no payment is made by any subscriber;

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (a) no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this state or (b) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days;

(12) Any offer, but not a sale, of a security for which registration statements have been filed under both the Securities Act of Nebraska and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either the Securities Act of Nebraska or the Securities Act of 1933;

(13) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by the stockholders for the distribution other than the surrender of a right to a cash dividend when the stockholder can elect to take a dividend in cash or stock;

(14) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) Any transaction involving the issuance for cash of any evidence of ownership interest or indebtedness by an agricultural cooperative formed as a corporation under section 21-1301 or 21-1401 if the issuer has first filed a notice of intention to issue with the director and the director has not by order, mailed to the issuer by certified or registered mail within ten business days after receipt thereof, disallowed the exemption;

(16) Any transaction in this state not involving a public offering when (a) there is no general or public advertising or solicitation, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) any such transaction is effected in accordance with rules and regulations adopted and promulgated by the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of investors. For purposes of this subdivision, not involving a public offering means any offering in which the seller has reason to believe that the securities purchased are taken for investment and in which each offeree, by reason of his or her knowledge about the affairs of the issuer or otherwise, does not require the protections afforded by registration under sections 8-1104 to 8-1107 in order to make a reasonably informed judgment with respect to such investment;

(17) The issuance of any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer;

(18) Any interest in a common trust fund or similar fund maintained by a bank or trust company organized and supervised under the laws of any state or a bank organized under the laws of the United States for the collective investment and reinvestment of funds contributed to such common trust fund or similar fund by the bank or trust company in its capacity as trustee, personal

representative, administrator, or guardian and any interest in a collective investment fund or similar fund maintained by the bank or trust company for the collective investment of funds contributed to such collective investment fund or similar fund by the bank or trust company in its capacity as trustee or agent which interest is issued in connection with an employee's savings, pension, profit-sharing, or similar benefit plan or a self-employed person's retirement plan, if a notice generally describing the terms of the collective investment fund or similar fund is filed by the bank or trust company with the director within thirty days after the establishment of the fund. Failure to give the notice may be cured by an order issued by the director in his or her discretion;

(19) Any transaction in which a United States Series EE Savings Bond is given or delivered with or as a bonus on account of any purchase of any item or thing;

(20) Any transaction in this state not involving a public offering by a Nebraska issuer selling solely to Nebraska residents, when (a) any such transaction is effected in accordance with rules and regulations adopted and promulgated by the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of investors, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director no later than twenty days prior to any sales for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) there is no general or public advertising or solicitation;

(21) Any transaction by a person who is an organization described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 involving an offering of interests in a fund described in section 3(c)(10)(B) of the Investment Company Act of 1940 solely to persons who are organizations described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 when (a) there is no general or public advertising or solicitation, (b) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (c) any such transaction is effected by a trustee, director, officer, employee, or volunteer of the seller who is either a volunteer or is engaged in the overall fundraising activities of a charitable organization and receives no commission or other special compensation based on the number or the value of interests sold in the fund; or

(22) Any offer or sale of any viatical settlement contract or any fractionalized or pooled interest therein in a transaction that meets all of the following criteria:

(a) Sales of such securities are made only to the following purchasers:

(i) A natural person who, either individually or jointly with the person's spouse, (A) has a minimum net worth of two hundred fifty thousand dollars and had taxable income in excess of one hundred twenty-five thousand dollars in each of the two most recent years and has a reasonable expectation of reaching the same income level in the current year or (B) has a minimum net worth of five hundred thousand dollars. Net worth shall be determined exclusive of home, home furnishings, and automobiles;

(ii) A corporation, partnership, or other organization specifically formed for the purpose of acquiring securities offered by the issuer in reliance upon this exemption if each equity owner of the corporation, partnership, or other organization is a person described in subdivision (22)(a)(i) of this section;

(iii) A pension or profit-sharing trust of the issuer, a self-employed individual retirement plan, or an individual retirement account, if the investment decisions made on behalf of the trust, plan, or account are made solely by persons described in subdivision (22)(a)(i) of this section; or

(iv) An organization described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01, or a corporation, Massachusetts or similar business trust, or partnership with total assets in excess of five million dollars according to its most recent audited financial statements;

(b) The amount of the investment of any purchaser, except a purchaser described in subdivision (a)(ii) of this subdivision, does not exceed five percent of the net worth, as determined by this subdivision, of that purchaser;

(c) Each purchaser represents that the purchaser is purchasing for the purchaser's own account or trust account, if the purchaser is a trustee, and not with a view to or for sale in connection with a distribution of the security;

(d)(i) Each purchaser receives, on or before the date the purchaser remits consideration pursuant to the purchase agreement, the following information in writing:

(A) The name, principal business and mailing addresses, and telephone number of the issuer;

(B) The suitability standards for prospective purchasers as set forth in subdivision (a) of this subdivision;

(C) A description of the issuer's type of business organization and the state in which the issuer is organized or incorporated;

(D) A brief description of the business of the issuer;

(E) If the issuer retains ownership or becomes the beneficiary of the insurance policy, an audit report from an independent certified public accountant together with a balance sheet and related statements of income, retained earnings, and cash flows that reflect the issuer's financial position, the results of the issuer's operations, and the issuer's cash flows as of a date within fifteen months before the date of the initial issuance of the securities described in this subdivision. The financial statements shall be prepared in conformity with generally accepted accounting principles. If the date of the audit report is more than one hundred twenty days before the date of the initial issuance of the securities described in this subdivision, the issuer shall provide unaudited interim financial statements;

(F) The names of all directors, officers, partners, members, or trustees of the issuer;

(G) A description of any order, judgment, or decree that is final as to the issuing entity of any state, federal, or foreign governmental agency or administrator, or of any state, federal, or foreign court of competent jurisdiction (I) revoking, suspending, denying, or censuring for cause any license, permit, or other authority of the issuer or of any director, officer, partner, member, trustee, or person owning or controlling, directly or indirectly, ten percent or more of the outstanding interest or equity securities of the issuer, to engage in the securities, commodities, franchise, insurance, real estate, or lending business or in the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (II) permanently restraining, enjoining, barring, suspending, or censuring any such person from engaging in or continuing any conduct, practice, or employment in connection with the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (III) convicting any such person of, or pleading nolo contendere by any such person to, any felony or misdemeanor involving a security, commodity, franchise, insurance, real estate, or loan, or any aspect of the securities, commodities, franchise, insurance, real estate, or lending business, or involving dishonesty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property, or (IV) holding any such person liable in a civil action involving breach of a fiduciary duty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property. This subdivision does not apply to any order, judgment, or decree that has been vacated or overturned or is more than ten years old;

(H) Notice of the purchaser's right to rescind or cancel the investment and receive a refund;

(I) A statement to the effect that any projected rate of return to the purchaser from the purchase of a viatical settlement contract or any fractionalized or pooled interest therein is based on an estimated life expectancy for the person insured under the life insurance policy; that the return on the purchase may vary substantially from the expected rate of return based upon the actual life expectancy of the insured that may be less than, may be equal to, or may greatly exceed the estimated life expectancy; and that the rate of return would be higher if the actual life expectancy were less than, and lower if the actual life expectancy were greater than, the estimated life expectancy of the insured at the time the viatical settlement contract was closed;

(J) A statement that the purchaser should consult with his or her tax advisor regarding the tax consequences of the purchase of the viatical settlement contract or any fractionalized or pooled interest therein; and

(K) Any other information as may be prescribed by rule of the director; and

(ii) The purchaser receives in writing at least five business days prior to closing the transaction:

(A) The name, address, and telephone number of the issuing insurance company and the name, address, and telephone number of the state or foreign country regulator of the insurance company;

(B) The total face value of the insurance policy and the percentage of the insurance policy the purchaser will own;

(C) The insurance policy number, issue date, and type;

(D) If a group insurance policy, the name, address, and telephone number of the group and, if applicable, the material terms and conditions of converting the policy to an individual policy, including the amount of increased premiums;

(E) If a term insurance policy, the term and the name, address, and telephone number of the person who will be responsible for renewing the policy if necessary;

(F) That the insurance policy is beyond the state statute for contestability and the reason therefor;

(G) The insurance policy premiums and terms of premium payments;

(H) The amount of the purchaser's money that will be set aside to pay premiums;

(I) The name, address, and telephone number of the person who will be the insurance policyowner and the person who will be responsible for paying premiums;

(J) The date on which the purchaser will be required to pay premiums and the amount of the premium, if known; and

(K) Any other information as may be prescribed by rule of the director;

(e) The purchaser may rescind or cancel the purchase for any reason by giving written notice of rescission or cancellation to the issuer or the issuer's agent within (i) fifteen calendar days after the date the purchaser remits the required consideration or receives the disclosure required under subdivision (d)(i) of this subdivision and (ii) five business days after the date the purchaser receives the disclosure required by subdivision (d)(ii) of this subdivision. No specific form is required for the rescission or cancellation. The notice is effective when personally delivered, deposited in the United States mail, or deposited with a commercial courier or delivery service. The issuer shall refund all the purchaser's money within seven calendar days after receiving the notice of rescission or cancellation;

(f) A notice of the issuer's intent to sell securities pursuant to this subdivision, signed by a duly authorized officer of the issuer and notarized, together with a filing fee of two hundred dollars, is filed with the Department of Banking and Finance before any offers or sales of securities are made under this subdivision. Such notice shall include:

(i) The issuer's name, the issuer's type of organization, the state in which the issuer is organized, the date the issuer intends to begin selling securities within or from this state, and the issuer's principal business;

(ii) A consent to service of process; and

(iii) An audit report of an independent certified public accountant together with a balance sheet and related statements of income, retained earnings and cash flows that reflect the issuer's financial position, the results of the issuer's operations, and the issuer's cash flows as of a date within fifteen months before the date of the notice prescribed in this subdivision. The financial statements shall be prepared in conformity with generally accepted accounting principles and shall be examined according to generally accepted auditing standards. If the date of the audit report is more than one hundred twenty days before the date of the notice prescribed in this subdivision, the issuer shall provide unaudited interim financial statements;

(g) No commission or remuneration is paid directly or indirectly for soliciting any prospective purchaser, except to a registered agent of a registered broker-dealer or registered issuer-dealer; and

(h) At least ten days before use within this state, the issuer files with the department all advertising and sales materials that will be published, exhibited, broadcast, or otherwise used, directly or indirectly, in the offer or sale of a viatical settlement contract in this state.

The director may by order deny or revoke the exemption specified in subdivision (2) of this section with respect to a specific security. Upon the entry of such an order, the director shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within fifteen business days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to all interested persons, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. No such order may operate retroactively. No person may be considered to have violated the provisions of the Securities Act of Nebraska by reason of any offer or sale effected after the entry of any such order if he or she sustains the burden of proof that he or she did not know and in the exercise of reasonable care could not have known of the order. In any proceeding under the act, the burden of proving an exemption from a definition shall be upon the person claiming it.

Source: Laws 1965, c. 549, § 11, p. 1787; Laws 1973, LB 167, § 6; Laws 1977, LB 263, § 5; Laws 1978, LB 760, § 2; Laws 1980, LB 496, § 1; Laws 1986, LB 909, § 11; Laws 1987, LB 93, § 1; Laws 1989, LB 60, § 3; Laws 1990, LB 956, § 10; Laws 1991, LB 305, § 5; Laws 1992, LB 758, § 2; Laws 1993, LB 216, § 7; Laws 1994, LB 1241, § 1; Laws 1995, LB 96, § 1; Laws 1996, LB 1053, § 9; Laws 1997, LB 335, § 7; Laws 2000, LB 932, § 20; Laws 2001, LB 52, § 44; Laws 2002, LB 957, § 9; Laws 2006, LB 876, § 20; Laws 2010, LB814, § 1; Laws 2011, LB76, § 3.
Effective date February 23, 2011.

ARTICLE 15

ACQUISITION OR MERGER OF FINANCIAL INSTITUTIONS

(c) CROSS-INDUSTRY ACQUISITION OR MERGER OF FINANCIAL INSTITUTION

Section

8-1510. Cross-industry acquisition or merger; application; notice; hearing.

(c) CROSS-INDUSTRY ACQUISITION OR MERGER OF FINANCIAL INSTITUTION

8-1510 Cross-industry acquisition or merger; application; notice; hearing.

(1) The Director of Banking and Finance may permit cross-industry acquisition or merger of one or more financial institutions under its supervision upon the application of such institutions to the Department of Banking and Finance. The application shall be made on forms prescribed by the department.

(2) Except as provided for in subsection (3) of this section, when an application is made for such an acquisition or merger, notice of the filing of the application shall be published by the department three weeks in a legal

newspaper in or of general circulation in the county where the applicant proposes to operate the acquired or merged financial institution. A public hearing shall be held on each application. The date for hearing the application shall be not more than ninety days after the filing of the application and not less than thirty days after the last publication of notice after the examination and approval by the department of the application. If the department, upon investigation and after public hearing on the application, is satisfied that the stockholders and officers of the financial institution applying for such acquisition or merger are parties of integrity and responsibility, that the requirements of section 8-702 have been met or some alternate form of protection for depositors has been met, and that the public necessity, convenience, and advantage will be promoted by permitting such acquisition or merger, the department shall, upon payment of the required fees, issue to such institution an order of approval for the acquisition or merger.

(3) When application is made for cross-industry acquisition or merger and the director determines, in his or her discretion, that the financial condition of the financial institution surviving the acquisition or merger is such as to indicate that a hearing on the application would not be necessary, then the hearing requirement of subsection (2) of this section shall only be required if, (a) after publishing a notice of the proposed application in a newspaper of general circulation in the county or counties where the offices of the financial institution to be merged or acquired are located and (b) after giving notice to all financial institutions located within such county or counties, the director receives a substantive objection to the application within fifteen days after the first day of publication. The director shall send the notice to financial institutions by first-class mail, postage prepaid, or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail. A financial institution may designate one office for receipt of any such notice if it has more than one office located within the county where such notice is to be sent or a main office in a county other than the county where such notice is to be sent.

(4) The expense of any publication and mailing required by this section shall be paid by the applicant.

Source: Laws 1983, LB 241, § 5; Laws 1990, LB 956, § 16; Laws 2003, LB 217, § 27; Laws 2008, LB851, § 14; Laws 2011, LB74, § 4.
Operative date February 23, 2011.

ARTICLE 17 COMMODITY CODE

Section

8-1704. CFTC rule, defined.

8-1707. Commodity Exchange Act, defined.

8-1704 CFTC rule, defined.

CFTC rule shall mean any rule, regulation, or order of the Commodity Futures Trading Commission in effect on January 1, 2011.

Source: Laws 1987, LB 575, § 4; Laws 1993, LB 283, § 2; Laws 2011, LB76, § 4.
Effective date February 23, 2011.

8-1707 Commodity Exchange Act, defined.

Commodity Exchange Act shall mean the act of Congress known as the Commodity Exchange Act, 7 U.S.C. 1, as amended on January 1, 2011.

Source: Laws 1987, LB 575, § 7; Laws 1993, LB 283, § 5; Laws 2011, LB76, § 5.

Effective date February 23, 2011.

CHAPTER 9 BINGO AND OTHER GAMBLING

Article.

6. County and City Lotteries. 9-601 to 9-607.
7. Gift Enterprises. 9-701.
8. State Lottery. 9-812.

ARTICLE 6 COUNTY AND CITY LOTTERIES

Section

- 9-601. Act, how cited.
 9-603. Definitions, where found.
 9-603.04. Activation, defined.
 9-607. Lottery, defined; manner of play; designation.

9-601 Act, how cited.

Sections 9-601 to 9-653 shall be known and may be cited as the Nebraska County and City Lottery Act.

Source: Laws 1986, LB 1027, § 172; Laws 1989, LB 767, § 47; Laws 1991, LB 427, § 54; Laws 1991, LB 795, § 4; Laws 1993, LB 563, § 2; Laws 2002, LB 545, § 44; Laws 2011, LB490, § 1.
 Effective date August 27, 2011.

9-603 Definitions, where found.

For purposes of the Nebraska County and City Lottery Act, the definitions found in sections 9-603.02 to 9-618 shall be used.

Source: Laws 1986, LB 1027, § 174; Laws 1989, LB 767, § 48; Laws 2002, LB 545, § 45; Laws 2003, LB 3, § 4; Laws 2011, LB490, § 2.
 Effective date August 27, 2011.

9-603.04 Activation, defined.

Activation, with regard to lottery equipment, means initiating the selection of winning numbers.

Source: Laws 2011, LB490, § 3.
 Effective date August 27, 2011.

9-607 Lottery, defined; manner of play; designation.

- (1) Lottery shall mean a gambling scheme in which:
- (a) The players pay or agree to pay something of value for an opportunity to win;
 - (b) Winning opportunities are represented by tickets;
 - (c) Winners are solely determined by one of the following two methods:

(i) By a random drawing of tickets differentiated by sequential enumeration from a receptacle by hand whereby each ticket has an equal chance of being chosen in the drawing; or

(ii) By use of a game known as keno in which a player selects up to twenty numbers from a total of eighty numbers on a paper ticket and a computer, other electronic selection device, or electrically operated blower machine which is not player-activated randomly selects up to twenty numbers from the same pool of eighty numbers and the winning players are determined by the correct matching of the numbers on the paper ticket selected by the players with the numbers randomly selected by the computer, other electronic selection device, or electrically operated blower machine, except that (A) no keno game shall permit or require player activation of lottery equipment and (B) the random selection of numbers by the computer, other electronic selection device, or electrically operated blower machine shall not occur within five minutes of the completion of the previous selection of random numbers; and

(d) The holders of the winning paper tickets are to receive cash or prizes redeemable for cash. Selection of a winner or winners shall be predicated solely on chance.

(2) Lottery shall not include:

(a) Any gambling scheme which uses any mechanical gaming device, computer gaming device, electronic gaming device, or video gaming device which has the capability of awarding something of value, free games redeemable for something of value, or tickets or stubs redeemable for something of value;

(b) Any activity authorized or regulated under the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, section 9-701, or Chapter 2, article 12; or

(c) Any activity prohibited under Chapter 28, article 11.

(3) Notwithstanding the requirement in subdivision (1)(c)(ii) of this section that a player select up to twenty numbers, a player may select more than twenty numbers on a paper ticket when a top or bottom, left or right, edge, or way ticket is played. For a top or bottom ticket, the player shall select all numbers from one through forty or all numbers from forty-one through eighty. For a left or right ticket, the player shall select all numbers ending in one through five or all numbers ending in six through zero. For an edge ticket, the player shall select all of the numbers comprising the outside edge of the ticket. For a way ticket, the player shall select a combination of groups of numbers in multiple ways on a single ticket.

(4) A county, city, or village conducting a keno lottery shall designate the method of winning number selection to be used in the lottery and submit such designation in writing to the department prior to conducting a keno lottery. Only those methods of winning number selection described in subdivision (1)(c)(ii) of this section shall be permitted, and the method of winning number selection initially utilized may only be changed once during that business day as set forth in the designation. A county, city, or village shall not change the method or methods of winning number selection filed with the department or allow it to be changed once such initial designation has been made unless (a) otherwise authorized in writing by the department based upon a written request from the county, city, or village or (b) an emergency arises in which case a ball draw method of number selection would be switched to a number

selection by a random number generator. An emergency situation shall be reported by the county, city, or village to the department within twenty-four hours of its occurrence.

Source: Laws 1986, LB 1027, § 178; Laws 1989, LB 767, § 53; Laws 1991, LB 795, § 7; Laws 1991, LB 849, § 56; Laws 1993, LB 563, § 4; Laws 1993, LB 138, § 14; Laws 2011, LB490, § 4.
Effective date August 27, 2011.

Cross References

Nebraska Bingo Act, see section 9-201.

Nebraska Lottery and Raffle Act, see section 9-401.

Nebraska Pickle Card Lottery Act, see section 9-301.

Nebraska Small Lottery and Raffle Act, see section 9-501.

State Lottery Act, see section 9-801.

ARTICLE 7

GIFT ENTERPRISES

Section

9-701. Conduct of gift enterprises; conditions; prohibited acts; violation; penalties; venue; enforcement.

9-701 Conduct of gift enterprises; conditions; prohibited acts; violation; penalties; venue; enforcement.

(1) For purposes of this section:

(a) Gift enterprise means a contest, game of chance, savings promotion raffle, or game promotion which is conducted within the state or throughout the state and other states in connection with the sale of consumer or trade products or services solely as business promotions and in which the elements of chance and prize are present. Gift enterprise does not include any scheme using the game of bingo or keno; any non-telecommunication-related, player-activated electronic or electromechanical facsimile of any game of chance; or any slot machine of any kind. A gift enterprise shall not utilize pickle cards as defined in section 9-315. Promotional game tickets may be utilized subject to the following:

(i) The tickets utilized shall be manufactured or imprinted with the name of the operator on each ticket;

(ii) The tickets utilized shall not be manufactured with a cost per play printed on them; and

(iii) The tickets utilized shall not be substantially similar to any type of pickle card approved by the Department of Revenue pursuant to section 9-332.01;

(b) Operator means any person, firm, corporation, association, governmental entity, or agent or employee thereof who promotes, operates, or conducts a gift enterprise. Operator does not include any nonprofit organization or any agent or employee thereof, except that operator includes any credit union chartered under state or federal law or any agent or employee thereof who promotes, operates, or conducts a gift enterprise; and

(c) Savings promotion raffle means a contest conducted by a credit union chartered under state or federal law or any agent or employee thereof in which a chance of winning a designated prize is obtained by the deposit of a specified amount of money in a savings account or other savings program if each entry has an equal chance of winning.

(2) Any operator may conduct a gift enterprise within this state in accordance with this section.

(3) An operator shall not:

(a) Design, engage in, promote, or conduct a gift enterprise in connection with the promotion or sale of consumer products or services in which the winner may be unfairly predetermined or the game may be manipulated or rigged;

(b) Arbitrarily remove, disqualify, disallow, or reject any entry;

(c) Fail to award prizes offered;

(d) Print, publish, or circulate literature or advertising material used in connection with such gift enterprise which is false, deceptive, or misleading; or

(e) Require an entry fee, a payment or promise of payment of any valuable consideration, or any other consideration as a condition of entering a gift enterprise or winning a prize from the gift enterprise, except that a contest, game of chance, or business promotion may require, as a condition of participation, evidence of the purchase of a product or service as long as the purchase price charged for such product or service is not greater than it would have been without the contest, game of chance, or business promotion. For purposes of this section, consideration shall not include (i) filling out an entry blank, (ii) entering by mail with the purchase of postage at a cost no greater than the cost of postage for a first-class letter weighing one ounce or less, (iii) entering by a telephone call to the operator of or for the gift enterprise at a cost no greater than the cost of postage for a first-class letter weighing one ounce or less. When the only method of entry is by telephone, the cost to the entrant of the telephone call shall not exceed the cost of postage for a first-class letter weighing one ounce or less for any reason, including (A) whether any communication occurred during the call which was not related to the gift enterprise or (B) the fact that the cost of the call to the operator was greater than the cost to the entrant allowed under this section, or (iv) the deposit of money in a savings account or other savings program, regardless of the interest rate earned by such account or program.

(4) An operator shall disclose to participants all terms and conditions of a gift enterprise.

(5)(a) The Department of Revenue may adopt and promulgate rules and regulations necessary to carry out the operation of gift enterprises.

(b) Whenever the department has reason to believe that a gift enterprise is being operated in violation of this section or the department's rules and regulations, it may bring an action in the district court of Lancaster County in the name of and on behalf of the people of the State of Nebraska against the operator of the gift enterprise to enjoin the continued operation of such gift enterprise anywhere in the state.

(6)(a) Any person, firm, corporation, association, or agent or employee thereof who engages in any unlawful acts or practices pursuant to this section or violates any of the rules and regulations promulgated pursuant to this section shall be guilty of a Class II misdemeanor.

(b) Any person, firm, corporation, association, or agent or employee thereof who violates any provision of this section or any of the rules and regulations promulgated pursuant to this section shall be liable to pay a civil penalty of not more than one thousand dollars imposed by the district court of Lancaster

County for each such violation which shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. Each day of continued violation shall constitute a separate offense or violation for purposes of this section.

(7) A credit union may limit the number of chances that a participant in a savings promotion raffle may obtain for making the required deposits but shall not limit the number of deposits.

(8) In all proceedings initiated in any court or otherwise under this section, the Attorney General or appropriate county attorney shall prosecute and defend all such proceedings.

(9) This section shall not apply to any activity authorized and regulated under the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, or the Nebraska Small Lottery and Raffle Act.

Source: Laws 1977, LB 38, § 230; Laws 1983, LB 259, § 39; R.S.1943, (1985), § 28-1114; Laws 1986, LB 1027, § 184; Laws 1991, LB 427, § 69; Laws 1993, LB 54, § 1; Laws 1994, LB 694, § 113; Laws 2004, LB 999, § 20; Laws 2011, LB524, § 1.
Effective date August 27, 2011.

Cross References

Nebraska Bingo Act, see section 9-201.

Nebraska County and City Lottery Act, see section 9-601.

Nebraska Lottery and Raffle Act, see section 9-401.

Nebraska Pickle Card Lottery Act, see section 9-301.

Nebraska Small Lottery and Raffle Act, see section 9-501.

ARTICLE 8 STATE LOTTERY

Section

9-812. State Lottery Operation Trust Fund; State Lottery Operation Cash Fund; State Lottery Prize Trust Fund; created; transfers; Education Innovation Fund; created; use; investment; unclaimed prize money; use.

9-812 State Lottery Operation Trust Fund; State Lottery Operation Cash Fund; State Lottery Prize Trust Fund; created; transfers; Education Innovation Fund; created; use; investment; unclaimed prize money; use.

(1) All money received from the operation of lottery games conducted pursuant to the State Lottery Act in Nebraska shall be credited to the State Lottery Operation Trust Fund, which fund is hereby created. All payments of the costs of establishing and maintaining the lottery games shall be made from the State Lottery Operation Cash Fund. In accordance with legislative appropriations, money for payments for expenses of the division shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Operation Cash Fund, which fund is hereby created. All money necessary for the payment of lottery prizes shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Prize Trust Fund, which fund is hereby created. The amount used for the payment of lottery prizes shall not be less than forty percent of the dollar amount of the lottery tickets which have been sold.

(2) Beginning October 1, 2003, a portion of the dollar amount of the lottery tickets which have been sold on an annualized basis shall be transferred from

the State Lottery Operation Trust Fund to the Education Innovation Fund, the Nebraska Opportunity Grant Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund. The dollar amount transferred pursuant to this subsection shall equal the greater of (a) the dollar amount transferred to the funds in fiscal year 2002-03 or (b) any amount which constitutes at least twenty-two percent and no more than twenty-five percent of the dollar amount of the lottery tickets which have been sold on an annualized basis. To the extent that funds are available, the Tax Commissioner and director may authorize a transfer exceeding twenty-five percent of the dollar amount of the lottery tickets sold on an annualized basis.

(3) Of the money available to be transferred to the Education Innovation Fund, the Nebraska Opportunity Grant Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund:

(a) The first five hundred thousand dollars shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in section 71-817;

(b) Nineteen and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Education Innovation Fund;

(c) Twenty-four and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Opportunity Grant Fund;

(d) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act;

(e) Ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska State Fair Board if the most populous city within the county in which the fair is located provides matching funds equivalent to ten percent of the funds available for transfer. Such matching funds may be obtained from the city and any other private or public entity, except that no portion of such matching funds shall be provided by the state. If the Nebraska State Fair ceases operations, ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the General Fund; and

(f) One percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in section 71-817.

(4)(a) The Education Innovation Fund is created. At least seventy-five percent of the lottery proceeds allocated to the Education Innovation Fund shall be available for disbursement.

(b) For fiscal year 2010-11, the Education Innovation Fund shall be allocated as follows: The first one million dollars shall be transferred to the Excellence in

Teaching Cash Fund to fund the Excellence in Teaching Act, and the amount remaining in the Education Innovation Fund shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

(c) For fiscal year 2011-12, the Education Innovation Fund shall be allocated as follows: (i) The first two hundred twenty-five thousand dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Attracting Excellence to Teaching Program; (ii) the next three million three hundred sixty-five thousand nine hundred sixty-two dollars shall be distributed to school districts as grants pursuant to the Early Childhood Education Grant Program; (iii) the next two million one hundred seventy-five thousand six hundred seventy-three dollars shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02; (iv) the next four hundred ninety-one thousand five hundred forty-one dollars shall be used by the State Department of Education for the development of an integrated early childhood, elementary, secondary, and postsecondary student information system; (v) the next four hundred fifty thousand dollars shall fund the Center for Student Leadership and Extended Learning Act; (vi) the next one hundred fourteen thousand six hundred twenty-nine dollars shall fund the multicultural education program created under section 79-720; (vii) the next one hundred twenty-three thousand four hundred sixty-eight dollars shall be used by the department to employ persons to investigate and prosecute alleged violations as provided in section 79-868; (viii) up to the next one hundred sixty thousand dollars shall be used by the department to implement section 79-759; and (ix) the amount remaining shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

(d) For fiscal year 2012-13, the Education Innovation Fund shall be allocated as follows: (i) The first forty-five thousand dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Attracting Excellence to Teaching Program; (ii) the next three million three hundred sixty-five thousand nine hundred sixty-two dollars shall be distributed to school districts as grants pursuant to the Early Childhood Education Grant Program; (iii) the next two million one hundred seventy-five thousand six hundred seventy-three dollars shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02; (iv) the next one hundred eight thousand one hundred thirty-six dollars shall be used by the department for the development of an integrated early childhood, elementary, secondary, and postsecondary student information system; (v) the next four hundred fifty thousand dollars shall fund the Center for Student Leadership and Extended Learning Act; (vi) the next one hundred fourteen thousand six hundred twenty-nine dollars shall be used by the department to fund the multicultural education program created under section 79-720; (vii) the next one hundred twenty-three thousand four hundred sixty-eight dollars shall be used by the department to employ persons to investigate and prosecute alleged violations as provided in section 79-868; (viii) up to the next one hundred sixty thousand dollars shall be used by the department to implement section 79-759; (ix) the next twenty-seven thousand two hundred dollars shall be used to fund the Interstate Compact on Educational Opportunity for Military Children; and (x) the amount remaining shall be

allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

(e) For fiscal year 2013-14, the Education Innovation Fund shall be allocated as follows: (i) The first one million dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Excellence in Teaching Act; (ii) the next allocation shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02 in an aggregated amount up to the amount distributed in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (iii) the next allocation shall be used by the State Department of Education for the integrated early childhood, elementary, secondary, and postsecondary student information system in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (iv) the next allocation shall fund the Center for Student Leadership and Extended Learning Act in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (v) the next allocation shall be used by the department to fund the multicultural education program created under section 79-720 in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (vi) the next allocation shall be used by the department to employ persons to investigate and prosecute alleged violations as provided in section 79-868 in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (vii) up to the next one hundred sixty thousand dollars shall be used by the department to implement section 79-759; and (viii) the amount remaining shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

(f) For fiscal years 2014-15 and 2015-16, the Education Innovation Fund shall be allocated as follows: (i) The first one million dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Excellence in Teaching Act; (ii) the next allocation shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02 in an aggregated amount up to the amount distributed in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (iii) the next allocation shall be used by the State Department of Education for the integrated early childhood, elementary, secondary, and postsecondary student information system in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (iv) the next allocation shall fund the Center for Student Leadership and Extended Learning Act in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (v) the next allocation shall be used by the department to fund the multicultural education program created under section 79-720 in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (vi) the next allocation shall be used by the department to employ persons to

investigate and prosecute alleged violations as provided in section 79-868 in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; and (vii) the amount remaining shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

(g) For fiscal year 2016-17 and each fiscal year thereafter, the Education Innovation Fund shall be allocated, after administrative expenses, for education purposes as provided by the Legislature.

(5) Any money in the State Lottery Operation Trust Fund, the State Lottery Operation Cash Fund, the State Lottery Prize Trust Fund, or the Education Innovation Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(6) Unclaimed prize money on a winning lottery ticket shall be retained for a period of time prescribed by rules and regulations. If no claim is made within such period, the prize money shall be used at the discretion of the Tax Commissioner for any of the purposes prescribed in this section.

Source: Laws 1991, LB 849, § 12; Laws 1992, LB 1257, § 57; Laws 1993, LB 138, § 28; Laws 1993, LB 563, § 24; Laws 1994, LB 647, § 5; Laws 1994, LB 694, § 119; Laws 1994, LB 1066, § 11; Laws 1995, LB 275, § 1; Laws 1995, LB 860, § 1; Laws 1996, LB 900, § 1015; Laws 1996, LB 1069, § 1; Laws 1997, LB 118, § 1; Laws 1997, LB 347, § 1; Laws 1997, LB 710, § 1; Laws 1997, LB 865, § 1; Laws 1998, LB 924, § 16; Laws 1998, LB 1228, § 7; Laws 1998, LB 1229, § 1; Laws 1999, LB 386, § 1; Laws 2000, LB 659, § 2; Laws 2000, LB 1243, § 1; Laws 2001, LB 797, § 1; Laws 2001, LB 833, § 1; Laws 2001, Spec. Sess., LB 3, § 1; Laws 2002, LB 1105, § 418; Laws 2002, LB 1310, § 3; Laws 2002, Second Spec. Sess., LB 1, § 1; Laws 2003, LB 367, § 1; Laws 2003, LB 574, § 21; Laws 2004, LB 1083, § 83; Laws 2004, LB 1091, § 1; Laws 2006, LB 1208, § 1; Laws 2007, LB638, § 16; Laws 2009, LB286, § 4; Laws 2009, LB545, § 1; Laws 2009, LB547, § 1; Laws 2009, First Spec. Sess., LB2, § 1; Laws 2010, LB956, § 1; Laws 2011, LB333, § 1; Laws 2011, LB575, § 7; Laws 2011, LB637, § 22.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB575, section 7, with LB637, section 22, and LB333, section 1, to reflect all amendments.

Note: Changes made by LB333 became effective March 16, 2011. Changes made by LB575 became operative July 1, 2012. Changes made by LB637 became effective May 5, 2011.

Cross References

Center for Student Leadership and Extended Learning Act, see section 79-772.

Excellence in Teaching Act, see section 79-8,132.

Interstate Compact on Educational Opportunity for Military Children, see section 79-2201.

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska Environmental Trust Act, see section 81-15,167.

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



CHAPTER 12 CEMETERIES

Article.

1. Wyuka Cemetery. 12-101.
13. State Veteran Cemetery System. 12-1301.

ARTICLE 1

WYUKA CEMETERY

Section

- 12-101. Wyuka Cemetery; declared a public charitable corporation; powers; trustees; appointment; terms; vacancies; reports.

12-101 Wyuka Cemetery; declared a public charitable corporation; powers; trustees; appointment; terms; vacancies; reports.

(1) The cemetery in Lincoln, Nebraska, known as Wyuka Cemetery, is hereby declared to be a public charitable corporation. The general control and management of the affairs of such cemetery shall be vested in a board of three trustees until July 1, 2009, and thereafter shall be vested in a board of five trustees. The trustees shall serve without compensation and shall be a body corporate to be known as Wyuka Cemetery, with power to sue and be sued, to contract and to be contracted with, and to acquire, hold, and convey both real and personal property for all purposes consistent with the provisions of sections 12-101 to 12-105, and shall have the power of eminent domain to be exercised in the manner provided in section 12-201.

(2) The trustees of Wyuka Cemetery shall have the power, by resolution duly adopted by a majority vote, to authorize one of their number to sign a petition for paving, repaving, curbing, recurbing, grading, changing grading, guttering, resurfacing, relaying existing pavement, or otherwise improving any street, streets, alley, alleys, or public ways or grounds abutting cemetery property. When such improvements have been ordered, the trustees shall pay, from funds of the cemetery, such special taxes or assessments as may be properly determined.

(3) The trustees of Wyuka Cemetery shall be appointed by the Governor of the State of Nebraska at the expiration of each trustee's term of office. The two trustees appointed for their initial terms of office beginning July 1, 2009, shall be appointed by the Governor to serve a five-year term and a six-year term, respectively. Thereafter, each of the five trustees shall be appointed by the Governor for a term of six years. In the event of a vacancy occurring among the members of the board, the vacancy shall be filled by appointment by the Governor, and such appointment shall continue for the unexpired term.

(4) The board of trustees of Wyuka Cemetery shall file with the Auditor of Public Accounts, on or before the second Tuesday in June of each year, an itemized report of all the receipts and expenditures in connection with its management and control of the cemetery.

(5) The trustees of Wyuka Cemetery shall have the power to provide, in their discretion, retirement benefits for present and future employees of the cemetery, and to establish, participate in, and administer plans for the benefit of its employees or its employees and their dependents, which may provide disability, hospitalization, medical, surgical, accident, sickness and life insurance coverage, or any one or more coverages, and which shall be purchased from a corporation or corporations authorized and licensed by the Department of Insurance.

(6)(a) Beginning December 31, 1998, and each December 31 thereafter, the trustees shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;
- (vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and
- (viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the trustees may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the trustees shall cause to be prepared a quadrennial report and shall file the same with the Public Employees Retirement Board and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan.

Source: Laws 1927, c. 197, § 1, p. 560; C.S.1929, § 13-101; R.S.1943, § 12-101; Laws 1953, c. 15, § 1, p. 81; Laws 1959, c. 28, § 1, p.

179; Laws 1967, c. 38, § 1, p. 167; Laws 1998, LB 1191, § 3; Laws 1999, LB 795, § 2; Laws 2009, LB498, § 1; Laws 2011, LB252, § 1; Laws 2011, LB474, § 2.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB252, section 1, with LB474, section 2, to reflect all amendments.

Note: Changes made by LB252 became operative July 1, 2011. Changes made by LB474 became effective August 27, 2011.

ARTICLE 13

STATE VETERAN CEMETERY SYSTEM

Section

12-1301. Director of Veterans' Affairs; powers and duties; Veteran Cemetery Construction Fund; Nebraska Veteran Cemetery System Endowment Fund; Nebraska Veteran Cemetery System Operation Fund; created; investment.

12-1301 Director of Veterans' Affairs; powers and duties; Veteran Cemetery Construction Fund; Nebraska Veteran Cemetery System Endowment Fund; Nebraska Veteran Cemetery System Operation Fund; created; investment.

(1) The Director of Veterans' Affairs may establish and operate a state veteran cemetery system consisting of a facility in Box Butte County, a facility in Sarpy County, and the Nebraska Veterans' Memorial Cemetery in Hall County. The director may seek and expend private, state, and federal funds for the establishment, construction, maintenance, administration, and operation of the cemetery system as provided in this section. Any gift, bequest, or devise of real property and any acquisition of real property with the proceeds of a donation, gift, bequest, devise, or grant from an individual, an organization, a corporation, a foundation, or a similar entity or from a nonfederal governmental agency for the cemetery system shall be subject to the approval requirements of section 81-1108.33 notwithstanding the value of the real property. All funds received for the construction of the cemetery system shall be remitted to the State Treasurer for credit to the Veteran Cemetery Construction Fund. Any funds remaining in the Veteran Cemetery Construction Fund following the completion of construction of the three facilities comprising the state veteran cemetery system shall upon such completion be transferred to the Nebraska Veteran Cemetery System Endowment Fund, and the Veteran Cemetery Construction Fund shall thereafter terminate.

(2)(a) A trust fund to be known as the Nebraska Veteran Cemetery System Endowment Fund is hereby created. The fund shall consist of:

(i) Gifts, bequests, grants, or contributions from private or public sources designated for the maintenance, administration, or operation of the state veteran cemetery system;

(ii) Any funds transferred from the Veteran Cemetery Construction Fund following the completion of construction of the three facilities comprising the state veteran cemetery system; and

(iii) Following the termination of the Veteran Cemetery Construction Fund, any funds received by the state from any source for the state veteran cemetery system.

(b) No revenue from the General Fund shall be remitted to the Nebraska Veteran Cemetery System Endowment Fund. The Legislature shall not appropriate or transfer money from the Nebraska Veteran Cemetery System Endowment Fund for any purpose other than as provided in this section. Any money

in the Nebraska Veteran Cemetery System Endowment 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 portion of the principal of the Nebraska Veteran Cemetery System Endowment Fund shall be expended for any purpose except investment pursuant to this subdivision. All investment earnings from the Nebraska Veteran Cemetery System Endowment Fund shall be credited on a quarterly basis to the Nebraska Veteran Cemetery System Operation Fund.

(3) There is hereby created the Nebraska Veteran Cemetery System Operation Fund. Money in the fund shall be used for the operation, administration, and maintenance of the state veteran cemetery system. 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.

(4) The director may make formal application to the federal government regarding federal financial assistance for the construction of any of the facilities comprising the state veteran cemetery system which is located in a county with a population of less than one hundred thousand persons when he or she determines that the requirements for such assistance have been met.

(5) The director may make formal application to the federal government regarding financial assistance for the construction of any facility comprising a portion of the state veteran cemetery system located in a county with a population of more than one hundred thousand persons when sufficient funds have been remitted to the Nebraska Veteran Cemetery System Endowment Fund such that (a) the projected annual earnings from such fund available for transfer to the Nebraska Veteran Cemetery System Operation Fund plus (b) the projected annual value of formal agreements that have been entered into between the state and any political subdivisions or private entities to subsidize or undertake the operation, administration, or maintenance of any of the facilities within the state veteran cemetery system, has a value that is sufficient to fund the operation, administration, and maintenance of any cemetery created pursuant to this subsection.

(6) The director may expend such funds as may be available for any of the purposes authorized in this section.

(7) The director, with the approval of the Governor, may enter into agreements for cemetery construction, administration, operation, or maintenance with qualified persons, political subdivisions, or business entities. The director shall provide lots in the cemetery system for the interment of deceased veterans as defined by the National Cemetery Administration of the United States Department of Veterans Affairs. The director shall provide lots for the interment of those veterans' spouses, minor children, and unmarried adult children who were physically or mentally disabled and incapable of self-support. Section 12-501 does not apply to the state veteran cemetery system.

(8) The Veteran Cemetery Construction Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(9) The director may adopt and promulgate rules and regulations to carry out this section. The rules and regulations shall include requirements for proof of

residency, cost of burial if any, and standards for cemeteries, including decorations and headstones.

Source: Laws 1999, LB 84, § 1; Laws 2004, LB 1231, § 1; Laws 2005, LB 54, § 2; Laws 2005, LB 227, § 1; Laws 2006, LB 996, § 1; Laws 2009, LB154, § 1; Laws 2011, LB264, § 1.
Effective date March 11, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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



**CHAPTER 13
CITIES, COUNTIES, AND OTHER
POLITICAL SUBDIVISIONS**

Article.

- 2. Community Development. 13-208.
- 3. Political Subdivisions; Particular Classes and Projects.
 - (h) Public Safety Services. 13-319 to 13-324.
 - (j) Motor Vehicle Donation. 13-329.
- 5. Budgets.
 - (d) Budget Limitations. 13-518.
- 8. Interlocal Cooperation Act. 13-824.01.
- 9. Political Subdivisions Tort Claims Act. 13-901 to 13-928.
- 11. Industrial Development.
 - (a) Industrial Development Bonds. 13-1101 to 13-1109.
- 13. Public Building Commission. 13-1302, 13-1304.
- 20. Integrated Solid Waste Management. 13-2042.
- 26. Convention Center Facility Financing Assistance Act. 13-2609, 13-2610.
- 27. Civic and Community Center Financing Act. 13-2701 to 13-2710.
- 28. Municipal Counties. 13-2814.
- 31. Sports Arena Facility Financing Assistance Act. 13-3107, 13-3108.

**ARTICLE 2
COMMUNITY DEVELOPMENT**

Section

13-208. Tax credits; limit.

13-208 Tax credits; limit.

The total amount of tax credit granted for programs approved and certified under the Community Development Assistance Act by the department for any fiscal year shall not exceed three hundred fifty thousand dollars, except that for fiscal years 2011-12 and 2012-13, the total amount of tax credit granted under this section shall be reduced by two hundred thousand dollars.

Source: Laws 1984, LB 372, § 8; Laws 2005, LB 334, § 5; Laws 2011, LB345, § 9.
Effective date May 25, 2011.

**ARTICLE 3
POLITICAL SUBDIVISIONS; PARTICULAR CLASSES AND PROJECTS**

(h) PUBLIC SAFETY SERVICES

Section

- 13-319. County; sales and use tax authorized; limitation; election.
- 13-320. Public safety services, defined.
- 13-324. Tax Commissioner; powers and duties; beginning and termination of taxation; procedure; notice; administrative fee; illegal assessment and collection; remedies.

(j) MOTOR VEHICLE DONATION

13-329. County, city, village, or public utility; donation of motor vehicle; conditions.

§ 13-319 CITIES, COUNTIES, AND OTHER POLITICAL SUBDIVISIONS

(h) PUBLIC SAFETY SERVICES

13-319 County; sales and use tax authorized; limitation; election.

Any county by resolution of the governing body may impose a sales and use tax of one-half percent, one percent, or one and one-half percent upon the same transactions sourced as provided in sections 77-2703.01 to 77-2703.04 within the county, but outside any incorporated municipality which has adopted a local sales tax pursuant to section 77-27,142, on which the state is authorized to impose a tax pursuant to the Nebraska Revenue Act of 1967, as amended from time to time. Any sales and use tax imposed pursuant to this section must be used (1) to finance public safety services provided by a public safety commission, (2) to provide the county share of funds required under any other agreement executed under the Interlocal Cooperation Act or Joint Public Agency Act, or (3) to finance public safety services provided by the county. A sales and use tax shall not be imposed pursuant to this section until an election has been held and a majority of the qualified electors have approved the tax pursuant to sections 13-322 and 13-323.

Source: Laws 1996, LB 1177, § 6; Laws 1999, LB 87, § 53; Laws 2003, LB 282, § 2; Laws 2011, LB106, § 2.
Effective date August 27, 2011.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

Nebraska Revenue Act of 1967, see section 77-2701.

13-320 Public safety services, defined.

For purposes of sections 13-318 to 13-326, public safety services means crime prevention, offender detention, and firefighter, police, medical, ambulance, or other emergency services.

Source: Laws 2011, LB106, § 1.
Effective date August 27, 2011.

13-324 Tax Commissioner; powers and duties; beginning and termination of taxation; procedure; notice; administrative fee; illegal assessment and collection; remedies.

(1) The Tax Commissioner shall administer all sales and use taxes adopted under section 13-319. The Tax Commissioner may prescribe forms and adopt and promulgate reasonable rules and regulations in conformity with the Nebraska Revenue Act of 1967, as amended, for the making of returns and for the ascertainment, assessment, and collection of taxes. The county shall furnish a certified copy of the adopting or repealing resolution to the Tax Commissioner in accordance with such rules and regulations. The tax shall begin the first day of the next calendar quarter which is at least one hundred twenty days following receipt by the Tax Commissioner of the certified copy of the adopted resolution. The Tax Commissioner shall provide at least sixty days' notice of the adoption of the tax or a change in the rate to retailers. Notice shall be provided to retailers within the county. Notice to retailers may be provided through the web site of the Department of Revenue or by other electronic means.

(2) For resolutions containing a termination date, the termination date is the first day of a calendar quarter. The county shall furnish a certified statement to

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the Tax Commissioner no more than one hundred eighty days and at least one hundred twenty days before the termination date that the termination date stated in the resolution is still valid. If the certified statement is not furnished within the prescribed time, the tax shall remain in effect, and the Tax Commissioner shall continue to collect the tax until the first day of the calendar quarter which is at least one hundred twenty days after receipt of the certified statement notwithstanding the termination date stated in the resolution. The Tax Commissioner shall provide at least sixty days' notice of the termination of the tax to retailers. Notice shall be provided to retailers within the county. Notice to retailers may be provided through the web site of the department or other electronic means.

(3) The Tax Commissioner shall collect the sales and use tax concurrently with collection of a state tax in the same manner as the state tax is collected. The Tax Commissioner shall remit monthly the proceeds of the tax to the counties imposing the tax, after deducting the amount of refunds made and three percent of the remainder as an administrative fee necessary to defray the cost of collecting the tax and the expenses incident thereto. The Tax Commissioner shall keep full and accurate records of all money received and distributed. All receipts from the three-percent administrative fee shall be deposited in the state General Fund.

(4) Upon any claim of illegal assessment and collection, the taxpayer has the same remedies provided for claims of illegal assessment and collection of the state tax. It is the intention of the Legislature that the provisions of law which apply to the recovery of state taxes illegally assessed and collected apply to the recovery of sales and use taxes illegally assessed and collected under section 13-319.

(5) Boundary changes or the adoption of a sales and use tax by an incorporated municipality that affects any tax imposed by this section shall be governed as provided in subsections (3) through (10) of section 77-27,143.

Source: Laws 1996, LB 1177, § 11; Laws 2003, LB 282, § 3; Laws 2003, LB 381, § 1; Laws 2005, LB 274, § 221; Laws 2006, LB 887, § 1; Laws 2011, LB211, § 1.
Operative date October 1, 2011.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

(j) MOTOR VEHICLE DONATION

13-329 County, city, village, or public utility; donation of motor vehicle; conditions.

The governing body of a county, city, village, or public utility may authorize the donation of any motor vehicle that is owned by such county, city, village, or public utility, if the governing body has determined that the motor vehicle has reached the end of its useful life, to any charitable organization described in section 501(c)(3) or 501(c)(19) of the Internal Revenue Code that is incorporated pursuant to the Nebraska Nonprofit Corporation Act unless such donation is prohibited by law. The governing body shall not authorize such donation if any employee of the charitable organization or any proposed recipient of the motor vehicle from the charitable organization is a family member of any member of

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the governing body. For purposes of this section, family member means a spouse, child, parent, brother, sister, grandchild, or grandparent by blood, marriage, or adoption.

Source: Laws 2011, LB628, § 4.
Effective date August 27, 2011.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

ARTICLE 5

BUDGETS

(d) BUDGET LIMITATIONS

Section

13-518. Terms, defined.

(d) BUDGET LIMITATIONS

13-518 Terms, defined.

For purposes of sections 13-518 to 13-522:

(1) Allowable growth means (a) for governmental units other than community colleges, the percentage increase in taxable valuation in excess of the base limitation established under section 77-3446, if any, due to improvements to real property as a result of new construction, additions to existing buildings, any improvements to real property which increase the value of such property, and any increase in valuation due to annexation and any personal property valuation over the prior year and (b) for community colleges, (i) for fiscal years prior to fiscal year 2003-04, for fiscal years after fiscal year 2004-05 until fiscal year 2007-08, and for fiscal year 2010-11 and each fiscal year thereafter, the percentage increase in excess of the base limitation, if any, in full-time equivalent students from the second year to the first year preceding the year for which the budget is being determined, (ii) for fiscal year 2003-04 and fiscal year 2004-05, the percentage increase in full-time equivalent students from the second year to the first year preceding the year for which the budget is being determined, and (iii) for fiscal year 2007-08 through fiscal year 2009-10, community college areas may exceed the base limitation to equal base revenue need calculated pursuant to section 85-2223;

(2) Capital improvements means (a) acquisition of real property or (b) acquisition, construction, or extension of any improvements on real property;

(3) Governing body has the same meaning as in section 13-503;

(4) Governmental unit means every political subdivision which has authority to levy a property tax or authority to request levy authority under section 77-3443 except sanitary and improvement districts which have been in existence for five years or less and school districts;

(5) Qualified sinking fund means a fund or funds maintained separately from the general fund to pay for acquisition or replacement of tangible personal property with a useful life of five years or more which is to be undertaken in the future but is to be paid for in part or in total in advance using periodic payments into the fund. The term includes sinking funds under subdivision (13) of section 35-508 for firefighting and rescue equipment or apparatus;

(6) Restricted funds means (a) property tax, excluding any amounts refunded to taxpayers, (b) payments in lieu of property taxes, (c) local option sales taxes, (d) motor vehicle taxes, (e) state aid, (f) transfers of surpluses from any user fee, permit fee, or regulatory fee if the fee surplus is transferred to fund a service or function not directly related to the fee and the costs of the activity funded from the fee, (g) any funds excluded from restricted funds for the prior year because they were budgeted for capital improvements but which were not spent and are not expected to be spent for capital improvements, (h) the tax provided in sections 77-27,223 to 77-27,227 beginning in the second fiscal year in which the county will receive a full year of receipts, and (i) any excess tax collections returned to the county under section 77-1776. Funds received pursuant to the nameplate capacity tax levied under section 77-6203 for the first five years after a wind energy generation facility has been commissioned are nonrestricted funds; and

(7) State aid means:

(a) For all governmental units, state aid paid pursuant to sections 60-3,202 and 77-3523;

(b) For municipalities, state aid to municipalities paid pursuant to sections 18-2605, 39-2501 to 39-2520, 60-3,190, and 77-27,139.04 and insurance premium tax paid to municipalities;

(c) For counties, state aid to counties paid pursuant to sections 39-2501 to 39-2520 and 60-3,184 to 60-3,190, insurance premium tax paid to counties, and reimbursements to counties from funds appropriated pursuant to section 29-3933;

(d) For community colleges, (i) for fiscal years prior to fiscal year 2010-11, state aid to community colleges paid pursuant to the Community College Foundation and Equalization Aid Act and (ii) for fiscal years 2010-11, 2011-12, and 2012-13, state aid to community colleges paid pursuant to section 90-517;

(e) For educational service units, state aid appropriated under sections 79-1241.01 to 79-1241.03; and

(f) For local public health departments as defined in section 71-1626, state aid as distributed under section 71-1628.08.

Source: Laws 1996, LB 299, § 1; Laws 1997, LB 269, § 11; Laws 1998, LB 989, § 1; Laws 1998, LB 1104, § 4; Laws 1999, LB 36, § 2; Laws 1999, LB 86, § 7; Laws 1999, LB 881, § 6; Laws 2001, LB 335, § 1; Laws 2002, LB 259, § 6; Laws 2002, LB 876, § 3; Laws 2003, LB 540, § 1; Laws 2003, LB 563, § 16; Laws 2004, LB 1005, § 1; Laws 2005, LB 274, § 222; Laws 2007, LB342, § 30; Laws 2009, LB218, § 1; Laws 2009, LB549, § 1; Laws 2010, LB1048, § 1; Laws 2010, LB1072, § 1; Laws 2011, LB59, § 1; Laws 2011, LB383, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB59, section 1, with LB383, section 1, to reflect all amendments.

Note: Changes made by LB59 became effective February 23, 2011. Changes made by LB383 became operative July 1, 2011.

Cross References

Community College Foundation and Equalization Aid Act, see section 85-2201.

ARTICLE 8
INTERLOCAL COOPERATION ACT

Section

13-824.01. Contracts relating to electric generating facility and related facilities; estimated cost; bid procedure; advertising; purchases authorized without advertising or sealed bidding.

13-824.01 Contracts relating to electric generating facility and related facilities; estimated cost; bid procedure; advertising; purchases authorized without advertising or sealed bidding.

(1) A joint entity shall cause estimates of the costs to be made by some competent engineer or engineers before the joint entity enters into any contract for the construction, management, ownership, maintenance, or purchase of an electric generating facility and related facilities.

(2) If the estimated cost exceeds the sum of one hundred thousand dollars, no such contract shall be entered into without advertising for sealed bids.

(3)(a) The provisions of subsection (2) of this section and sections 13-824.02 and 13-824.03 relating to sealed bids shall not apply to contracts entered into by a joint entity in the exercise of its rights and powers relating to radioactive material or the energy therefrom, any technologically complex or unique equipment, equipment or supplemental labor procurement from an electric utility or from or through an electric utility alliance, or any maintenance or repair if:

(i) The engineer or engineers certify that, by reason of the nature of the subject matter of the contract, compliance with subsection (2) of this section would be impractical or not in the public interest;

(ii) The engineer's certification is approved by a two-thirds vote of the governing body of the joint entity; and

(iii) The joint entity advertises notice of its intention to enter into such contract, the general nature of the proposed work, and the name of the person to be contacted for additional information by anyone interested in contracting for such work.

(b) Any contract for which the governing body has approved an engineer's certificate described in subdivision (a) of this subsection shall be advertised in three issues, not less than seven days between issues, in one or more newspapers of general circulation in the municipality or county where the principal office or place of business of the joint entity is located, or if no newspaper is so published then in a newspaper qualified to carry legal notices having general circulation therein, and in such additional newspapers or trade or technical periodicals as may be selected by the governing body in order to give proper notice of its intention to enter into such contract, and any such contract shall not be entered into prior to twenty days after the last advertisement.

(4) The provisions of subsection (2) of this section and sections 13-824.02 and 13-824.03 shall not apply to contracts in excess of one hundred thousand dollars entered into for the purchase of any materials, machinery, or apparatus to be used in facilities described in subsection (1) of this section if, after advertising for sealed bids:

(a) No responsive bids are received; or

(b) The governing body of the joint entity determines that all bids received are in excess of the fair market value of the subject matter of such bids.

(5) Notwithstanding any other provision of subsection (2) of this section or sections 13-824.02 and 13-824.03, a joint entity may, without advertising or sealed bidding, purchase replacement parts or services relating to such replacement parts for any generating unit, transformer, or other transmission and distribution equipment from the original manufacturer of such equipment upon certification by an engineer or engineers that such manufacturer is the only available source of supply for such replacement parts or services and that such purchase is in compliance with standards established by the governing body of the joint entity. A written statement containing such certification and a description of the resulting purchase of replacement parts or services from the original manufacturer shall be submitted to the joint entity by the engineer or engineers certifying the purchase for the governing body's approval. After such certification, but not necessarily before the governing body's review, notice of any such purchase shall be published once a week for at least three consecutive weeks in one or more newspapers of general circulation in the municipality or county where the principal office or place of business of the joint entity is located and published in such additional newspapers or trade or technical periodicals as may be selected by the governing body in order to give proper notice of such purchase.

(6) Notwithstanding any other provision of subsection (2) of this section or sections 13-824.02 and 13-824.03, a joint entity may, without advertising or sealed bidding, purchase used equipment and materials on a negotiated basis upon certification by an engineer that such equipment is or such materials are in compliance with standards established by the governing body. A written statement containing such certification shall be submitted to the joint entity by the engineer for the governing body's approval.

Source: Laws 2007, LB636, § 2; Laws 2008, LB939, § 1; Laws 2011, LB155, § 1.

Effective date August 27, 2011.

ARTICLE 9

POLITICAL SUBDIVISIONS TORT CLAIMS ACT

Section

13-901. Act, how cited.

13-910. Act and sections; exemptions.

13-928. Political subdivision; state highway use for special event; applicability of act.

13-901 Act, how cited.

Sections 13-901 to 13-928 shall be known and may be cited as the Political Subdivisions Tort Claims Act.

Source: Laws 1969, c. 138, § 20, p. 634; Laws 1984, LB 590, § 1; Laws 1985, Second Spec. Sess., LB 14, § 1; Laws 1987, LB 258, § 5; R.S.Supp., 1987, § 23-2420; Laws 2007, LB564, § 1; Laws 2011, LB589, § 1.

Effective date May 25, 2011.

13-910 Act and sections; exemptions.

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The Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610 shall not apply to:

(1) Any claim based upon an act or omission of an employee of a political subdivision, exercising due care, in the execution of a statute, ordinance, or officially adopted resolution, rule, or regulation, whether or not such statute, ordinance, resolution, rule, or regulation is valid;

(2) Any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of the political subdivision or an employee of the political subdivision, whether or not the discretion is abused;

(3) Any claim based upon the failure to make an inspection or making an inadequate or negligent inspection of any property other than property owned by or leased to such political subdivision to determine whether the property complies with or violates any statute, ordinance, rule, or regulation or contains a hazard to public health or safety unless the political subdivision had reasonable notice of such hazard or the failure to inspect or inadequate or negligent inspection constitutes a reckless disregard for public health or safety;

(4) Any claim based upon the issuance, denial, suspension, or revocation of or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, or order. Nothing in this subdivision shall be construed to limit a political subdivision's liability for any claim based upon the negligent execution by an employee of the political subdivision in the issuance of a certificate of title under the Motor Vehicle Certificate of Title Act and the State Boat Act;

(5) Any claim arising with respect to the assessment or collection of any tax or fee or the detention of any goods or merchandise by any law enforcement officer;

(6) Any claim caused by the imposition or establishment of a quarantine by the state or a political subdivision, whether such quarantine relates to persons or property;

(7) Any claim arising out of assault, battery, false arrest, false imprisonment, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

(8) Any claim by an employee of the political subdivision which is covered by the Nebraska Workers' Compensation Act;

(9) Any claim arising out of the malfunction, destruction, or unauthorized removal of any traffic or road sign, signal, or warning device unless it is not corrected by the political subdivision responsible within a reasonable time after actual or constructive notice of such malfunction, destruction, or removal. Nothing in this subdivision shall give rise to liability arising from an act or omission of any political subdivision in placing or removing any traffic or road signs, signals, or warning devices when such placement or removal is the result of a discretionary act of the political subdivision;

(10) Any claim arising out of snow or ice conditions or other temporary conditions caused by nature on any highway as defined in section 60-624, bridge, public thoroughfare, or other public place due to weather conditions. Nothing in this subdivision shall be construed to limit a political subdivision's liability for any claim arising out of the operation of a motor vehicle by an employee of the political subdivision while acting within the course and scope of his or her employment by the political subdivision;

(11) Any claim arising out of the plan or design for the construction of or an improvement to any highway as defined in such section or bridge, either in original construction or any improvement thereto, if the plan or design is approved in advance of the construction or improvement by the governing body of the political subdivision or some other body or employee exercising discretionary authority to give such approval;

(12) Any claim arising out of the alleged insufficiency or want of repair of any highway as defined in such section, bridge, or other public thoroughfare. Insufficiency or want of repair shall be construed to refer to the general or overall condition and shall not refer to a spot or localized defect. A political subdivision shall be deemed to waive its immunity for a claim due to a spot or localized defect only if (a) the political subdivision has had actual or constructive notice of the defect within a reasonable time to allow repair prior to the incident giving rise to the claim or (b) the claim arose during the time specified in a notice provided by the political subdivision pursuant to subsection (3) of section 39-1359 and the state or political subdivision had actual or constructive notice; or

(13)(a) Any claim relating to recreational activities for which no fee is charged (i) resulting from the inherent risk of the recreational activity, (ii) arising out of a spot or localized defect of the premises unless the spot or localized defect is not corrected by the political subdivision leasing, owning, or in control of the premises within a reasonable time after actual or constructive notice of the spot or localized defect, or (iii) arising out of the design of a skatepark or bicycle motocross park constructed for purposes of skateboarding, inline skating, bicycling, or scootering that was constructed or reconstructed, reasonably and in good faith, in accordance with generally recognized engineering or safety standards or design theories in existence at the time of the construction or reconstruction. For purposes of this subdivision, a political subdivision shall be charged with constructive notice only when the failure to discover the spot or localized defect of the premises is the result of gross negligence.

(b) For purposes of this subdivision:

(i) Recreational activities include, but are not limited to, whether as a participant or spectator: Hunting, fishing, swimming, boating, camping, picnicking, hiking, walking, running, horseback riding, use of trails, nature study, waterskiing, winter sports, use of playground equipment, biking, roller blading, skateboarding, golfing, athletic contests; visiting, viewing, or enjoying entertainment events, festivals, or historical, archaeological, scenic, or scientific sites; and similar leisure activities;

(ii) Inherent risk of recreational activities means those risks that are characteristic of, intrinsic to, or an integral part of the activity;

(iii) Gross negligence means the absence of even slight care in the performance of a duty involving an unreasonable risk of harm; and

(iv) Fee means a fee to participate in or be a spectator at a recreational activity. A fee shall include payment by the claimant to any person or organization other than the political subdivision only to the extent the political subdivision retains control over the premises or the activity. A fee shall not include payment of a fee or charge for parking or vehicle entry.

(c) This subdivision, and not subdivision (3) of this section, shall apply to any claim arising from the inspection or failure to make an inspection or negligent

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inspection of premises owned or leased by the political subdivision and used for recreational activities.

Source: Laws 1969, c. 138, § 9, p. 629; Laws 1986, LB 811, § 10; R.S.Supp.,1986, § 23-2409; Laws 1992, LB 262, § 8; Laws 1993, LB 370, § 2; Laws 1996, LB 900, § 1025; Laws 1999, LB 228, § 1; Laws 2004, LB 560, § 1; Laws 2005, LB 276, § 98; Laws 2007, LB564, § 2; Laws 2011, LB589, § 2.
Effective date May 25, 2011.

Cross References

Motor Vehicle Certificate of Title Act, see section 60-101.
Nebraska Workers' Compensation Act, see section 48-1,110.
State Boat Act, see section 37-1201.

13-928 Political subdivision; state highway use for special event; applicability of act.

The Political Subdivisions Tort Claims Act shall apply to any claim arising during the time specified in a notice provided by a political subdivision pursuant to subsection (3) of section 39-1359.

Source: Laws 2011, LB589, § 3.
Effective date May 25, 2011.

ARTICLE 11

INDUSTRIAL DEVELOPMENT

(a) INDUSTRIAL DEVELOPMENT BONDS

Section

- 13-1101. Terms, defined.
- 13-1102. Governing body; powers.
- 13-1104. Bonds; security; agreements; default; payment; foreclosure.
- 13-1105. Leasing or financing of project; governing body; powers and duties; hearing.
- 13-1109. Powers; cumulative; presumption regarding bonds and agreements.

(a) INDUSTRIAL DEVELOPMENT BONDS

13-1101 Terms, defined.

As used in sections 13-1101 to 13-1110, unless the context otherwise requires:

(1) Municipality means any incorporated city or village in the state, including cities operating under home rule charters and entities created by interlocal agreements among cities, villages, and counties;

(2) Nonprofit enterprise means any activity, venture, undertaking, trade, or business conducted or to be conducted by a nonprofit organization incorporated or authorized to do business in this state as permitted under its governing documents and the applicable laws of its jurisdiction of organization;

(3) Project means (a) any land, building, or equipment or other improvement, and all real and personal properties deemed necessary in connection therewith, which shall be suitable for use for manufacturing or industrial enterprises, (b) any land, building, or equipment or other improvement, and all real and personal properties deemed necessary in connection therewith, which shall be suitable for use as a nonprofit enterprise or the refinancing of outstanding debt of a nonprofit enterprise incurred to finance such land, building, equipment, improvement, or other properties, except that a project under this subdivision

shall not include any portion of such land, building, equipment, improvement, or other properties or the refinancing thereof to the extent used for sectarian instruction or study or devotional activities or religious worship, or (c) any land, building, or improvements located in a blighted area located within a city of the metropolitan, primary, first, or second class, and all real and personal properties deemed necessary in connection therewith, which shall be suitable for any enterprise, including, but not limited to, profit or nonprofit commercial, business, governmental, or multifamily housing enterprises;

(4) Governing body means the board or body in which the general legislative powers of the municipality or county are vested;

(5) Mortgage means a mortgage or a mortgage and deed of trust, or other security device; and

(6) Blighted area means an area within a municipality (a) which by reason of the presence of a substantial number of deteriorated or deteriorating structures, existence of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations, or constitutes an economic or social liability and is detrimental to the public health, safety, morals, or welfare in its present condition and use, and (b) in which there is at least one of the following conditions: (i) Unemployment in the designated area is at least one hundred twenty percent of the state or national average; (ii) the average age of the residential or commercial units in the area is at least forty years; (iii) more than half of the platted and subdivided property in an area is unimproved land that has been within the municipality for forty years and has remained unimproved during that time; (iv) the per capita income of the area is lower than the average per capita income of the municipality in which the area is designated; or (v) the area has had either stable or decreasing population based on the last two decennial censuses. In no event shall a city of the metropolitan, primary, or first class designate more than thirty-five percent of the city as blighted, a city of the second class shall not designate an area larger than fifty percent of the city as blighted, and a village shall not designate an area larger than one hundred percent of the village as blighted.

Source: Laws 1961, c. 54, § 1, p. 200; Laws 1983, LB 451, § 1; Laws 1984, LB 1084, § 1; R.S.Supp.,1986, § 18-1614; Laws 2011, LB159, § 1.

Effective date March 17, 2011.

13-1102 Governing body; powers.

(1) In addition to any other powers which it may have, each municipality and each county shall have without any other authority the following powers:

(a) To acquire, whether by construction, purchase, devise, gift, or lease, or any one or more of such methods, one or more projects, which shall be located within this state, and may be located within, without, partially within, or partially without the municipality or county;

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(b) To lease to others any or all of its projects for such rentals and upon such terms and conditions as the governing body may deem advisable and as shall not conflict with sections 13-1101 to 13-1110;

(c) To finance the acquisition, construction, rehabilitation, or purchase of projects in blighted areas. The power to finance such projects in blighted areas means and includes the power to enter into any type of agreement, including a loan agreement, when the other party to the agreement agrees (i) to use the proceeds of money provided under the agreement to pay the costs of such acquisition, construction, rehabilitation, or purchase and any costs incident to the issuance of the related bonds and the funding of any reserve funds, (ii) to be bound by the terms of the Age Discrimination in Employment Act, the Nebraska Fair Employment Practice Act, and sections 48-1219 to 48-1227, regardless of the number of employees, and (iii) to make payments to the municipality or county sufficient to enable it to pay on a timely basis all principal, redemption premiums, and interest on the related revenue bonds issued to provide such financing, and any amounts necessary to repay such municipality or county for any and all costs incurred by it that are incidental to such financing. Title to any such project in a blighted area need not be in the name of the municipality or county, but may be in the name of a private party;

(d) To acquire, own, develop, lease, or finance or refinance the acquisition, construction, rehabilitation, or purchase of one or more projects for use as a nonprofit enterprise, regardless of whether such project or projects are within a blighted area. Such projects shall be located within this state and may be located within, without, partially within, or partially without the municipality or county; provided, for any project located without the municipality or county, such municipality or county shall find that a reasonable relationship exists between such municipality or county and the project, borrower, or other party or parties to the financing agreement, as applicable. The power to finance such projects means and includes the power to enter into any type of agreement, including a loan agreement, when the other party to the agreement agrees (i) to use the proceeds of money provided under the agreement to pay the costs of such acquisition, construction, rehabilitation, or purchase and any costs incident to the issuance of the related bonds and the funding of any reserve funds and (ii) to make payments to the municipality or county sufficient to enable it to pay on a timely basis all principal, redemption premiums, and interest on the related revenue bonds issued to provide such financing and any amounts necessary to repay such municipality or county for any and all costs incurred by it that are incidental to such financing. Title to any such project need not be in the name of the municipality or county but may be in the name of a private party;

(e) To issue revenue bonds for the purpose of defraying the cost of acquiring, improving, or financing any project or projects, including the cost of any real estate previously purchased and used for such project or projects, or the cost of any option in connection with acquiring such property, and to secure the payment of such bonds as provided in sections 13-1101 to 13-1110, which revenue bonds may be issued in two or more series or issues where deemed advisable, and each such series or issue may contain different maturity dates, interest rates, priorities on revenue available for payment of such bonds and priorities on securities available for guaranteeing payment thereof, and such other differing terms and conditions as are deemed necessary and are not in conflict with sections 13-1101 to 13-1110; and

(f) To sell and convey any real or personal property acquired as provided by subdivision (1)(a) of this section and make such order respecting the same as may be deemed conducive to the best interest of the municipality or county, except that such sale or conveyance shall be subject to the terms of any lease but shall be free and clear of any other encumbrance.

(2) No municipality or county shall have the power to (a) operate any project, referred to in this section, as a business or in any manner except as the lessor thereof, (b) lease any project acquired under powers conferred by this section for use principally for commercial feeding of livestock, (c) issue bonds under this section principally for the purpose of financing the construction or acquisition of commercial feeding facilities for livestock, or (d) acquire any project or any part thereof by condemnation.

Source: Laws 1961, c. 54, § 2, p. 201; Laws 1967, c. 86, § 1, p. 271; Laws 1972, LB 1261, § 2; Laws 1983, LB 451, § 2; R.S.1943, (1983), § 18-1615; Laws 2007, LB265, § 1; Laws 2011, LB159, § 2. Effective date March 17, 2011.

Cross References

Age Discrimination in Employment Act, see section 48-1001.

Nebraska Fair Employment Practice Act, see section 48-1125.

13-1104 Bonds; security; agreements; default; payment; foreclosure.

(1) The principal of and interest on any bonds issued under the authority of sections 13-1101 to 13-1110 (a) shall be secured by a pledge of the revenue out of which such bonds shall be made payable, (b) may be secured by a mortgage covering all or any part of the project, (c) may be secured by a pledge of the lease of such project or by any related financing agreement, or (d) may be secured by such other security device as may be deemed most advantageous by the issuing authority and other parties to the transaction.

(2) The proceedings under which the bonds are authorized to be issued under sections 13-1101 to 13-1110 and any mortgage given to secure the same may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting (a) the fixing and collection of rents for any project covered by such proceedings or mortgage, (b) the terms to be incorporated in the lease or financing of such project, (c) the maintenance and insurance of such project, (d) the creation and maintenance of special funds from the revenue of such project, and (e) the rights and remedies available in the event of a default to the bondholders or to the trustee under a mortgage, all as the governing body shall deem advisable and as shall not be in conflict with sections 13-1101 to 13-1110. In making any such agreements or provisions, a municipality or county shall not have the power to obligate itself, except with respect to the project and the application of the revenue therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

(3) The proceedings authorizing any bonds under sections 13-1101 to 13-1110 and any mortgage securing such bonds may provide that, in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and

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to apply the revenue from the project in accordance with such proceedings or the provisions of such mortgage.

(4) Any mortgage made under sections 13-1101 to 13-1110 to secure bonds issued thereunder may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if it is the highest bidder therefor. No breach of any such agreement shall impose any pecuniary liability upon a municipality or county or any charge upon their general credit or against their taxing powers.

Source: Laws 1961, c. 54, § 4, p. 203; Laws 1983, LB 451, § 3; R.S.1943, (1983), § 18-1617; Laws 2011, LB159, § 3.
Effective date March 17, 2011.

13-1105 Leasing or financing of project; governing body; powers and duties; hearing.

(1) Prior to the leasing or financing of any project, the governing body must determine and find the following: The amount necessary to pay the principal of and the interest on the bonds proposed to be issued to finance such project; the amount necessary to be paid into any reserve funds which the governing body may deem it advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project including taxes; and, with respect to leases, unless the terms under which the project is to be leased provide that the lessee shall maintain the project and carry all proper insurance with respect thereto, the estimated cost of maintaining the project in good repair and keeping it properly insured.

(2) The determinations and findings of the governing body, required to be made by subsection (1) of this section, shall be set forth in the proceedings under which the proposed bonds are to be issued. Prior to the issuance of the bonds authorized by sections 13-1101 to 13-1110, the municipality or county shall (a) lease the project to a lessee or lessees under an agreement conditioned upon completion of the project and providing for payment to the municipality or county of such rentals as, upon the basis of such determinations and findings, will be sufficient (i) to pay the principal of and interest on the bonds issued to finance the project, (ii) to pay the taxes on the project, (iii) to build up and maintain any reserves deemed by the governing body to be advisable in connection therewith, and (iv) unless the agreement of lease obligates the lessees to pay for the maintenance and insurance of the project, to pay the costs of maintaining the project in good repair and keeping it properly insured or (b) enter into a financing agreement pursuant to subdivision (1)(c) or (d) of section 13-1102. Subject to the limitations of sections 13-1101 to 13-1110, the lease or financing agreement or extensions or modifications thereof may contain such other terms and conditions as may be mutually acceptable to the parties. Notwithstanding any other provisions of law relating to the sale of property owned by municipalities and counties, any such lease may contain an option for the lessees to purchase the project on such terms and conditions as may be mutually acceptable to the parties.

(3) At a public hearing or at the adjournment of such hearing, the governing body of the city in which the proposed project is located shall determine whether the location of the proposed project is within a blighted area and whether the proposed project is within the development plan or plans for the area. Notice of the time and place of the hearing shall be published at least two times not less than seven days prior to the hearing in a legal newspaper having a general circulation within the boundaries of the city. Upon a favorable resolution by the governing body of the city where the proposed project is located, the governing body of the city or county may proceed to issue bonds.

(4) The requirements for notice and public hearing as set forth in subsection (3) of this section shall not apply to projects for manufacturing or industrial enterprises or for nonprofit enterprises as described in subdivision (3)(a) or (b) of section 13-1101 or refunding bonds authorized under section 13-1106.

Source: Laws 1961, c. 54, § 5, p. 204; Laws 1983, LB 451, § 4; R.S.1943, (1983), § 18-1618; Laws 2011, LB159, § 4.
Effective date March 17, 2011.

13-1109 Powers; cumulative; presumption regarding bonds and agreements.

(1) Sections 13-1101 to 13-1110 shall not be construed as a restriction or limitation upon any powers which a municipality or county might otherwise have under any laws of this state but shall be construed as cumulative.

(2) Sections 13-1101 to 13-1110 shall be full authority for the exercise of the powers described in such sections by a municipality or county, and no action, proceeding, or election shall be required prior to the exercise of such powers under such sections or to authorize the exercise of any of the powers granted in such sections, except as specifically provided in such sections, any provision of law applicable to a municipality or county to the contrary notwithstanding. No proceedings for the issuance of bonds of a municipality or county shall be required other than those required by sections 13-1101 to 13-1110, and the provisions of all other laws and charters of any municipality or county, if any, relative to the terms and conditions for the acquisition, leasing, financing construction, rehabilitation, or purchase of projects as provided in such sections and the issuance, payment, redemption, registration, sale, or delivery of bonds by a municipality or county shall not be applicable to bonds issued by a municipality or county pursuant to such sections. No municipality, county, or governing body or officer thereof shall be subject to the Securities Act of Nebraska with respect to any revenue bonds issued under sections 13-1101 to 13-1110. Insofar as sections 13-1101 to 13-1110 are inconsistent with the provisions of any other law or of any law otherwise applicable to a municipality or county, if any, sections 13-1101 to 13-1110 shall be controlling.

(3) In any suit, action, or proceeding involving the validity or enforceability of any bond of a municipality or county or the security therefor brought after the lapse of thirty days after the issuance of such bonds has been authorized, any such bond reciting in substance that it has been authorized by the municipality or county to aid in financing a project shall be conclusively deemed to have been authorized for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with sections 13-1101 to 13-1110.

(4) In any suit, action, or proceeding involving the validity or enforceability of any agreement of a municipality or county brought after the lapse of thirty days

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after the agreement has been formally entered into, any such agreement reciting in substance that it has been entered into by the municipality or county to provide financing for a project shall be conclusively deemed to have been entered into for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with sections 13-1101 to 13-1110.

Source: Laws 1961, c. 54, § 9, p. 207; R.S.1943, (1983), § 18-1622; Laws 2011, LB159, § 5.
Effective date March 17, 2011.

Cross References

Securities Act of Nebraska, see section 8-1123.

**ARTICLE 13
PUBLIC BUILDING COMMISSION**

Section

13-1302. Terms, defined.

13-1304. Commission; powers and duties.

13-1302 Terms, defined.

For purposes of sections 13-1301 to 13-1312, unless the context otherwise requires:

- (1) Bonds means bonds issued by the commission pursuant to such sections;
- (2) City means a city of the metropolitan class as defined in section 14-101 or a city of the primary class as defined in section 15-101, the population of which according to the most recent federal census was more than one-half in number of the total population, according to such census, of the county in which such city is located;
- (3) Commission means a public building commission created by and activated pursuant to sections 13-1301 to 13-1312;
- (4) County means a county in which a city of the metropolitan class or primary class is located;
- (5) Governing body means the council in the case of the city and the board of county commissioners in the case of the county;
- (6) Other governmental units means a city, other than a city as defined in this section, village, district, authority, public agency, board, commission, or other public corporation, political subdivision, or public instrumentality located in whole or in part in the county; and
- (7) Project means any building, structure, or facility for public purposes to be used jointly by the city and the county, including the site thereof, all machinery, equipment, and apparatus of or pertaining thereto, including fixtures and furnishings if agreed to by the city and the county, and all other real or personal property necessary or incidental thereto.

Source: Laws 1971, LB 1003, § 2; R.S.1943, (1983), § 23-2602; Laws 1990, LB 1098, § 2; Laws 2011, LB480, § 1.
Effective date August 27, 2011.

13-1304 Commission; powers and duties.

Any commission established under sections 13-1301 to 13-1312 shall have power to:

- (1) Sue and be sued;
- (2) Have a seal and alter the seal;
- (3) Acquire, hold, and dispose of personal property for its corporate purposes;
- (4) Acquire in the name of the city and county, by gift, grant, bequest, purchase, or condemnation, real property or rights and easements thereon necessary or convenient for its corporate purposes and use such property or rights and easements so long as its corporate existence continues;
- (5) Make bylaws for the management and regulation of its affairs and make rules and regulations for the use of its projects;
- (6) With the consent of the city or the county, as the case may be, use the services of agents, employees, and facilities of the city or county, for which the commission may reimburse the city or the county its proper proportion of the compensation or cost thereof, and use the services of the city attorney as legal advisor to the commission;
- (7) Appoint officers, agents, and employees and fix their compensation, except that the county treasurer shall be the ex officio treasurer of the commission;
- (8) Design, acquire, construct, maintain, operate, improve, remodel, remove, and reconstruct, so long as its corporate existence continues, such projects for the use both by the city and county as are approved by the city and the county and all facilities necessary or convenient in connection with any such projects;
- (9) Enter into agreements with the city or county, or both, as to the operation, maintenance, repair, and use of its projects. Such agreements may provide that the city or county, or both, has responsibility for a certain area within any building, structure, or facility, including the maintenance, repair, use, furnishing, or management of such area;
- (10) With the approval of both the city and the county, enter into agreements with the United States of America, the State of Nebraska, any body, board, agency, corporation, or other governmental entity of either of them, or other governmental units for use by them of any projects to the extent that such use is not required by the city or the county;
- (11) Make all other contracts, leases, and instruments necessary or convenient to the carrying out of the corporate purposes or powers of the commission;
- (12) Annually levy, assess, and certify to the governing body of the county the amount of tax to be levied for the purposes of the commission subject to section 77-3443, not to exceed one and seven-tenths cents on each one hundred dollars upon the taxable valuation of all the taxable property in the county. The governing body of the county shall collect the tax so certified at the same time and in the same manner as other county taxes are levied and collected, and the proceeds of such taxes when due and as collected shall be set aside and deposited in the special account or accounts in which other revenue of the commission is deposited;
- (13) Accept grants, loans, or contributions from the United States of America, the State of Nebraska, any agency or instrumentality of either of them, the city,

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the county, any other governmental unit, or any private person, firm, or corporation and expend the proceeds thereof for any corporate purposes;

(14) Incur debt, issue bonds and notes and provide for the rights of the holders thereof, and pledge and apply to the payment of such bonds and notes the taxes and other receipts, income, revenue, profits, and money of the commission;

(15) Enter on any lands, waters, and premises for the purpose of making surveys, findings, and examinations; and

(16) Do all things necessary or convenient to carry out the powers specially conferred on the commission by sections 13-1301 to 13-1312.

Source: Laws 1971, LB 1003, § 4; Laws 1979, LB 187, § 126; R.S.1943, (1983), § 23-2604; Laws 1992, LB 719A, § 32; Laws 1996, LB 1114, § 26; Laws 2011, LB480, § 2.
Effective date August 27, 2011.

**ARTICLE 20
INTEGRATED SOLID WASTE MANAGEMENT**

Section

13-2042. Landfill disposal fee; payment; interest; use; grants; department; powers; council; duties.

13-2042 Landfill disposal fee; payment; interest; use; grants; department; powers; council; duties.

(1) A disposal fee of one dollar and twenty-five cents is imposed for each six cubic yards of uncompacted solid waste, one dollar and twenty-five cents for each three cubic yards of compacted solid waste, or one dollar and twenty-five cents per ton of solid waste (a) disposed of at landfills regulated by the department or (b) transported for disposal out of state from a solid waste processing facility holding a permit under the Integrated Solid Waste Management Act. Each operator of a landfill or solid waste processing facility shall make the fee payment quarterly. The fee shall be paid quarterly to the department on or before the forty-fifth day following the end of each quarter. For purposes of this section, landfill has the same definition as municipal solid waste landfill unit in 40 C.F.R. 258.2.

(2) Each fee payment shall be accompanied by a form prepared and furnished by the department and completed by the permitholder. The form shall state the total volume of solid waste disposed of at the landfill or transported for disposal out of state from the solid waste processing facility during the payment period and shall provide any other information deemed necessary by the department. The form shall be signed by the permitholder.

(3) If a permitholder fails to make a timely payment of the fee, he or she shall pay interest on the unpaid amount at the rate specified in section 45-104.02, as such rate may from time to time be adjusted.

(4) This section shall not apply to a site used solely for the reclamation of land through the introduction of landscaping rubble or inert material.

(5) Fifty percent of the total of such fees collected in each quarter shall be remitted to the State Treasurer for credit to the Integrated Solid Waste Management Cash Fund and shall be used by the department to cover the direct and indirect costs of responding to spills or other environmental emer-

gencies, of regulating, investigating, remediating, and monitoring facilities during and after operation of facilities, or of performance of regulated activities under the Integrated Solid Waste Management Act, the Nebraska Litter Reduction and Recycling Act, and the Waste Reduction and Recycling Incentive Act. The department may seek recovery of expenses paid from the fund for responding to spills or other environmental emergencies or for investigation, remediation, and monitoring of a facility from any person who owned, operated, or used the facility in violation of the Integrated Solid Waste Management Act, the Nebraska Litter Reduction and Recycling Act, and the Waste Reduction and Recycling Incentive Act in a civil action filed in the district court of Lancaster County.

(6)(a) The remaining fifty percent of the total of such fees collected per quarter shall be remitted to the State Treasurer for credit to the Waste Reduction and Recycling Incentive Fund. For purposes of determining the total fees collected, any amount of fees rebated pursuant to section 13-2042.01 shall be included as if the fees had not been rebated, and the amount of the fees rebated pursuant to such section shall be deducted from the amount to be credited to the Waste Reduction and Recycling Incentive Fund.

(b) From the fees credited to the Waste Reduction and Recycling Incentive Fund under this subsection:

(i) Grants shall be awarded to counties, municipalities, and agencies for the purposes of planning and implementing facilities and systems to further the goals of the Integrated Solid Waste Management Act. The grant proceeds shall not be used to fund landfill closure site assessments, closure, monitoring, or investigative or corrective action costs for existing landfills or landfills already closed prior to July 15, 1992. The council shall adopt and promulgate rules and regulations to carry out this subdivision. Such rules and regulations shall base the awarding of grants on a project's reflection of the integrated solid waste management policy and hierarchy established in section 13-2018, the proposed amount of local matching funds, and community need; and

(ii) The department may disburse amounts to political subdivisions for costs incurred in response to and remediation of any solid waste disposed of or abandoned at dump sites or discrete locations along public roadways or ditches and on any contiguous area affected by such disposal or abandonment. Such reimbursement shall be by application to the department on forms prescribed by the department. The department shall prepare and make available a schedule of eligible costs and application procedures which may include a requirement of a demonstration of preventive measures to be taken to discourage future dumping. The department may not disburse to political subdivisions an amount which in the aggregate exceeds five percent of total revenue from the disposal fees collected pursuant to this section in the preceding fiscal year. These disbursements shall be made on a fiscal-year basis, and applications received after funds for this purpose have been exhausted may be eligible during the next fiscal year but are not an obligation of the state. Any eligible costs incurred by a political subdivision which are not funded due to a lack of funds shall not be considered an obligation of the state. In disbursing funds under this subdivision, the director shall make efforts to ensure equal geographical distribution throughout the state and may deny reimbursements in order to accomplish this goal.

Source: Laws 1992, LB 1257, § 42; Laws 1994, LB 1207, § 11; Laws 1997, LB 495, § 2; Laws 1999, LB 592, § 1; Laws 2001, LB 128,

§ 13-2042 CITIES, COUNTIES, AND OTHER POLITICAL SUBDIVISIONS

§ 1; Laws 2003, LB 143, § 8; Laws 2004, LB 916, § 1; Laws 2010, LB696, § 1; Laws 2011, LB29, § 1.
Effective date August 27, 2011.

Cross References

Nebraska Litter Reduction and Recycling Act, see section 81-1534.
Waste Reduction and Recycling Incentive Act, see section 81-15,158.01.

ARTICLE 26

CONVENTION CENTER FACILITY FINANCING ASSISTANCE ACT

Section

13-2609. Tax Commissioner; duties; certain retailers and operators; reports required.

13-2610. Convention Center Support Fund; created; use; investment; distribution to certain areas; development fund; committee.

13-2609 Tax Commissioner; duties; certain retailers and operators; reports required.

(1) If an application is approved, the Tax Commissioner shall:

(a) Audit or review audits of the approved convention and meeting center facility, sports arena facility, or associated hotel to determine the state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels; and

(b) Certify annually the amount of state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels, to the State Treasurer.

(2) State sales tax revenue collected by retailers and operators that are not eligible facilities but are doing business at eligible facilities shall be reported on informational returns developed by the Department of Revenue and provided to any such retailers and operators by the eligible facility. The informational returns shall be submitted to the department by the retailer or operator by the twentieth day of the month following the month the sales taxes are collected. The Tax Commissioner shall use the data from the informational returns and sales tax returns of eligible facilities and associated hotels to determine the appropriate amount of state sales tax revenue.

(3) Changes made to the Convention Center Facility Financing Assistance Act by Laws 2007, LB 551, shall apply to state sales tax revenue collected commencing on July 1, 2006.

Source: Laws 1999, LB 382, § 9; Laws 2007, LB551, § 5; Laws 2011, LB210, § 1.

Operative date October 1, 2011.

Cross References

Limitation on applications, see section 13-2612.

13-2610 Convention Center Support Fund; created; use; investment; distribution to certain areas; development fund; committee.

CONVENTION CENTER FACILITY FINANCING ASSISTANCE ACT § 13-2610

(1) Upon the annual certification under section 13-2609, the State Treasurer shall transfer after the audit the amount certified to the Convention Center Support Fund. The Convention Center Support Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2)(a) It is the intent of the Legislature to appropriate from the fund to any political subdivision for which an application for state assistance under the Convention Center Facility Financing Assistance Act has been approved an amount not to exceed (i) seventy percent of the state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels, (ii) seventy-five million dollars for any one approved project, or (iii) the total cost of acquiring, constructing, improving, or equipping the eligible facility. State assistance shall not be used for an operating subsidy or other ancillary facility.

(b) Ten percent of such funds appropriated to a city of the metropolitan class under this subsection shall be equally distributed to areas with a high concentration of poverty to (i) showcase important historical aspects of such areas or areas within close geographic proximity of the area with a high concentration of poverty or (ii) assist with the reduction of street and gang violence in such areas.

(c) Each area with a high concentration of poverty that has been distributed funds under subdivision (b) of this subsection shall establish a development fund and form a committee which shall identify and research potential projects to be completed in the area with a high concentration of poverty or in an area within close geographic proximity of such area if the project would have a significant or demonstrable impact on such area and make final determinations on the use of state sales tax revenue received for such projects.

(d) A committee formed in subdivision (c) of this subsection shall include the following three members:

(i) The member of the city council whose district includes a majority of the census tracts which each contain a percentage of persons below the poverty line of greater than thirty percent, as determined by the most recent federal decennial census, within the area with a high concentration of poverty;

(ii) The commissioner of the county whose district includes a majority of the census tracts which each contain a percentage of persons below the poverty line of greater than thirty percent, as determined by the most recent federal decennial census, within the area with a high concentration of poverty; and

(iii) A resident of the area with a high concentration of poverty, appointed by the other two members of the committee.

(e) A committee formed in subdivision (c) of this subsection shall solicit project ideas from the public and shall hold a public hearing in the area with a high concentration of poverty. Notice of a proposed hearing shall be provided in accordance with the procedures for notice of a public hearing pursuant to section 18-2115. The committee shall research potential projects and make the final determination regarding the annual distribution of funding to such projects.

§ 13-2610 CITIES, COUNTIES, AND OTHER POLITICAL SUBDIVISIONS

(f) For purposes of this subsection, an area with a high concentration of poverty means an area within the corporate limits of a city of the metropolitan class consisting of one or more contiguous census tracts, as determined by the most recent federal decennial census, which contain a percentage of persons below the poverty line of greater than thirty percent, and all census tracts contiguous to such tract or tracts, as determined by the most recent federal decennial census.

(3) State assistance to the political subdivision shall no longer be available upon the retirement of the bonds issued to acquire, construct, improve, or equip the facility or any subsequent bonds that refunded the original issue or when state assistance reaches the amount determined under subdivision (2)(a) of this section, whichever comes first.

(4) The remaining thirty percent of state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels, shall be appropriated by the Legislature to the Civic and Community Center Financing Fund.

(5) Any municipality that has applied for and received a grant of assistance under the Civic and Community Center Financing Act may not receive state assistance under the Convention Center Facility Financing Assistance Act.

Source: Laws 1999, LB 382, § 10; Laws 2007, LB551, § 6; Laws 2008, LB754, § 1; Laws 2009, LB63, § 1; Laws 2010, LB975, § 1; Laws 2011, LB297, § 1.
Effective date August 27, 2011.

Cross References

Civic and Community Center Financing Act, see section 13-2701.

Limitation on applications, see section 13-2612.

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 27

CIVIC AND COMMUNITY CENTER FINANCING ACT

Section

- 13-2701. Act, how cited.
- 13-2702. Purpose of act.
- 13-2703. Terms, defined.
- 13-2704. Civic and Community Center Financing Fund; created; use; investment.
- 13-2705. Conditional grant approval.
- 13-2707. Department; evaluation criteria.
- 13-2709. Information on grants.
- 13-2710. Rules and regulations.

13-2701 Act, how cited.

Sections 13-2701 to 13-2710 shall be known and may be cited as the Civic and Community Center Financing Act.

Source: Laws 1999, LB 382, § 13; Laws 2011, LB297, § 2.
Effective date August 27, 2011.

13-2702 Purpose of act.

The purpose of the Civic and Community Center Financing Act is to support the development of civic and community centers throughout Nebraska. Furthermore, the act is intended to support projects that foster maintenance or growth of communities.

Source: Laws 1999, LB 382, § 14; Laws 2011, LB297, § 3.
Effective date August 27, 2011.

13-2703 Terms, defined.

For purposes of the Civic and Community Center Financing Act:

- (1) Civic center means a facility that is primarily used to host conventions, meetings, and cultural events and a library;
- (2) Community center means the traditional center of a community, typically comprised of a cohesive core of residential, civic, religious, and commercial buildings, arranged around a main street and intersecting streets;
- (3) Department means the Department of Economic Development;
- (4) Fund means the Civic and Community Center Financing Fund; and
- (5) Historic building means a building eligible for listing on or currently listed on the National Register of Historic Places.

Source: Laws 1999, LB 382, § 15; Laws 2011, LB297, § 4.
Effective date August 27, 2011.

13-2704 Civic and Community Center Financing Fund; created; use; investment.

(1) The Civic and Community Center Financing Fund is created. The fund shall be administered by the department. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Civic and Community Center Financing Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The fund may be used for assistance for the construction of new civic centers, the renovation or expansion of existing civic or community centers, or the conversion, rehabilitation, or reuse of historic buildings for purposes consistent with this section. The fund may not be used for programming, marketing, advertising, and related activities. Transfers may be made from the fund to the Department of Revenue Enforcement Fund at the direction of the Legislature.

(2) It is the intent of the Legislature that on July 1, 2011, or as soon thereafter as is administratively possible the State Treasurer shall transfer forty-two thousand nine hundred dollars from the Civic and Community Center Financing Fund to the Department of Revenue Enforcement Fund.

Source: Laws 1999, LB 382, § 16; Laws 2009, First Spec. Sess., LB3, § 8; Laws 2010, LB779, § 5; Laws 2011, LB297, § 5.
Effective date August 27, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

13-2705 Conditional grant approval.

§ 13-2705 CITIES, COUNTIES, AND OTHER POLITICAL SUBDIVISIONS

The department may conditionally approve grants of assistance from the fund to eligible and competitive applicants within the following limits:

(1) Except as provided in subdivision (2) of this section, a grant request shall be at least ten thousand dollars but no more than:

- (a) For a city of the primary class, one million five hundred thousand dollars;
- (b) For a municipality with a population of forty thousand but less than one hundred thousand, seven hundred fifty thousand dollars;
- (c) For a municipality with a population of twenty thousand but less than forty thousand, five hundred thousand dollars;
- (d) For a municipality with a population of ten thousand but less than twenty thousand, four hundred thousand dollars; and
- (e) For a municipality with a population of less than ten thousand, two hundred fifty thousand dollars;

(2) Upon the balance of the fund reaching two million five hundred thousand dollars, and until the balance of the fund falls below one million dollars, a grant request shall be at least ten thousand dollars but no more than:

- (a) For a city of the primary class, two million two hundred fifty thousand dollars;
- (b) For a municipality with a population of forty thousand but less than one hundred thousand, one million one hundred twenty-five thousand dollars;
- (c) For a municipality with a population of twenty thousand but less than forty thousand, seven hundred fifty thousand dollars;
- (d) For a municipality with a population of ten thousand but less than twenty thousand, six hundred thousand dollars; and
- (e) For a municipality with a population of less than ten thousand, three hundred seventy-five thousand dollars;

(3) Assistance from the fund shall not amount to more than fifty percent of the cost of construction, renovation, or expansion; and

(4) A municipality shall not be awarded more than one grant in any five-year period.

Source: Laws 1999, LB 382, § 17; Laws 2003, LB 385, § 1; Laws 2010, LB789, § 1; Laws 2011, LB297, § 6.
Effective date August 27, 2011.

13-2707 Department; evaluation criteria.

The department shall evaluate all applications for grants of assistance based on the following criteria:

(1) Attraction impact. Funding decisions by the department shall be based in part on the likelihood of the project attracting new civic or community activity to Nebraska from outside of Nebraska. A project with greater out-of-state draw shall be preferred over a project with less impact;

(2) Socioeconomic impact. The project's potential for long-term positive impacts on the local and regional economy and society;

(3) Financial support. Assistance from the fund shall be matched at least equally from local sources. At least fifty percent of the local match must be in cash. Projects with a higher level of local matching funds shall be preferred as compared to those with a lower level of matching funds;

(4) Readiness. The applicant's fiscal and economic capacity to finance the local share and ability to proceed and implement its plan and operate the civic or community center;

(5) Project location. A project shall be located in the municipality that applies for the grant; and

(6) Project planning. Projects with completed technical assistance and feasibility studies shall be preferred to those with no prior planning.

Source: Laws 1999, LB 382, § 19; Laws 2003, LB 385, § 3; Laws 2011, LB297, § 7.

Effective date August 27, 2011.

13-2709 Information on grants.

The department shall submit, as part of the department's annual status report under section 81-1201.11, information documenting the grants conditionally approved for funding by the Legislature in the following fiscal year.

Source: Laws 1999, LB 382, § 21; Laws 2011, LB404, § 2.

Operative date January 1, 2012.

13-2710 Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out the Civic and Community Center Financing Act.

Source: Laws 1999, LB 382, § 22; Laws 2011, LB297, § 8.

Effective date August 27, 2011.

ARTICLE 28

MUNICIPAL COUNTIES

Section

13-2814. Sales and use tax; administration.

13-2814 Sales and use tax; administration.

(1) The Tax Commissioner shall administer all sales and use taxes adopted under section 13-2813. The Tax Commissioner may prescribe forms and adopt and promulgate rules and regulations in conformity with the Nebraska Revenue Act of 1967, as amended, for the making of returns and for the ascertainment, assessment, and collection of taxes. The council shall furnish a certified copy of the adopting or repealing resolution to the Tax Commissioner in accordance with such rules and regulations. The tax shall begin the first day of the next calendar quarter following receipt by the Tax Commissioner of the certified copy of the adopted resolution if the certified copy of the adopted resolution is received sixty days prior to the start of the next calendar quarter.

(2) For resolutions containing a termination date, the termination date is the first day of a calendar quarter. The council shall furnish a certified statement to the Tax Commissioner no more than one hundred twenty days and at least sixty days before the termination date stating that the termination date in the resolution is still valid. If the certified statement is not furnished within the prescribed time, the tax shall remain in effect and the Tax Commissioner shall continue to collect the tax until the first day of the calendar quarter which is at least sixty days after receipt of the certified statement notwithstanding the termination date stated in the resolution.

§ 13-2814 CITIES, COUNTIES, AND OTHER POLITICAL SUBDIVISIONS

(3) The Tax Commissioner shall collect the sales and use tax concurrently with collection of a state tax in the same manner as the state tax is collected. The Tax Commissioner shall remit monthly the proceeds of the tax to the municipal county imposing the tax, after deducting the amount of refunds made and three percent of the remainder as an administrative fee necessary to defray the cost of collecting the tax and the expenses incident thereto. The Tax Commissioner shall keep full and accurate records of all money received and distributed. All receipts from the three percent administrative fee shall be deposited in the Municipal Equalization Fund.

(4) Upon any claim of illegal assessment and collection, the taxpayer has the same remedies as provided for claims of illegal assessment and collection of the state tax. It is the intention of the Legislature that the provisions of law which apply to the recovery of state taxes illegally assessed and collected apply to the recovery of sales and use taxes illegally assessed and collected under section 13-2813.

Source: Laws 2001, LB 142, § 14; Laws 2003, LB 381, § 2; Laws 2005, LB 274, § 223; Laws 2011, LB211, § 2.
Operative date October 1, 2011.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

ARTICLE 31

SPORTS ARENA FACILITY FINANCING ASSISTANCE ACT

Section

13-3107. Tax Commissioner; duties; Department of Revenue; rules and regulations.
13-3108. State Treasurer; duties; Sports Arena Facility Support Fund; created; investment; state assistance; use.

13-3107 Tax Commissioner; duties; Department of Revenue; rules and regulations.

(1) If an application is approved, the Tax Commissioner shall:

(a) Audit or review audits of the approved eligible sports arena facility to determine the (i) state sales tax revenue collected by retailers doing business at such facility on sales at such facility, (ii) state sales tax revenue collected on primary and secondary box office sales of admissions to such facility, and (iii) new state sales tax revenue collected by nearby retailers;

(b) Certify annually the amount of state sales tax revenue and new state sales tax revenue determined under subdivision (a) of this subsection to the State Treasurer; and

(c) Determine if more than one facility is eligible for state assistance from state sales tax revenue collected by the same nearby retailers. If the Tax Commissioner has made such a determination, the facility that was first determined to be eligible for state assistance shall be the only facility eligible to receive such funds.

(2) State sales tax revenue collected by retailers that are doing business at an eligible sports arena facility and new state sales tax revenue collected by nearby retailers shall be reported on informational returns developed by the Department of Revenue and provided to any such retailers by the facility. The

informational returns shall be submitted to the department by the retailer by the twentieth day of the month following the month the sales taxes are collected. The Tax Commissioner shall use the data from the informational returns and sales tax returns of both such categories of retailers and the sports arena facility to determine the appropriate amount of state sales tax revenue.

(3) The Department of Revenue may adopt and promulgate rules and regulations to carry out the Sports Arena Facility Financing Assistance Act.

Source: Laws 2010, LB779, § 13; Laws 2011, LB210, § 2.
Operative date October 1, 2011.

13-3108 State Treasurer; duties; Sports Arena Facility Support Fund; created; investment; state assistance; use.

(1) Upon the annual certification under section 13-3107, the State Treasurer shall transfer after the audit the amount certified to the Sports Arena Facility Support Fund which is hereby created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2)(a) It is the intent of the Legislature to appropriate from the fund money to be distributed to any political subdivision for which an application for state assistance under the Sports Arena Facility Financing Assistance Act has been approved an amount not to exceed seventy percent of the (i) state sales tax revenue collected by retailers doing business at eligible sports arena facilities on sales at such facilities, (ii) state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and (iii) new state sales tax revenue collected by nearby retailers and sourced under sections 77-2703.01 to 77-2703.04 to a location within six hundred yards of the eligible facility.

(b) The amount to be appropriated for distribution as state assistance to a political subdivision under this subsection for any one year after the tenth year shall not exceed the highest such amount appropriated under subdivision (2)(a) of this section during any one year of the first ten years of such appropriation. If seventy percent of the state sales tax revenue as described in subdivision (2)(a) of this section exceeds the amount to be appropriated under this subdivision, such excess funds shall be transferred to the General Fund.

(3) The total amount of state assistance approved for an eligible sports arena facility shall not (a) exceed fifty million dollars or (b) be paid out for more than twenty years after the issuance of the first bond for the sports arena facility.

(4) State assistance to the political subdivision shall no longer be available upon the retirement of the bonds issued to acquire, construct, improve, or equip the facility or any subsequent bonds that refunded the original issue or when state assistance reaches the amount determined under subsection (3) of this section, whichever comes first.

(5) State assistance shall not be used for an operating subsidy or other ancillary facility.

(6) The thirty percent of state sales tax revenue remaining after the appropriation and transfer in subsection (2) of this section shall be appropriated by the Legislature to the Civic and Community Center Financing Fund.

§ 13-3108 CITIES, COUNTIES, AND OTHER POLITICAL SUBDIVISIONS

(7) Any municipality that has applied for and received a grant of assistance under the Civic and Community Center Financing Act shall not receive state assistance under the Sports Arena Facility Financing Assistance Act.

Source: Laws 2010, LB779, § 14; Laws 2011, LB297, § 9.
Effective date August 27, 2011.

Cross References

Civic and Community Center Financing Act, see section 13-2701.

Nebraska Capital Expansion Act, see section 72-1269.

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

CHAPTER 14

CITIES OF THE METROPOLITAN CLASS

Article.

1. General Powers. 14-109.
3. Public Improvements.
 - (g) Streets, Sidewalks, and Highways. 14-3,113.
5. Fiscal Management, Revenue, and Finances.
 - (g) Pension Board. 14-567.
 - (h) Municipal Bidding. 14-568.
18. Metropolitan Transit Authority. 14-1805.01.
21. Public Utilities. 14-2111.

ARTICLE 1

GENERAL POWERS

Section

- 14-109. City council; powers; occupation and license taxes; motor vehicle fee; conditions; limitations.

14-109 City council; powers; occupation and license taxes; motor vehicle fee; conditions; limitations.

(1)(a) The city council shall have power to tax for revenue, license, and regulate any person within the limits of the city by ordinance except as otherwise provided in this section. Such tax may include both a tax for revenue and license. The city council may raise revenue by levying and collecting a tax on any occupation or business within the limits of the city. All such taxes shall be uniform in respect to the class upon which they are imposed. All scientific and literary lectures and entertainments shall be exempt from taxation, as well as concerts and all other musical entertainments given exclusively by the citizens of the city. It shall be the duty of the city clerk to deliver to the city treasurer the certified copy of the ordinance levying such tax, and the city clerk shall append thereto a warrant requiring the city treasurer to collect such tax.

(b) For purposes of this subsection, limits of the city does not include the extraterritorial zoning jurisdiction of such city.

(2)(a) Except as otherwise provided in subdivision (c) of this subsection, the city council shall also have power to require any individual whose primary residence or person who owns a place of business which is within the limits of the city and that owns and operates a motor vehicle within such limits to annually register such motor vehicle in such manner as may be provided and to require such person to pay an annual motor vehicle fee therefor and to require the payment of such fee upon the change of ownership of such vehicle. All such fees which may be provided for under this subsection shall be credited to a separate fund of the city, thereby created, to be used exclusively for constructing, repairing, maintaining, or improving streets, roads, alleys, public ways, or parts thereof or for the amortization of bonded indebtedness when created for such purposes.

(b) No motor vehicle fee shall be required under this subsection if (i) a vehicle is used or stored but temporarily in such city for a period of six months or less in a twelve-month period, (ii) an individual does not have a primary residence or a person does not own a place of business within the limits of the city and does not own and operate a motor vehicle within the limits of the city, or (iii) an individual is a full-time student attending a postsecondary institution within the limits of the city and the motor vehicle's situs under the Motor Vehicle Certificate of Title Act is different from the place at which he or she is attending such institution.

(c) After December 31, 2012, no motor vehicle fee shall be required of any individual whose primary residence is or person who owns a place of business within the extraterritorial zoning jurisdiction of such city.

(d) For purposes of this subsection, limits of the city includes the extraterritorial zoning jurisdiction of such city.

(3) For purposes of this section, person includes bodies corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, cooperatives, and associations. Person does not include any federal, state, or local government or any political subdivision thereof.

Source: Laws 1921, c. 116, art. I, § 9, p. 408; C.S.1922, § 3496; C.S.1929, § 14-109; R.S.1943, § 14-109; Laws 1997, LB 752, § 73; Laws 2011, LB81, § 1.
Operative date January 1, 2011.

Cross References

Motor Vehicle Certificate of Title Act, see section 60-101.

**ARTICLE 3
PUBLIC IMPROVEMENTS**

(g) STREETS, SIDEWALKS, AND HIGHWAYS

Section

14-3,113. Intersections, certain lands; improvement by city; priority on use of funds; street improvement districts.

(g) STREETS, SIDEWALKS, AND HIGHWAYS

14-3,113 Intersections, certain lands; improvement by city; priority on use of funds; street improvement districts.

(1) The city is authorized to improve intersections, spaces opposite alleys, and spaces opposite property not subject to special assessment, with the like material in the manner provided in sections 14-384 to 14-3,127 for improving streets whenever a street, highway, boulevard, main thoroughfare, controlled-access facility, major traffic street, or alley is ordered to be improved at the time of improving such street and in such event is authorized to include in such improvement of such intersection and spaces the construction, replacement, or repair of sidewalks therein and, except as may be otherwise provided, pay for all such improvements from funds provided for the purpose of improving intersections if (a) the first priority in the expenditure of funds for such purposes is given to improvements within street improvement districts and (b)

the city maintains, in a separate fund, not less than twenty-five thousand dollars to be expended solely for the purpose of improving intersections.

(2) Such sidewalk construction, replacement, or repair may be included either in the contract for curbs at an intersection or in the contract for paving the same.

Source: Laws 1959, c. 36, § 30, p. 206; Laws 1963, c. 47, § 1, p. 223; Laws 2011, LB289, § 1.

Operative date January 1, 2012.

ARTICLE 5

FISCAL MANAGEMENT, REVENUE, AND FINANCES

(g) PENSION BOARD

Section

14-567. Pension board; duties; retirement plan reports.

(h) MUNICIPAL BIDDING

14-568. Municipal bidding procedure; waiver; when.

(g) PENSION BOARD

14-567 Pension board; duties; retirement plan reports.

(1) Beginning December 31, 1998, and each December 31 thereafter, the pension board of a city of the metropolitan class shall file with the Public Employees Retirement Board an annual report on each retirement plan established by such city pursuant to section 401(a) of the Internal Revenue Code and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

(a) The number of persons participating in the retirement plan;

(b) The contribution rates of participants in the plan;

(c) Plan assets and liabilities;

(d) The names and positions of persons administering the plan;

(e) The names and positions of persons investing plan assets;

(f) The form and nature of investments;

(g) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(h) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the pension board may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(2) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the pension board of a city of the metropolitan class shall cause to be prepared a quadrennial report and shall

file the same with the Public Employees Retirement Board and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The report shall consist of a full actuarial analysis of each such retirement plan established by the city. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan.

Source: Laws 1998, LB 1191, § 5; Laws 1999, LB 795, § 3; Laws 2011, LB474, § 3.
Effective date August 27, 2011.

(h) MUNICIPAL BIDDING

14-568 Municipal bidding procedure; waiver; when.

Notwithstanding any charter or statutory provisions or restrictions, any municipal bidding procedure may be waived by the city council of a city of the metropolitan class when required to comply with any federal grant, loan, or program.

Source: Laws 2011, LB335, § 1.
Effective date August 27, 2011.

ARTICLE 18

METROPOLITAN TRANSIT AUTHORITY

Section

14-1805.01. Metropolitan transit authority; retirement plan reports; duties.

14-1805.01 Metropolitan transit authority; retirement plan reports; duties.

(1) Beginning December 31, 1998, and each December 31 thereafter, the chairperson of the board shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to section 14-1805 and section 401(a) of the Internal Revenue Code and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (a) The number of persons participating in the retirement plan;
- (b) The contribution rates of participants in the plan;
- (c) Plan assets and liabilities;
- (d) The names and positions of persons administering the plan;
- (e) The names and positions of persons investing plan assets;
- (f) The form and nature of investments;

(g) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(h) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(2) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the authority shall cause to be prepared a quadrennial report and the chairperson shall file the same with the Public Employees Retirement Board and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to section 14-1805. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan.

Source: Laws 1998, LB 1191, § 8; Laws 1999, LB 795, § 4; Laws 2011, LB474, § 4.

Effective date August 27, 2011.

ARTICLE 21

PUBLIC UTILITIES

Section

14-2111. Utilities district; employees; retirement and other benefits; terms and conditions; reports.

14-2111 Utilities district; employees; retirement and other benefits; terms and conditions; reports.

(1) The board of directors of any metropolitan utilities district may also provide benefits for, insurance of, and annuities for the present and future employees and appointees of the district covering accident, disease, death, total and permanent disability, and retirement, all or any of them, under such terms and conditions as the board may deem proper and expedient from time to time. Any retirement plan adopted by the board of directors shall be upon some contributory basis requiring contributions by both the district and the employee or appointee, except that the district may pay the entire cost of the fund necessary to cover service rendered prior to the adoption of any new retirement plan. Any retirement plan shall take into consideration the benefits provided for employees and appointees of metropolitan utilities districts under the Social Security Act, and any benefits provided under a contributory retirement plan shall be supplemental to the benefits provided under the Social Security Act as defined in section 68-602 if the employees entitled to vote in a referendum vote in favor of old age and survivors' insurance coverage. To effectuate any plan adopted pursuant to this authority, the board of directors of the district is empowered to establish and maintain reserves and funds, provide for insurance

premiums and costs, and make such delegation as may be necessary to carry into execution the general powers granted by this section. Payments made to employees and appointees, under the authority in this section, shall be exempt from attachment or other legal process and shall not be assignable.

(2) Any retirement plan adopted by the board of directors of any metropolitan utilities district may allow the district to pick up the employee contribution required by this section for all compensation paid on or after January 1, 1986, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code, except that the employer shall continue to withhold federal income taxes based upon such contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the Internal Revenue Code, such contributions shall not be included as gross income of the employee until such time as they are distributed or made available. The employer shall pay the employee contributions from the same source of funds which is used in paying earnings to the employees. The employer shall pick up the contributions by a salary deduction either through a reduction in the cash salary of the employee or a combination of a reduction in salary and offset against a future salary increase. Employee contributions picked up shall be treated in the same manner and to the same extent as employee contributions made prior to the date picked up.

(3)(a) Beginning December 31, 1998, and each December 31 thereafter, the chairperson of the board shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;
- (vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and
- (viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the board of directors of any metropolitan utilities district shall cause to be prepared a quadrennial report and shall file the same with the Public Employees Retirement Board and

submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan.

Source: Laws 1919, c. 33, § 3, p. 108; C.S.1922, § 3759; C.S.1929, § 14-1015; Laws 1941, c. 20, § 1, p. 110; C.S.Supp.,1941, § 14-1015; Laws 1943, c. 38, § 1(2), p. 181; R.S.1943, § 14-1022; Laws 1951, c. 31, § 1, p. 129; Laws 1955, c. 25, § 1, p. 118; Laws 1985, LB 353, § 1; R.S.1943, (1991), § 14-1022; Laws 1992, LB 746, § 11; Laws 1995, LB 574, § 16; Laws 1998, LB 1191, § 16; Laws 1999, LB 795, § 5; Laws 2011, LB474, § 5.
Effective date August 27, 2011.



CHAPTER 15 CITIES OF THE PRIMARY CLASS

Article.

- 8. Fiscal Management, Revenue, and Finances. 15-850.
- 10. Pensions. 15-1017.

ARTICLE 8

FISCAL MANAGEMENT, REVENUE, AND FINANCES

Section

- 15-850. Municipal bidding procedure; waiver; when.

15-850 Municipal bidding procedure; waiver; when.

Notwithstanding any charter or statutory provisions or restrictions, any municipal bidding procedure may be waived by the city council of a city of the primary class when required to comply with any federal grant, loan, or program.

Source: Laws 2011, LB335, § 2.
Effective date August 27, 2011.

ARTICLE 10

PENSIONS

Section

- 15-1017. Pension funds; investment; reports.

15-1017 Pension funds; investment; reports.

(1) A city of the primary class which has a city pension and retirement plan or fund, or a city fire and police pension plan or fund, or both, may provide by ordinance as authorized by its home rule charter, and not prohibited by the Constitution of Nebraska, for the investment of any plan or fund, and it may provide that (a) such a city shall place in trust any part of such plan or fund, (b) it shall place in trust any part of any such plan or fund with a corporate trustee in Nebraska, or (c) it shall purchase any part of any such plan from a life insurance company licensed to do business in the State of Nebraska. The powers conferred by this section shall be independent of and in addition and supplemental to any other provisions of the laws of the State of Nebraska with reference to the matters covered hereby and this section shall be considered as a complete and independent act and not as amendatory of or limited by any other provision of the laws of the State of Nebraska.

(2)(a) Beginning December 31, 1998, and each December 31 thereafter, the clerk of a city of the primary class shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to this section, section 15-1026, and section 401(a) of the Internal Revenue Code and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a

form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;
- (vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and
- (viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the city clerk may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the city council of a city of the primary class shall cause to be prepared a quadrennial report and shall file the same with the Public Employees Retirement Board and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section and section 15-1026. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan.

Source: Laws 1967, c. 52, § 1, p. 188; Laws 1998, LB 1191, § 17; Laws 1999, LB 795, § 6; Laws 2011, LB474, § 6.
Effective date August 27, 2011.

CHAPTER 16 CITIES OF THE FIRST CLASS

Article.

- 3. Officers, Elections, Employees. 16-321.01.
- 10. Retirement Systems.
 - (a) Police Officers Retirement. 16-1017.
 - (b) Firefighters Retirement. 16-1037.

ARTICLE 3

OFFICERS, ELECTIONS, EMPLOYEES

Section

16-321.01. Municipal bidding procedure; waiver; when.

16-321.01 Municipal bidding procedure; waiver; when.

Any municipal bidding procedure may be waived by the city council or board of public works (1) when materials or equipment are purchased at the same price and from the same seller as materials or equipment which have formerly been obtained pursuant to the state bidding procedure in sections 81-145 to 81-162, (2) when the contract is negotiated directly with a sheltered workshop pursuant to section 48-1503, or (3) when required to comply with any federal grant, loan, or program.

Source: Laws 1997, LB 238, § 2; Laws 2011, LB335, § 3.
Effective date August 27, 2011.

ARTICLE 10

RETIREMENT SYSTEMS

(a) POLICE OFFICERS RETIREMENT

Section

16-1017. Retirement committee; duties.

(b) FIREFIGHTERS RETIREMENT

16-1037. Retirement committee; officers; duties.

(a) POLICE OFFICERS RETIREMENT

16-1017 Retirement committee; duties.

(1) It shall be the duty of the retirement committee to:

(a) Provide each employee a summary of plan eligibility requirements and benefit provisions;

(b) Provide, within thirty days after a request is made by a participant, a statement describing the amount of benefits such participant is eligible to receive; and

(c) Make available for review an annual report of the system's operations describing both (i) the amount of contributions to the system from both employee and employer sources and (ii) an identification of the total assets of the retirement system.

(2)(a) Beginning December 31, 1998, and each December 31 thereafter, the chairperson of the retirement committee shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to section 401(a) of the Internal Revenue Code and administered by a retirement system established pursuant to sections 16-1001 to 16-1019 and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;
- (vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and
- (viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the retirement committee shall cause to be prepared a quadrennial report and the chairperson shall file the same with the Public Employees Retirement Board and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The report shall consist of a full actuarial analysis of each such retirement plan administered by a system established pursuant to sections 16-1001 to 16-1019. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan.

Source: Laws 1983, LB 237, § 17; Laws 1998, LB 1191, § 18; Laws 1999, LB 795, § 7; Laws 2011, LB474, § 7.
Effective date August 27, 2011.

(b) FIREFIGHTERS RETIREMENT

16-1037 Retirement committee; officers; duties.

(1) It shall be the duty of the retirement committee to:

(a) Elect a chairperson, a vice-chairperson, and such other officers as the committee deems appropriate;

(b) Hold regular quarterly meetings and special meetings upon the call of the chairperson;

(c) Conduct meetings pursuant to the Open Meetings Act;

(d) Provide each employee a summary of plan eligibility requirements, benefit provisions, and investment options available to such employee;

(e) Provide, within thirty days after a request is made by a participant, a statement describing the amount of benefits such participant is eligible to receive; and

(f) Make available for review an annual report of the system's operations describing both (i) the amount of contributions to the system from both employee and employer sources and (ii) an identification of the total assets of the retirement system.

(2)(a) Beginning December 31, 1998, and each December 31 thereafter, the chairperson of the retirement committee shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to section 401(a) of the Internal Revenue Code and administered by a retirement system established pursuant to sections 16-1020 to 16-1042 and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

(i) The number of persons participating in the retirement plan;

(ii) The contribution rates of participants in the plan;

(iii) Plan assets and liabilities;

(iv) The names and positions of persons administering the plan;

(v) The names and positions of persons investing plan assets;

(vi) The form and nature of investments;

(vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the retirement committee shall cause to be prepared a quadrennial report and the chairperson shall file the same with the Public Employees Retirement Board and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The report shall consist of a full actuarial analysis of each such retirement plan administered by a system established pursuant to sections

16-1020 to 16-1042. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan.

Source: Laws 1983, LB 531, § 18; Laws 1992, LB 672, § 28; Laws 1998, LB 1191, § 20; Laws 1999, LB 795, § 8; Laws 2004, LB 821, § 8; Laws 2011, LB474, § 8.
Effective date August 27, 2011.

Cross References

Open Meetings Act, see section 84-1407.

CHAPTER 17

CITIES OF THE SECOND CLASS AND VILLAGES

Article.

1. Laws Applicable Only to Cities of the Second Class. 17-107.
2. Laws Applicable Only to Villages. 17-208.
5. General Grant of Power. 17-568.02.

ARTICLE 1

LAWS APPLICABLE ONLY TO CITIES OF THE SECOND CLASS

Section

17-107. Mayor; qualifications; election; officers; appointment; removal; terms of office; police officers; appointment; removal, demotion, or suspension; procedure.

17-107 Mayor; qualifications; election; officers; appointment; removal; terms of office; police officers; appointment; removal, demotion, or suspension; procedure.

(1) A mayor of a city of the second class shall be elected in the manner provided in the Election Act. The mayor shall take office on the date of the first regular meeting of the city council held in December following the statewide general election. The mayor shall be a resident and registered voter of the city. If the president of the council assumes the office of mayor for the unexpired term, there shall be a vacancy on the council which vacancy shall be filled as provided in section 32-568.

(2) The mayor, with the consent of the council, may appoint such officers as shall be required by ordinance or otherwise required by law. Such officers may be removed from office by the mayor. The terms of office for all officers, except regular police officers, appointed by the mayor and confirmed by the council shall be established by the city council by ordinance. The ordinance shall provide that either (a) the officers hold the office to which they have been appointed until the end of the mayor's term of office and until their successors are appointed and qualified unless sooner removed or (b) the officers hold office for one year unless sooner removed.

(3)(a) The mayor, by and with the consent of the council, shall appoint such a number of regular police officers as may be necessary. All police officers appointed by the mayor and council may be removed, demoted, or suspended at any time by the mayor as provided in subdivision (b) of this subsection. A police officer, including the chief of police, may appeal to the city council such removal, demotion, or suspension with or without pay. After a hearing, the city council may uphold, reverse, or modify the action.

(b) The city council shall by ordinance adopt rules and regulations governing the removal, demotion, or suspension with or without pay of any police officer, including the chief of police. The ordinance shall include a procedure for such removal, demotion, or suspension with or without pay of any police officer, including the chief of police, upon the written accusation of the police chief, the mayor, or any citizen or taxpayer. The city council shall establish by ordinance procedures for acting upon such written accusation, including: (i) Provisions

for giving notice and a copy of the written accusation to the police officer; (ii) the police officer's right to have an attorney or representative retained by the police officer present with him or her at all hearings or proceedings regarding the written accusation; (iii) the right of the police officer or his or her attorney or representative retained by the police officer to be heard and present evidence; and (iv) the right of the police officer as well as the individual imposing the action or their respective attorneys or representatives to record all hearings or proceedings regarding the written accusation. The ordinance shall also include a procedure for making application for an appeal, specifications on the period of time within which such application shall be made, and provisions on the manner in which the appeals hearing shall be conducted. Both the police officer and the individual imposing the action or their respective attorneys or representatives shall have the right at the hearing to be heard and to present evidence to the city council for its consideration. Not later than thirty days following the adjournment of the meeting at which the hearing was held, the city council shall vote to uphold, reverse, or modify the action. The failure of the city council to act within thirty days or the failure of a majority of the elected council members to vote to reverse or modify the action shall be construed as a vote to uphold the action. The decision of the city council shall be based upon its determination that, under the facts and evidence presented at the hearing, the action was necessary for the proper management and the effective operation of the police department in the performance of its duties under the statutes of the State of Nebraska. Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the appropriate authority, pending the hearing authorized by this section, in cases of gross misconduct, neglect of duty, or disobedience of orders.

(c) This subsection does not apply to a police officer during his or her probationary period.

Source: Laws 1879, § 6, p. 194; Laws 1881, c. 23, § 1, p. 168; R.S.1913, § 4999; Laws 1921, c. 155, § 1, p. 637; C.S.1922, § 4168; Laws 1923, c. 67, § 3, p. 203; Laws 1925, c. 36, § 1, p. 143; C.S.1929, § 17-107; R.S.1943, § 17-107; Laws 1955, c. 38, § 1, p. 151; Laws 1969, c. 257, § 7, p. 935; Laws 1972, LB 1032, § 104; Laws 1973, LB 559, § 2; Laws 1974, LB 1025, § 1; Laws 1976, LB 441, § 1; Laws 1976, LB 782, § 13; Laws 1994, LB 76, § 491; Laws 1995, LB 346, § 1; Laws 2009, LB158, § 1; Laws 2011, LB308, § 1.

Effective date August 27, 2011.

Cross References

Election Act, see section 32-101.

ARTICLE 2

LAWS APPLICABLE ONLY TO VILLAGES

Section

17-208. Appointive officers; term of office; police officer; removal, demotion, or suspension; procedure; board of health; members; duties.

17-208 Appointive officers; term of office; police officer; removal, demotion, or suspension; procedure; board of health; members; duties.

(1) The village board of trustees may appoint a village clerk, treasurer, attorney, overseer of the streets, and marshal or chief of police and other such officers as shall be required by ordinance or otherwise required by law.

(2)(a) The village marshal or chief of police or any other police officer may appeal to the village board his or her removal, demotion, or suspension with or without pay. After a hearing, the village board may uphold, reverse, or modify the action.

(b) The village board of trustees shall by ordinance adopt rules and regulations governing the removal, demotion, or suspension with or without pay of any police officer, including the village marshal or chief of police. The ordinance shall include a procedure for such removal, demotion, or suspension with or without pay of any police officer, including the village marshal or chief of police, upon the written accusation of the village marshal or chief of police, the chairperson, or any citizen or taxpayer. The village board of trustees shall establish by ordinance procedures for acting upon such written accusation, including: (i) Provisions for giving notice and a copy of the written accusation to the police officer; (ii) the police officer's right to have an attorney or representative retained by the police officer present with him or her at all hearings or proceedings regarding the written accusation; (iii) the right of the police officer or his or her attorney or representative retained by the police officer to be heard and present evidence; and (iv) the right of the police officer as well as the individual imposing the action or their respective attorneys or representatives to record all hearings or proceedings regarding the written accusation. The ordinance shall also include a procedure for making application for an appeal, specifications on the period of time within which such application shall be made, and provisions on the manner in which the appeals hearing shall be conducted. Both the police officer and the individual imposing the action or their respective attorneys or representatives shall have the right at the hearing to be heard and to present evidence to the village board for its consideration. Not later than thirty days following the adjournment of the meeting at which the hearing was held, the village board shall vote to uphold, reverse, or modify the action. The failure of the village board to act within thirty days or the failure of a majority of the elected board members to vote to reverse or modify the action shall be construed as a vote to uphold the action. The decision of the village board shall be based upon its determination that, under the facts and evidence presented at the hearing, the action was necessary for the proper management and the effective operation of the police department in the performance of its duties under the statutes of the State of Nebraska. Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the appropriate authority, pending the hearing authorized by this section, in cases of gross misconduct, neglect of duty, or disobedience of orders.

(c) This subsection does not apply to a police officer during his or her probationary period.

(3) The village board of trustees shall also appoint a board of health consisting of three members: The chairperson of the village board, who shall be chairperson, and two other members. One member shall be a physician or health care provider, if one can be found who is willing to serve. Such physician or health care provider, if appointed, shall be the board's medical advisor. If the village board of trustees has appointed a marshal or chief of police, the marshal or chief of police may be appointed to the board and serve

as secretary and quarantine officer. A majority of the board of health shall constitute a quorum and shall enact rules and regulations, which shall have the force and effect of law, to safeguard the health of the people of such village and prevent nuisances and unsanitary conditions. The board of health shall enforce the same and provide fines and punishments for violations.

(4) The village clerk, treasurer, attorney, overseer of the streets, members of the board of health, and other appointed officers, except regular police officers, shall hold office for one year unless removed by the chairperson of the village board with the advice and consent of the trustees.

Source: Laws 1879, § 47, p. 204; Laws 1885, c. 18, § 1, p. 158; Laws 1895, c. 15, § 1, p. 110; Laws 1911, c. 20, § 1, p. 137; R.S.1913, § 5058; Laws 1919, c. 165, § 1, p. 369; C.S.1922, § 4230; C.S. 1929, § 17-208; R.S.1943, § 17-208; Laws 1995, LB 346, § 2; Laws 1996, LB 1162, § 2; Laws 2009, LB158, § 2; Laws 2011, LB308, § 2.

Effective date August 27, 2011.

ARTICLE 5

GENERAL GRANT OF POWER

Section

17-568.02. Municipal bidding procedure; waiver; when.

17-568.02 Municipal bidding procedure; waiver; when.

Any municipal bidding procedure may be waived by the city council, village board, or board of public works (1) when materials or equipment are purchased at the same price and from the same seller as materials or equipment which have formerly been obtained pursuant to the state bidding procedure in sections 81-145 to 81-162, (2) when the contract is negotiated directly with a sheltered workshop pursuant to section 48-1503, or (3) when required to comply with any federal grant, loan, or program.

Source: Laws 1997, LB 238, § 4; Laws 2011, LB335, § 4.
Effective date August 27, 2011.

CHAPTER 18

CITIES AND VILLAGES; LAWS APPLICABLE TO ALL

Article.

- 12. Miscellaneous Taxes. 18-1214.
- 17. Miscellaneous. 18-1736 to 18-1742.
- 21. Community Development. 18-2147.
- 27. Municipal Economic Development. 18-2708 to 18-2717.
- 30. Planned Unit Development. 18-3001.

ARTICLE 12

MISCELLANEOUS TAXES

Section

18-1214. Motor vehicles; annual motor vehicle fee; use.

18-1214 Motor vehicles; annual motor vehicle fee; use.

(1) Except as otherwise provided in subsection (3) of this section, the governing body of any city or village shall have power to require any individual whose primary residence or person who owns a place of business which is within the limits of the city or village and that owns and operates a motor vehicle within such limits to pay an annual motor vehicle fee and to require the payment of such fee upon the change of ownership of such vehicle. All such fees which may be provided for under this subsection shall be used exclusively for constructing, repairing, maintaining, or improving streets, roads, alleys, public ways, or parts thereof or for the amortization of bonded indebtedness when created for such purposes.

(2) No motor vehicle fee shall be required under this section if (a) a vehicle is used or stored but temporarily in such city or village for a period of six months or less in a twelve-month period, (b) an individual does not have a primary residence or a person does not own a place of business within the limits of the city or village and does not own and operate a motor vehicle within the limits of the city or village, or (c) an individual is a full-time student attending a postsecondary institution within the limits of the city or village and the motor vehicle's situs under the Motor Vehicle Certificate of Title Act is different from the place at which he or she is attending such institution.

(3) After December 31, 2012, no motor vehicle fee shall be required of any individual whose primary residence is or person who owns a place of business within the extraterritorial zoning jurisdiction of such city or village.

(4) Until the implementation date designated by the Director of Motor Vehicles under section 23-186, the fee shall be paid to the designated county official of the county in which such city or village is located when the registration fees as provided in the Motor Vehicle Registration Act are paid. Such fees shall be remitted to the county treasurer for credit to the road fund of such city or village. On and after the implementation date designated under

section 23-186, the fee shall be paid to the county treasurer for credit to such road fund.

(5) For purposes of this section:

(a) Limits of the city or village includes the extraterritorial zoning jurisdiction of such city or village; and

(b) Person includes bodies corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, cooperatives, and associations. Person does not include any federal, state, or local government or any political subdivision thereof.

Source: Laws 1963, c. 348, § 3, p. 1119; Laws 1988, LB 958, § 1; Laws 1989, LB 57, § 1; Laws 1993, LB 112, § 2; Laws 2005, LB 274, § 224; Laws 2009, LB49, § 1; Laws 2011, LB81, § 2.
Operative date January 1, 2011.

Cross References

Motor Vehicle Certificate of Title Act, see section 60-101.
Motor Vehicle Registration Act, see section 60-301.

**ARTICLE 17
MISCELLANEOUS**

- Section
- 18-1736. Handicapped or disabled persons; designation of parking spaces.
 - 18-1737. Handicapped or disabled persons; offstreet parking facility; onstreet parking; designation; removal of unauthorized vehicle; penalty; state agency, defined.
 - 18-1738. Handicapped or disabled persons; parking; permits; issuance; procedure; renewal.
 - 18-1738.01. Handicapped or disabled persons; motor vehicle used for transportation; parking permits; issuance; procedure; renewal.
 - 18-1738.02. Handicapped or disabled persons; parking permit; place of application.
 - 18-1739. Handicapped or disabled persons; parking permits; contents; issuance; duplicate permit.
 - 18-1740. Handicapped or disabled persons; parking permits; period valid; renewal.
 - 18-1741. Handicapped or disabled persons; parking permits; nontransferable; violation; penalty.
 - 18-1741.02. Handicapped parking infraction; penalties; suspension of permit; fine.
 - 18-1741.03. Handicapped parking infraction; citation form; Supreme Court; powers.
 - 18-1741.04. Handicapped parking citation; requirements; procedure; waivers; dismissal; credit card; payment authorized.
 - 18-1742. Handicapped parking; rules and regulations.

18-1736 Handicapped or disabled persons; designation of parking spaces.

(1) A city or village may designate parking spaces, including access aisles, for the exclusive use of (a) handicapped or disabled persons whose motor vehicles display the distinguishing license plates issued to handicapped or disabled persons pursuant to section 60-3,113, (b) handicapped or disabled persons whose motor vehicles display a distinguishing license plate issued to a handicapped or disabled person by another state, (c) such other handicapped or disabled persons or temporarily handicapped or disabled persons whose motor vehicles display a handicapped or disabled parking permit, and (d) such other motor vehicles which display a handicapped or disabled parking permit.

(2) If a city or village so designates a parking space or access aisle, it shall be indicated by posting aboveground and immediately adjacent to and visible from

each space or access aisle a sign as described in section 18-1737. In addition to such sign, the space or access aisle may also be indicated by blue paint on the curb or edge of the paved portion of the street adjacent to the space or access aisle.

(3) For purposes of sections 18-1736 to 18-1742:

(a) Access aisle has the same meaning as in section 60-302.01;

(b) Handicapped or disabled parking permit has the same meaning as in section 60-331.01;

(c) Handicapped or disabled person has the same meaning as in section 60-331.02; and

(d) Temporarily handicapped or disabled person has the same meaning as in section 60-352.01.

Source: Laws 1977, LB 13, § 1; Laws 1979, LB 146, § 1; Laws 1980, LB 717, § 2; Laws 1984, LB 482, § 1; Laws 1987, LB 598, § 1; Laws 1995, LB 593, § 1; Laws 1996, LB 1211, § 1; Laws 1998, LB 299, § 1; Laws 2001, LB 809, § 1; Laws 2005, LB 274, § 225; Laws 2011, LB163, § 1.

Effective date August 27, 2011.

18-1737 Handicapped or disabled persons; offstreet parking facility; onstreet parking; designation; removal of unauthorized vehicle; penalty; state agency, defined.

(1) Any city or village, any state agency, and any person in lawful possession of any offstreet parking facility may designate stalls or spaces, including access aisles, in such facility owned or operated by the city, village, state agency, or person for the exclusive use of handicapped or disabled persons whose motor vehicles display the distinguishing license plates issued to such individuals pursuant to section 60-3,113, such other handicapped or disabled persons or temporarily handicapped or disabled persons whose motor vehicles display a handicapped or disabled parking permit, and such other motor vehicles which display a handicapped or disabled parking permit. Such designation shall be made by posting aboveground and immediately adjacent to and visible from each stall or space, including access aisles, a sign which is in conformance with the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118 and the federal Americans with Disabilities Act of 1990 and the federal regulations adopted in response to the act, as the act and the regulations existed on January 1, 2011.

(2) The owner or person in lawful possession of an offstreet parking facility, after notifying the police or sheriff's department, as the case may be, and any city, village, or state agency providing onstreet parking or owning, operating, or providing an offstreet parking facility may cause the removal, from a stall or space, including access aisles, designated exclusively for handicapped or disabled persons or temporarily handicapped or disabled persons or motor vehicles for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons, of any vehicle not displaying the proper handicapped or disabled parking permit or the distinguishing license plates specified in this section if there is posted aboveground and immediately adjacent to and visible from such stall or space, including access aisles, a sign which clearly and conspicuously states the area so designated as a tow-in zone.

(3) A person who parks a vehicle in any onstreet parking space or access aisle which has been designated exclusively for handicapped or disabled persons or temporarily handicapped or disabled persons or motor vehicles for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons, or in any so exclusively designated parking space or access aisle in any offstreet parking facility, without properly displaying the proper license plates or handicapped or disabled parking permit or when the handicapped or disabled person to whom or for whom, as the case may be, the license plate or permit is issued will not enter or exit the vehicle while it is parked in the designated space or access aisle shall be guilty of a handicapped parking infraction as defined in section 18-1741.01 and shall be subject to the penalties and procedures set forth in sections 18-1741.01 to 18-1741.07. The display on a motor vehicle of a distinguishing license plate or permit issued to a handicapped or disabled person by and under the duly constituted authority of another state shall constitute a full and complete defense in any action for a handicapped parking infraction as defined in section 18-1741.01. If the identity of the person who parked the vehicle in violation of this section cannot be readily determined, the owner or person in whose name the vehicle is registered shall be held prima facie responsible for such violation and shall be guilty and subject to the penalties and procedures described in this section. In the case of a privately owned offstreet parking facility, a city or village shall not require the owner or person in lawful possession of such facility to inform the city or village of a violation of this section prior to the city or village issuing the violator a handicapped parking infraction citation.

(4) For purposes of this section and section 18-1741.01, state agency means any division, department, board, bureau, commission, or agency of the State of Nebraska created by the Constitution of Nebraska or established by act of the Legislature, including the University of Nebraska and the Nebraska state colleges, when the entity owns, leases, controls, or manages property which includes offstreet parking facilities.

Source: Laws 1977, LB 13, § 2; Laws 1979, LB 146, § 2; Laws 1980, LB 717, § 3; Laws 1987, LB 598, § 2; Laws 1991, LB 113, § 1; Laws 1992, LB 933, § 1; Laws 1993, LB 370, § 4; Laws 1993, LB 632, § 8; Laws 1995, LB 593, § 2; Laws 1996, LB 1211, § 2; Laws 1998, LB 299, § 2; Laws 2001, LB 809, § 2; Laws 2005, LB 274, § 226; Laws 2011, LB163, § 2.
Effective date August 27, 2011.

18-1738 Handicapped or disabled persons; parking; permits; issuance; procedure; renewal.

(1) This section applies until the implementation date designated by the Director of Motor Vehicles under section 60-3,113.01.

(2) The clerk of any city of the primary class, first class, or second class or village shall, or the county clerk or designated county official pursuant to section 23-186 or the Department of Motor Vehicles may, take an application from a handicapped or disabled person or temporarily handicapped or disabled person or his or her parent, legal guardian, or foster parent for a handicapped or disabled parking permit which will entitle the holder thereof or a person driving a motor vehicle for the purpose of transporting such holder to park in those spaces or access aisles provided for by sections 18-1736 to 18-1741 when

the holder of the permit will enter or exit the motor vehicle while it is parked in such spaces or access aisles. For purposes of this section, the handicapped or disabled person or temporarily handicapped or disabled person shall be considered the holder of the permit.

(3) A person applying for a handicapped or disabled parking permit or for the renewal of a permit shall complete an application, shall provide proof of identity, and shall submit a completed medical form containing the statutory criteria for qualification and signed by a physician, a physician assistant, or an advanced practice registered nurse practicing under and in accordance with his or her certification act, certifying that the person who will be the holder meets the definition of handicapped or disabled person or temporarily handicapped or disabled person. No applicant shall be required to provide his or her social security number. In the case of a temporarily handicapped or disabled person, the certifying physician, physician assistant, or advanced practice registered nurse shall indicate the estimated date of recovery or that the temporary handicap or disability will continue for a period of six months, whichever is less. A person may hold up to two permits under this section. If a person holds a permit under this section, such person may not hold a permit under section 18-1738.01. The Department of Motor Vehicles shall provide applications and medical forms to the clerk or designated county official. The application form shall contain information listing the legal uses of the permit and that the permit is not transferable, is to be used by the party to whom issued or for the motor vehicle for which it is issued, is not to be altered or reproduced, and is to be used only when a handicapped or disabled person or a temporarily handicapped or disabled person will enter or exit the motor vehicle while it is parked in a designated parking space or access aisle. The application form shall provide space for the applicant to sign a statement that he or she is aware of his or her rights, duties, and responsibilities with regard to the use and possession of a permit and the penalties provided by law for handicapped parking infractions. The application form shall also indicate that those convicted of handicapped parking infractions shall be subject to suspension of the permit for six months. A copy of the completed application form shall be given to each applicant. The clerk or designated county official shall submit to the department the name, address, and license number of all persons applying for a permit pursuant to this section. An application for the renewal of a permit under this section may be filed within one hundred eighty days prior to the expiration of the permit. The existing permit shall be invalid upon receipt of the new permit. Following the receipt of the application and its processing, the Department of Motor Vehicles shall deliver each individual renewed permit to the applicant, except that renewed permits shall not be issued sooner than ten days prior to the date of expiration.

(4) The Department of Motor Vehicles, upon receipt from the clerk or designated county official of a completed application form and completed medical form from an applicant for a handicapped or disabled parking permit under this section, shall verify that the applicant qualifies for such permit and, if so, shall deliver the permit to the applicant.

Source: Laws 1977, LB 13, § 3; Laws 1979, LB 146, § 3; Laws 1980, LB 717, § 4; Laws 1987, LB 598, § 3; Laws 1989, LB 516, § 1; Laws 1992, LB 928, § 1; Laws 1993, LB 112, § 3; Laws 1993, LB 632, § 10; Laws 1995, LB 593, § 3; Laws 1996, LB 1211, § 3; Laws

2000, LB 1115, § 1; Laws 2001, LB 809, § 3; Laws 2005, LB 256, § 15; Laws 2011, LB163, § 3.
Effective date August 27, 2011.

18-1738.01 Handicapped or disabled persons; motor vehicle used for transportation; parking permits; issuance; procedure; renewal.

(1) This section applies until the implementation date designated by the Director of Motor Vehicles under section 60-3,113.01.

(2) The clerk of any city of the primary class, first class, or second class or village shall, or the county clerk or designated county official pursuant to section 23-186 or the Department of Motor Vehicles may, take an application from any person for a handicapped or disabled parking permit that is issued for a specific motor vehicle and entitles the holder thereof or a person driving the motor vehicle for the purpose of transporting handicapped or disabled persons or temporarily handicapped or disabled persons to park in those spaces or access aisles provided for by sections 18-1736 to 18-1741 if the motor vehicle is used primarily for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons. Such permit shall be used only when the motor vehicle for which it was issued is being used for the transportation of a handicapped or disabled person or temporarily handicapped or disabled person and such person will enter or exit the motor vehicle while it is parked in such designated spaces or access aisles.

(3) A person applying for a handicapped or disabled parking permit or for the renewal of a permit pursuant to this section shall apply for a permit for each motor vehicle used for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons, shall complete such forms as are provided to the clerk or designated county official by the Department of Motor Vehicles, and shall demonstrate to the clerk or designated county official or the department that each such motor vehicle is used primarily for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons. The application form shall contain information listing the legal uses of the permit and that the permit is not transferable, is to be used by the party to whom issued or for the motor vehicle for which it is issued, is not to be altered or reproduced, and is to be used only when a handicapped or disabled person or a temporarily handicapped or disabled person will enter or exit the motor vehicle while it is parked in a designated parking space or access aisle. The application form shall provide space for the applicant to sign a statement that he or she is aware of his or her rights, duties, and responsibilities with regard to the use and possession of a permit and the penalties provided by law for handicapped parking infractions. The application form shall also indicate that those convicted of handicapped parking infractions shall be subject to suspension of the permit for six months. A copy of the completed application form shall be given to each applicant. No more than one such permit shall be issued for each motor vehicle. An application for the renewal of a permit under this section may be filed within one hundred eighty days prior to the expiration of the permit. The existing permit shall be invalid upon receipt of the new permit. Following the receipt of the application and its processing, the Department of Motor Vehicles shall deliver each individual renewed permit to the applicant, except that renewed permits shall not be issued sooner than ten days prior to the date of expiration.

(4) The department, upon receipt from the clerk or designated county official of a completed application form, shall verify that the applicant qualifies for a handicapped or disabled parking permit under this section and, if so, shall deliver the permit to the applicant. The clerk or designated county official shall submit to the department the name, address, and license number of all persons applying for a permit pursuant to this section.

Source: Laws 1980, LB 717, § 5; Laws 1987, LB 598, § 4; Laws 1992, LB 928, § 2; Laws 1993, LB 112, § 4; Laws 1993, LB 632, § 11; Laws 1995, LB 593, § 4; Laws 1996, LB 1211, § 4; Laws 2001, LB 809, § 4; Laws 2011, LB163, § 4.
Effective date August 27, 2011.

Cross References

Department of Motor Vehicles, maintain registry of permitholders, see section 60-3,113.

18-1738.02 Handicapped or disabled persons; parking permit; place of application.

(1) This section applies until the implementation date designated by the Director of Motor Vehicles under section 60-3,113.01.

(2) Any person applying for a handicapped or disabled parking permit pursuant to section 18-1738 or 18-1738.01 shall apply for such permit to the city clerk, village clerk, county clerk, or designated county official pursuant to section 23-186 of the city, village, or county within which the applying individual resides or to the Department of Motor Vehicles. If such person does not reside within a city or village and the county clerk or designated county official does not issue permits, the person shall make application to the city clerk or village clerk of the city or village located nearest to his or her place of residence, to the county clerk or designated county official of any neighboring county who issues such permits, or to the department. No city clerk, village clerk, county clerk, designated county official, or department employee shall accept the application for a permit pursuant to section 18-1738 or 18-1738.01 of any person making application contrary to the provisions of this section.

Source: Laws 1993, LB 632, § 9; Laws 1996, LB 1211, § 5; Laws 2001, LB 809, § 5; Laws 2011, LB163, § 5.
Effective date August 27, 2011.

18-1739 Handicapped or disabled persons; parking permits; contents; issuance; duplicate permit.

(1) This section applies until the implementation date designated by the Director of Motor Vehicles under section 60-3,113.01.

(2) The handicapped or disabled parking permit to be issued pursuant to section 18-1738 or 18-1738.01 shall be constructed of a durable plastic designed to resist normal wear or fading for the term of the permit's issuance and printed so as to minimize the possibility of alteration following issuance. The permit shall be of a design, size, configuration, color, and construction and contain such information as specified in the regulations adopted by the United States Department of Transportation in the Uniform System for Parking for Persons with Disabilities, 23 C.F.R. part 1235, as such regulations existed on January 1, 2011.

(3) Until October 1, 2011, in addition to the requirements of subsection (2) of this section, the handicapped or disabled parking permit shall show the expiration date and such identifying information with regard to the handicapped or disabled person or temporarily handicapped or disabled person to whom it is issued as is necessary to the enforcement of sections 18-1736 to 18-1741.07 as determined by the Department of Motor Vehicles. The expiration date information shall be distinctively color-coded so as to identify by color the year in which the permit is due to expire.

(4) No handicapped or disabled parking permit shall be issued to any person or for any motor vehicle if any permit has been issued to such person or for such motor vehicle and such permit has been suspended pursuant to section 18-1741.02. At the expiration of such suspension, a permit may be renewed in the manner provided for renewal in sections 18-1738, 18-1738.01, and 18-1740.

(5) A duplicate handicapped or disabled parking permit may be provided without cost up to two times during any single permit period if a permit is destroyed, lost, or stolen. Such duplicate permit shall be issued as provided in section 18-1738 or 18-1738.01, whichever is applicable, except that a newly completed medical form need not be provided if a completed medical form submitted at the time of the most recent application for a permit or its renewal is on file with the clerk or designated county official or the Department of Motor Vehicles. A duplicate permit shall be valid for the remainder of the period for which the original permit was issued. If a person has been issued two duplicate permits under this subsection and needs another permit, such person shall reapply for a new permit under section 18-1738 or 18-1738.01, whichever is applicable.

Source: Laws 1977, LB 13, § 4; Laws 1979, LB 146, § 4; Laws 1980, LB 717, § 6; Laws 1984, LB 482, § 2; Laws 1987, LB 598, § 5; Laws 1989, LB 516, § 2; Laws 1992, LB 928, § 3; Laws 1995, LB 593, § 5; Laws 1996, LB 1211, § 6; Laws 2001, LB 31, § 1; Laws 2001, LB 809, § 6; Laws 2009, LB331, § 1; Laws 2010, LB805, § 1; Laws 2011, LB163, § 6; Laws 2011, LB212, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB163, section 6, with LB212, section 1, to reflect all amendments.

Note: Changes made by LB212 became effective February 23, 2011. Changes made by LB163 became effective August 27, 2011.

18-1740 Handicapped or disabled persons; parking permits; period valid; renewal.

(1) This section applies until the implementation date designated by the Director of Motor Vehicles under section 60-3,113.01.

(2) Permanently issued handicapped or disabled parking permits issued prior to October 1, 2011, shall be valid for a period ending on the last day of the month of the applicant's birthday in the third year after issuance and shall expire on that day. Permanently issued handicapped or disabled parking permits issued on or after October 1, 2011, shall be valid for a period ending on the last day of the month of the applicant's birthday in the sixth year after issuance and shall expire on that day.

(3) All handicapped or disabled parking permits for temporarily handicapped or disabled persons shall be issued for a period ending not more than six months after the date of issuance but may be renewed one time for a period not

to exceed six months. For the renewal period, there shall be submitted an additional application with proof of a handicap or disability.

Source: Laws 1977, LB 13, § 5; Laws 1979, LB 146, § 5; Laws 1980, LB 717, § 7; Laws 1982, LB 928, § 5; Laws 1987, LB 598, § 6; Laws 1988, LB 833, § 1; Laws 1992, LB 928, § 4; Laws 1993, LB 632, § 12; Laws 1995, LB 593, § 6; Laws 1996, LB 1211, § 7; Laws 2001, LB 31, § 2; Laws 2001, LB 809, § 7; Laws 2005, LB 406, § 1; Laws 2011, LB163, § 7.
Effective date August 27, 2011.

18-1741 Handicapped or disabled persons; parking permits; nontransferable; violation; penalty.

(1) This section applies until the implementation date designated by the Director of Motor Vehicles under section 60-3,113.01.

(2) A handicapped or disabled parking permit shall not be transferable and shall be used only by the party to whom issued or for the motor vehicle for which issued and only for the purpose for which the permit is issued. A handicapped or disabled parking permit shall be displayed by hanging the permit from the motor vehicle's rearview mirror so as to be clearly visible through the front windshield. A handicapped or disabled parking permit shall be displayed on the dashboard only when there is no rearview mirror. No person shall alter or reproduce in any manner a handicapped or disabled parking permit. No person shall knowingly hold more than the allowed number of handicapped or disabled parking permits or knowingly provide false information on an application for a handicapped or disabled parking permit. No person who is not the holder of a handicapped or disabled parking permit issued to him or her as a handicapped or disabled person shall display a handicapped or disabled parking permit and park in a space or access aisle designated for the exclusive use of a handicapped or disabled person. No person who is the holder of a handicapped or disabled parking permit issued for the use of such person when transporting a handicapped or disabled person shall display his or her handicapped or disabled parking permit and park in a space or access aisle designated for the exclusive use of a handicapped or disabled person unless a handicapped or disabled person will enter or exit the motor vehicle while it is parked in a designated space or access aisle. No person who is not the holder of a handicapped or disabled parking permit issued for use when a vehicle is transporting a handicapped or disabled person shall display a handicapped or disabled parking permit and park in a space or access aisle designated for the exclusive use of a handicapped or disabled person unless a handicapped or disabled person will enter or exit the motor vehicle while it is parked in a designated space or access aisle. Any violation of this section shall constitute a handicapped parking infraction as defined in section 18-1741.01 and shall be subject to the penalties and procedures set forth in sections 18-1741.01 to 18-1741.07.

Source: Laws 1977, LB 13, § 6; Laws 1979, LB 146, § 6; Laws 1980, LB 717, § 8; Laws 1995, LB 593, § 7; Laws 1996, LB 1211, § 8; Laws 2001, LB 31, § 3; Laws 2001, LB 809, § 8; Laws 2011, LB163, § 8.
Effective date August 27, 2011.

18-1741.02 Handicapped parking infraction; penalties; suspension of permit; fine.

(1) Any person found guilty of a handicapped parking infraction shall be fined (a) not more than one hundred fifty dollars for the first offense, (b) not more than three hundred dollars for a second offense within a one-year period, and (c) not more than five hundred dollars for a third or subsequent offense within a one-year period.

(2) In addition to any fine imposed under subsection (1) of this section, any person found guilty of a handicapped parking infraction under section 18-1741 or section 60-3,113.06 shall be subject to suspension of such person's handicapped or disabled parking permit for six months and such other punishment as may be provided by local ordinance. In addition, the court shall impose a fine of not more than two hundred fifty dollars which may be waived by the court if, at the time of sentencing, all handicapped or disabled parking permits issued to or in the possession of the offender are returned to the court. At the expiration of such six-month period, a suspended handicapped or disabled parking permit may be renewed in the manner provided for renewal of the original permit.

Source: Laws 1993, LB 632, § 2; Laws 2009, LB524, § 1; Laws 2011, LB163, § 9.
Effective date August 27, 2011.

18-1741.03 Handicapped parking infraction; citation form; Supreme Court; powers.

To insure uniformity, the Supreme Court may prescribe the form of the handicapped parking citation to be used for handicapped parking infractions. The handicapped parking citation shall include a description of the handicapped parking infraction, the time and place at which the person cited is to appear, a warning that failure to appear in accordance with the command of the citation is a punishable offense, and such other matter as the Supreme Court deems appropriate, but shall not include a place for the cited person's social security number. The handicapped parking citation shall provide space for an affidavit by a peace officer certifying that the recipient of the citation is the lawful possessor in his or her own right of a handicapped or disabled parking permit and that the peace officer has personally viewed the permit. The Supreme Court may provide that a copy of the handicapped parking citation constitutes the complaint filed in the trial court.

Source: Laws 1993, LB 632, § 3; Laws 1996, LB 1211, § 10; Laws 2002, LB 82, § 2; Laws 2011, LB163, § 10.
Effective date August 27, 2011.

18-1741.04 Handicapped parking citation; requirements; procedure; waivers; dismissal; credit card; payment authorized.

When a handicapped parking citation is issued for a handicapped parking infraction, the person issuing the handicapped parking citation shall enter thereon all required information, including the name and address of the cited person or, if not known, the license number and description of the offending motor vehicle, the offense charged, and the time and place the person cited is to appear in court. Unless the person cited requests an earlier date, the time of appearance shall be at least three days after the issuance of the handicapped

parking citation. One copy of the handicapped parking citation shall be delivered to the person cited or attached to the offending motor vehicle. At least twenty-four hours before the time set for the appearance of the cited person, either the prosecuting attorney or other person authorized by law to issue a complaint for the particular offense shall issue and file a complaint charging such person with a handicapped parking infraction or such person shall be released from the obligation to appear as specified. A person cited for a handicapped parking violation may waive his or her right to trial. For any handicapped parking citation issued for a handicapped parking infraction by reason of the failure of a vehicle to display a handicapped or disabled parking permit, the complaint shall be dismissed if, within seven business days after the date of issuance of the citation, the person cited files with the court the affidavit provided for in section 18-1741.03, signed by a peace officer certifying that the recipient is the lawful possessor in his or her own right of a handicapped or disabled parking permit and that the peace officer has personally viewed the permit. The Supreme Court may prescribe uniform rules for such waivers. Anyone may use a credit card authorized by the court in which the person is cited as a means of payment of his or her fine and costs.

Source: Laws 1993, LB 632, § 4; Laws 1996, LB 1211, § 11; Laws 2011, LB163, § 11.
Effective date August 27, 2011.

18-1742 Handicapped parking; rules and regulations.

(1) This section applies until the implementation date designated by the Director of Motor Vehicles under section 60-3,113.01.

(2) The Department of Motor Vehicles shall adopt and promulgate rules and regulations necessary to fulfill any duties and obligations as provided in sections 18-1736 to 18-1741.07.

Source: Laws 1995, LB 593, § 9; Laws 2011, LB163, § 12.
Effective date August 27, 2011.

ARTICLE 21

COMMUNITY DEVELOPMENT

Section

18-2147. Ad valorem tax; division authorized; limitation; fifteen-year period.

18-2147 Ad valorem tax; division authorized; limitation; fifteen-year period.

(1) Any redevelopment plan as originally approved or as later modified pursuant to section 18-2117 may contain a provision that any ad valorem tax levied upon real property, or any portion thereof, in a redevelopment project for the benefit of any public body shall be divided, for a period not to exceed fifteen years after the effective date as identified in the project redevelopment contract or in the resolution of the authority authorizing the issuance of bonds pursuant to section 18-2124, as follows:

(a) That portion of the ad valorem tax which is produced by the levy at the rate fixed each year by or for each such public body upon the redevelopment project valuation shall be paid into the funds of each such public body in the same proportion as are all other taxes collected by or for the body. When there is not a redevelopment project valuation on a parcel or parcels, the county

assessor shall determine the redevelopment project valuation based upon the fair market valuation of the parcel or parcels as of January 1 of the year prior to the year that the ad valorem taxes are to be divided. The county assessor shall provide written notice of the redevelopment project valuation to the authority as defined in section 18-2103 and the owner. The authority or owner may protest the valuation to the county board of equalization within thirty days after the date of the valuation notice. All provisions of section 77-1502 except dates for filing of a protest, the period for hearing protests, and the date for mailing notice of the county board of equalization's decision are applicable to any protest filed pursuant to this section. The county board of equalization shall decide any protest filed pursuant to this section within thirty days after the filing of the protest. The county clerk shall mail a copy of the decision made by the county board of equalization on protests pursuant to this section to the authority or owner within seven days after the board's decision. Any decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission, in accordance with section 77-5013, within thirty days after the date of the decision;

(b) That portion of the ad valorem tax on real property, as provided in the redevelopment contract or bond resolution, in the redevelopment project in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the authority to be used solely to pay the principal of, the interest on, and any premiums due in connection with the bonds of, loans, notes, or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such authority for financing or refinancing, in whole or in part, the redevelopment project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premiums due, have been paid, the authority shall so notify the county assessor and county treasurer and all ad valorem taxes upon taxable real property in such a redevelopment project shall be paid into the funds of the respective public bodies; and

(c) Any interest and penalties due for delinquent taxes shall be paid into the funds of each public body in the same proportion as are all other taxes collected by or for the public body.

(2) The effective date of a provision dividing ad valorem taxes as provided in subsection (1) of this section shall not occur until such time as the real property in the redevelopment project is within the corporate boundaries of the city.

(3) Beginning August 1, 2006, all notices of the provision for dividing ad valorem taxes shall be sent by the authority to the county assessor on forms prescribed by the Property Tax Administrator. The notice shall be sent to the county assessor on or before August 1 of the year of the effective date of the provision. Failure to satisfy the notice requirement of this section shall result in the taxes, for all taxable years affected by the failure to give notice of the effective date of the provision, remaining undivided and being paid into the funds for each public body receiving property taxes generated by the property in the redevelopment project. However, the redevelopment project valuation for the remaining division of ad valorem taxes in accordance with subdivisions (1)(a) and (b) of this section shall be the last certified valuation for the taxable year prior to the effective date of the provision to divide the taxes for the

remaining portion of the fifteen-year period pursuant to subsection (1) of this section.

Source: Laws 1979, LB 158, § 10; Laws 1997, LB 875, § 14; Laws 1999, LB 194, § 2; Laws 2002, LB 994, § 2; Laws 2006, LB 808, § 2; Laws 2006, LB 1175, § 2; Laws 2011, LB54, § 1.
Effective date August 27, 2011.

ARTICLE 27

MUNICIPAL ECONOMIC DEVELOPMENT

Section

- 18-2708. Local sources of revenue, defined.
18-2709. Qualifying business, defined.
18-2714. Economic development program; established by ordinance; amendment; repeal; procedures.
18-2717. Appropriations; restrictions.

18-2708 Local sources of revenue, defined.

Local sources of revenue means the city's property tax, the city's local option sales tax, or any other general tax levied by the city or generated from municipally owned utilities or grants, donations, or state and federal funds received by the city subject to any restrictions of the grantor, donor, or state or federal law. Funds generated from municipally owned utilities shall be used for utility-related purposes or activities associated with the economic development program as determined by the city council, including, but not limited to, load management, energy efficiency, energy conservation, incentives for load growth, line extensions, land purchase, site development, and demand side management measures.

Source: Laws 1991, LB 840, § 9; Laws 2011, LB471, § 1.
Effective date August 27, 2011.

18-2709 Qualifying business, defined.

(1) Qualifying business means any corporation, partnership, limited liability company, or sole proprietorship which derives its principal source of income from any of the following: The manufacture of articles of commerce; the conduct of research and development; the processing, storage, transport, or sale of goods or commodities which are sold or traded in interstate commerce; the sale of services in interstate commerce; headquarters facilities relating to eligible activities as listed in this section; telecommunications activities, including services providing advanced telecommunications capability; or tourism-related activities.

(2) Qualifying business also means:

(a) In cities of the first and second class and villages, a business that derives its principal source of income from the construction or rehabilitation of housing;

(b) A business that derives its principal source of income from retail trade, except that no more than forty percent of the total revenue generated pursuant to the Local Option Municipal Economic Development Act for an economic development program in any twelve-month period and no more than twenty percent of the total revenue generated pursuant to the act for an economic development program in any five-year period, commencing from the date of

municipal approval of an economic development program, shall be used by the city for or devoted to the use of retail trade businesses. For purposes of this subdivision, retail trade means a business which is principally engaged in the sale of goods or commodities to ultimate consumers for their own use or consumption and not for resale; and

(c) In cities with a population of two thousand five hundred inhabitants or less, a business shall be a qualifying business even though it derives its principal source of income from activities other than those set out in this section.

(3) If a business which would otherwise be a qualifying business employs people and carries on activities in more than one city in Nebraska or will do so at any time during the first year following its application for participation in an economic development program, it shall be a qualifying business only if, in each such city, it maintains employment for the first two years following the date on which such business begins operations in the city as a participant in its economic development program at a level not less than its average employment in such city over the twelve-month period preceding participation.

(4) A qualifying business need not be located within the territorial boundaries of the city from which it is or will be receiving financial assistance.

Source: Laws 1991, LB 840, § 10; Laws 1993, LB 121, § 145; Laws 1993, LB 732, § 18; Laws 1994, LB 1188, § 1; Laws 1995, LB 207, § 4; Laws 2001, LB 827, § 14; Laws 2011, LB471, § 2.
Effective date August 27, 2011.

18-2714 Economic development program; established by ordinance; amendment; repeal; procedures.

(1) After approval by the voters of an economic development program, the governing body of the city shall, within forty-five days after such approval, establish the economic development program by ordinance in conformity with the terms of such program as set out in the original enabling resolution.

(2) After the adoption of the ordinance establishing the economic development program, such ordinance shall only be amended (a) to conform to the provisions of any existing or future state or federal law or (b) after notice, at least one public hearing, and a two-thirds vote of the members of the governing body of the city, when necessary to accomplish the purposes of the original enabling resolution.

(3) The governing body of a city shall not amend the economic development program so as to fundamentally alter its basic structure or goals, either with regard to the qualifying businesses that are eligible to participate, the local sources of revenue used to fund the program, the uses of the funds collected, or the basic terms set out in the original enabling resolution, without submitting the proposed changes to a new vote of the registered voters of the city in the manner provided for in section 18-2713.

(4) The governing body of a city may, at any time after the adoption of the ordinance establishing the economic development program, by a two-thirds vote of the members of the governing body, repeal the ordinance in its entirety and end the economic development program, subject only to the provisions of any existing contracts relating to such program and the rights of any third parties arising from those contracts. Prior to such vote by the governing body, it

shall publish notice of its intent to consider the repeal and hold a public hearing on the issue. Any funds in the custody of the city for such economic development program which are not spent or committed at the time of the repeal and any funds to be received in the future from the prior operation of the economic development program shall be placed into the general fund of the city.

Source: Laws 1991, LB 840, § 15; Laws 2011, LB471, § 3.
Effective date August 27, 2011.

18-2717 Appropriations; restrictions.

(1) No city shall appropriate from funds derived directly from local sources of revenue for all approved economic development programs, in each year during which such programs are in existence, an amount in excess of four-tenths of one percent of the taxable valuation of the city in the year in which the funds are collected.

(2) Notwithstanding the provisions of subsections (1) and (3) of this section, no city of the metropolitan or primary class shall appropriate from funds derived directly from local sources of revenue more than five million dollars for all approved economic development programs in any one year, no city of the first class shall appropriate from funds derived directly from local sources of revenue more than four million dollars for all approved economic development programs in any one year, and no city of the second class or village shall appropriate from funds derived directly from local sources of revenue more than three million dollars for all approved economic development programs in any one year.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, no city shall appropriate from funds derived directly from local sources of revenue an amount for an economic development program in excess of the total amount approved by the voters at the election or elections in which the economic development program was submitted or amended.

(4) The restrictions on the appropriation of funds from local sources of revenue as set out in subsections (1) through (3) of this section shall apply only to the appropriation of funds derived directly from local sources of revenue. Sales tax collections in excess of the amount which may be appropriated as a result of the restrictions set out in such subsections shall be deposited in the city's economic development fund and invested as provided for in section 18-2718. Any funds in the city's economic development fund not otherwise restricted from appropriation by reason of the city's ordinance governing the economic development program or this section may be appropriated and spent for the purposes of the economic development program in any amount and at any time at the discretion of the governing body of the city subject only to section 18-2716.

(5) The restrictions on the appropriation of funds from local sources of revenue shall not apply to the reappropriation of funds which were appropriated but not expended during previous fiscal years.

Source: Laws 1991, LB 840, § 18; Laws 1992, LB 719A, § 79; Laws 1993, LB 732, § 24; Laws 2000, LB 1258, § 1; Laws 2011, LB471, § 4.
Effective date August 27, 2011.

ARTICLE 30
PLANNED UNIT DEVELOPMENT

Section

18-3001. Planned unit development ordinance; authorized; conditions.

18-3001 Planned unit development ordinance; authorized; conditions.

(1) Except as provided in subsection (5) of this section and notwithstanding any provisions of Chapter 14, article 4, Chapter 15, article 9, Chapter 19, article 9, or of any home rule charter to the contrary, every city or village may include within its zoning ordinance provisions authorizing and regulating planned unit developments within such city or village or within the zoning jurisdiction of such city or village, except such cities or villages shall not have authority to impose such power over other organized cities or villages within the zoning jurisdiction of such cities or villages. As used in this section, planned unit development includes any development of a parcel of land or an aggregation of contiguous parcels of land to be developed as a single project which proposes density transfers, density increases, and mixing of land uses, or any combination thereof, based upon the application of site planning criteria. The purpose of such ordinance shall be to permit flexibility in the regulation of land development, to encourage innovation in land use and variety in design, layout, and type of structures constructed, to achieve economy and efficiency in the use of land, natural resources, and energy and the provision of public services and utilities, to encourage the preservation and provision of useful open space, and to provide improved housing, employment, or shopping opportunities particularly suited to the needs of an area.

(2) An ordinance authorizing and regulating planned unit developments shall establish criteria relating to the review of proposed planned unit developments to ensure that the land use or activity proposed through a planned unit development shall be compatible with adjacent uses of land and the capacities of public services and utilities affected by such planned unit development and to ensure that the approval of such planned unit development is consistent with the public health, safety, and general welfare of the city or village and is in accordance with the comprehensive plan.

(3) Within a planned unit development, regulations relating to the use of land, including permitted uses, lot sizes, setbacks, height limits, required facilities, buffers, open spaces, roadway and parking design, and land-use density shall be determined in accordance with the planned unit development regulations specified in the zoning ordinance. The planned unit development regulations need not be uniform with regard to each type of land use.

(4) The approval of planned unit developments, as authorized under a planned unit development ordinance, shall be generally similar to the procedures established for the approval of zone changes. In approving any planned unit development, a city or village may, either as a condition of the ordinance approving a planned unit development, by covenant, by separate agreement, or otherwise, impose reasonable conditions as deemed necessary to ensure that a planned unit development shall be compatible with adjacent uses of land, will not overburden public services and facilities, and will not be detrimental to the public health, safety, and welfare. Such conditions or agreements may provide for dedications of land for public purposes.

(5) A city of the second class or village located in a county that has adopted a comprehensive development plan which meets the requirements of section 23-114.02 and is enforcing subdivision regulations shall not finally approve a planned unit development upon property located outside of the corporate boundaries of the city or village until the plans for the planned unit development have been submitted to, reviewed, and approved by the county's planning commission pursuant to subsection (4) of section 17-1002.

Source: Laws 1983, LB 135, § 1; R.S.1943, (2007), § 19-4401; Laws 2011, LB146, § 1.
Effective date August 27, 2011.



CHAPTER 19
CITIES AND VILLAGES; LAWS APPLICABLE
TO MORE THAN ONE AND LESS THAN
ALL CLASSES

Article.

24. Municipal Improvements. (Applicable to cities of the first or second class and villages.) 19-2432.
35. Pension Plans. (Applicable to cities of the first or second class and villages.) 19-3501.
44. Planned Unit Development. (Applicable to cities of the metropolitan, primary, or first class.) Transferred.

ARTICLE 24

MUNICIPAL IMPROVEMENTS

(Applicable to cities of the first or second class and villages.)

Section

- 19-2432. Special assessment; division or subdivision of land; reapportionment; procedure; notice; hearing; aggrieved owner; appeal; governing body; duties.

19-2432 Special assessment; division or subdivision of land; reapportionment; procedure; notice; hearing; aggrieved owner; appeal; governing body; duties.

(1) Whenever a tract of land against which a special assessment has been levied is divided or subdivided by any platting, replatting, or other form of division creating separate lots or tracts, the governing body of any city of the first class, city of the second class, or village which has levied such special assessments may (a) on application of the owner of any part of the tract or (b) on its own motion, determine the apportionment of such special assessment remaining unpaid among the various lots and parcels in the tract resulting from the division or subdivision. Any such reapportionment shall be on such fair and equitable terms as the governing body shall determine after notice and hearing on the reapportionment. No reapportionment of a special assessment shall be done on a tract of land if a tax sale certificate has been issued for such tract or if the special assessment being reapportioned is delinquent.

(2) Notice of hearing on the reapportionment shall be given by publication one time in a newspaper published or of general circulation in the city or village not less than ten days prior to the hearing. Notice of the hearing shall be sent by mail to the owners of record title of each lot or parcel affected by any proposed or determined reapportionment in the same manner as is required under section 25-520.01.

(3) In making the determination as to reapportionment, the governing body shall take into consideration its own requirements as to security for payment of the amounts owing and may, if determined appropriate, allocate based upon either front footage or square footage or other such method or reapportionment as may be determined appropriate based upon the facts and circumstances. No

such reapportionment shall result in a reduction or remittance of the total amount originally assessed and then remaining outstanding and unpaid. Notice of the reapportionment when determined shall be sent by mail to the owners of record title of each lot or parcel affected by the reapportionment.

(4) Any notice required under this section may be waived in writing by any owner of any lot or parcel affected by any reapportionment.

(5) Any owner of real property who feels aggrieved by the reapportionment of any special assessment under this section may appeal such reapportionment in the same manner as applies for appeals from special assessments under sections 19-2422 to 19-2425, but only matters related to such reapportionment shall be considered upon any such appeal.

(6) The governing body shall file notice of any reapportionment of a special assessment with the county treasurer of the county where the lot or parcel is located.

Source: Laws 2011, LB309, § 1.

Effective date May 18, 2011.

ARTICLE 35

PENSION PLANS

(Applicable to cities of the first or second class and villages.)

Section

19-3501. Pension plans authorized; employees covered; contributions; funding past service benefits; joinder in plan by two or more cities; reports.

19-3501 Pension plans authorized; employees covered; contributions; funding past service benefits; joinder in plan by two or more cities; reports.

(1) The governing body of cities of the first and second classes and villages may, by appropriate ordinance or proper resolution, establish a pension plan designed and intended for the benefit of the regularly employed or appointed full-time employees of the city. Any recognized method of funding a pension plan may be employed. The plan shall be established by appropriate ordinance or proper resolution, which may provide for mandatory contribution by the employee. The city may also contribute, in addition to any amounts contributed by the employee, amounts to be used for the purpose of funding employee past service benefits. Any two or more cities of the first and second classes and villages may jointly establish such a pension plan by adoption of appropriate ordinances or resolutions. Such a pension plan may be integrated with old age and survivors insurance, otherwise generally known as social security.

(2)(a) Beginning December 31, 1998, and each December 31 thereafter, the clerk of a city or village with a retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code shall file with the Public Employees Retirement Board an annual report on such plan and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;

- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;
- (vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and
- (viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the city or village clerk may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the city council or village board shall cause to be prepared a quadrennial report and shall file the same with the Public Employees Retirement Board and submit to the Auditor of Public Accounts a copy of each report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan.

(3) Subsection (1) of this section shall not apply to firefighters or police officers who are included under an existing pension or retirement system established by the municipality employing such firefighters or police officers or the Legislature. If a city of the first class decreases in population to less than five thousand, as determined by the latest federal census, any police officer or firefighter employed by such city on or prior to the date such city becomes a city of the second class shall retain the level of benefits established by the Legislature for police officers or firefighters employed by a city of the first class on the date such city becomes a city of the second class.

Source: Laws 1957, c. 26, § 1, p. 180; Laws 1963, c. 63, § 10, p. 262; Laws 1967, c. 98, § 1, p. 297; R.S.Supp., 1967, § 16-328; Laws 1969, c. 79, § 1, p. 410; Laws 1974, LB 1002, § 1; Laws 1983, LB 291, § 2; Laws 1989, LB 145, § 1; Laws 1998, LB 1191, § 21; Laws 1999, LB 795, § 9; Laws 2011, LB474, § 9.
Effective date August 27, 2011.

ARTICLE 44

PLANNED UNIT DEVELOPMENT

(Applicable to cities of the metropolitan, primary, or first class.)

Section
19-4401. Transferred to section 18-3001.

§ 19-4401

CITIES AND VILLAGES; PARTICULAR CLASSES

19-4401 Transferred to section 18-3001.

CHAPTER 20 CIVIL RIGHTS

Article.

1. Individual Rights.
 - (g) Interpreters. 20-159.
 - (k) Mother Breast-Feed Child. 20-170.

ARTICLE 1 INDIVIDUAL RIGHTS

(g) INTERPRETERS

Section

20-159. Fees authorized.

(k) MOTHER BREAST-FEED CHILD

20-170. Mother; right to breast-feed child.

(g) INTERPRETERS

20-159 Fees authorized.

A licensed interpreter appointed pursuant to sections 20-150 to 20-159 is entitled to a fee for professional services and other relevant expenses as approved by the governing body of the appointing authority. When the licensed interpreter is appointed by a court, the fee shall be paid out of the General Fund with funds appropriated to the Supreme Court for that purpose or from funds, including grant money, made available to the Supreme Court for such purpose. When the licensed interpreter is appointed by an appointing authority other than a court, the fee shall be paid out of funds available to the governing body of the appointing authority.

Source: Laws 1987, LB 376, § 10; Laws 1997, LB 851, § 10; Laws 1999, LB 54, § 2; Laws 2002, LB 22, § 7; Laws 2011, LB669, § 1.
Operative date August 27, 2011.

(k) MOTHER BREAST-FEED CHILD

20-170 Mother; right to breast-feed child.

Notwithstanding any other provision of law, a mother may breast-feed her child in any public or private location where the mother is otherwise authorized to be.

Source: Laws 2011, LB197, § 1.
Effective date August 27, 2011.



CHAPTER 21

CORPORATIONS AND OTHER COMPANIES

Article.

- 17. Credit Unions.
 - (a) Credit Union Act. 21-17,115.
- 19. Nebraska Nonprofit Corporation Act.
 - (d) Names. 21-1931.
 - (n) Foreign Corporations. 21-19,151.
- 20. Business Corporation Act.
 - (c) Purposes and Powers. 21-2024.
 - (d) Name. 21-2028.
 - (n) Foreign Corporations. 21-20,173.
- 22. Professional Corporations. 21-2201, 21-2223.

ARTICLE 17

CREDIT UNIONS

(a) CREDIT UNION ACT

Section

- 21-17,115. Credit union organized under laws of Nebraska; rights, powers, privileges, and immunities of federal credit union; exception.

(a) CREDIT UNION ACT

21-17,115 Credit union organized under laws of Nebraska; rights, powers, privileges, and immunities of federal credit union; exception.

Notwithstanding any of the other provisions of the Credit Union Act or any other Nebraska statute, any credit union incorporated under the laws of the State of Nebraska and organized under the provisions of the act shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2011, by a federal credit union doing business in Nebraska on the condition that such rights, powers, privileges, benefits, and immunities shall not relieve such credit union from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1977, LB 246, § 5; Laws 1978, LB 772, § 1; Laws 1979, LB 307, § 1; Laws 1980, LB 793, § 1; Laws 1981, LB 60, § 1; Laws 1982, LB 775, § 2; Laws 1983, LB 143, § 1; Laws 1984, LB 643, § 1; Laws 1985, LB 430, § 1; Laws 1986, LB 963, § 1; Laws 1987, LB 197, § 1; Laws 1988, LB 957, § 1; Laws 1989, LB 126, § 1; Laws 1990, LB 1017, § 1; Laws 1991, LB 97, § 1; Laws 1992, LB 984, § 1; Laws 1993, LB 122, § 1; Laws 1994, LB 878, § 1; Laws 1995, LB 76, § 1; R.S.Supp.,1995, § 21-17,120.01; Laws 1996, LB 948, § 115; Laws 1997, LB 152, § 1; Laws 1998, LB 1321, § 75; Laws 1999, LB 278, § 1; Laws 2000, LB 932, § 27; Laws 2001, LB 53, § 26; Laws 2002, LB 957, § 20; Laws 2003, LB 217, § 32; Laws 2004, LB 999, § 21; Laws 2005, LB 533, § 32; Laws 2006, LB 876, § 24; Laws 2007, LB124, § 21;

Laws 2008, LB851, § 17; Laws 2009, LB327, § 15; Laws 2010, LB890, § 14; Laws 2011, LB74, § 5.
Operative date February 23, 2011.

ARTICLE 19

NEBRASKA NONPROFIT CORPORATION ACT

(d) NAMES

Section

21-1931. Corporate name.

(n) FOREIGN CORPORATIONS

21-19,151. Foreign corporation; corporate name.

(d) NAMES

21-1931 Corporate name.

(a) A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 21-1927 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d) of this section, a corporate name shall not be the same as or deceptively similar to, upon the records of the Secretary of State, any of the names referenced in subdivisions (b)(1) through (5) of this section:

(1) The corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(2) A corporate name reserved or registered under section 21-1932, 21-1933, 21-2029, or 21-2030;

(3) The fictitious name of a foreign business or nonprofit corporation authorized to transact business in this state because its real name is unavailable;

(4) A trade name registered in this state pursuant to sections 87-208 to 87-219.01; and

(5) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(c) A corporation may apply to the Secretary of State for authorization to use a name that is deceptively similar to, upon the Secretary of State's records, one or more of the names described in subsection (b) of this section. The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation or business entity consents to the use in writing; or

(2) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A corporation may use the name (including the fictitious name) of another domestic or foreign business or nonprofit corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to do business in this state and the proposed user corporation:

(1) Has merged with the other corporation or business entity;

(2) Has been formed by reorganization of the other corporation or business entity; or

(3) Has acquired all or substantially all of the assets, including the name, of the other corporation or business entity.

(e) The Nebraska Nonprofit Corporation Act does not control the use of fictitious names.

Source: Laws 1996, LB 681, § 31; Laws 1997, LB 44, § 2; Laws 1997, LB 453, § 1; Laws 2003, LB 464, § 1; Laws 2011, LB462, § 1. Effective date August 27, 2011.

(n) FOREIGN CORPORATIONS

21-19,151 Foreign corporation; corporate name.

(a) If the corporate name of a foreign corporation does not satisfy the requirements of section 21-1931, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d) of this section, the corporate name (including a fictitious name) of a foreign corporation shall not be the same as or deceptively similar to, upon the records of the Secretary of State, any of the names referenced in subdivisions (b)(1) through (5) of this section:

(1) The corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state;

(2) A corporate name reserved or registered under section 21-1932, 21-1933, 21-2029, or 21-2030;

(3) The fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state;

(4) A trade name registered in this state pursuant to sections 87-208 to 87-219.01; and

(5) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(c) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation or business entity (incorporated or authorized to transact business in this state) that is deceptively similar to, upon the records of the Secretary of State, the name applied for. The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation or business entity consents in writing to the use; or

(2) The applying corporation delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing its right to use the name applied for in this state.

(d) A foreign corporation may use in this state the name (including the fictitious name) of another domestic or foreign business or nonprofit corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to transact business in this state and the foreign corporation:

(1) Has merged with the other corporation or business entity;

(2) Has been formed by a reorganization of the other corporation or business entity; or

(3) Has acquired all or substantially all of the assets, including the name, of the other corporation or business entity.

(e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 21-1931, it shall not transact business in this state under the changed name until it adopts a name satisfying the requirements of section 21-1931 and obtains an amended certificate of authority under section 21-19,149.

Source: Laws 1996, LB 681, § 151; Laws 1997, LB 44, § 4; Laws 1997, LB 453, § 2; Laws 2003, LB 464, § 3; Laws 2011, LB462, § 2. Effective date August 27, 2011.

ARTICLE 20

BUSINESS CORPORATION ACT

(c) PURPOSES AND POWERS

Section
21-2024. Corporation; purpose.

(d) NAME

21-2028. Corporate name.

(n) FOREIGN CORPORATIONS

21-20,173. Corporate name of foreign corporation.

(c) PURPOSES AND POWERS

21-2024 Corporation; purpose.

(1) Every corporation incorporated under the Business Corporation Act shall have the purpose of engaging in any lawful business unless a more limited purpose shall be set forth in the articles of incorporation.

(2) A corporation engaging in a business subject to regulation under another law of this state may incorporate under the act only if permitted by, and subject to all limitations of, such other law.

(3) Corporations shall not be organized under the act to perform any personal services as specified in section 21-2202 except for personal services rendered by a designated broker as defined in section 81-885.01.

(4) A designated broker as defined in section 81-885.01 may be organized as a corporation under the Business Corporation Act.

Source: Laws 1995, LB 109, § 24; Laws 2011, LB315, § 1. Effective date May 18, 2011.

(d) NAME

21-2028 Corporate name.

(1) A corporate name:

(a) Shall contain the word corporation, incorporated, company, or limited, or the abbreviation corp., inc., co., or ltd., or words or abbreviations of like import in another language, except that a corporation organized to conduct a banking business under the Nebraska Banking Act may use a name which includes the word bank without using any such words or abbreviations; and

(b) Shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 21-2024 and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4) of this section, a corporate name shall not be the same as or deceptively similar to, upon the records of the Secretary of State, any of the names referenced in subdivisions (2)(a) through (f) of this section:

(a) The corporate name of a corporation incorporated or authorized to transact business in this state;

(b) A corporate name reserved or registered under section 21-2029 or 21-2030;

(c) The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(d) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) A trade name registered in this state pursuant to sections 87-208 to 87-219.01; and

(f) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(3) A corporation may apply to the Secretary of State for authorization to use a name that is deceptively similar to, upon his or her records, one or more of the names described in subsection (2) of this section. The Secretary of State shall authorize use of the name applied for if:

(a) The other corporation or business entity consents to the use in writing; or

(b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to transact business in this state and the proposed user corporation has:

(a) Merged with the other corporation or business entity;

(b) Been formed by reorganization of the other corporation or business entity; or

(c) Acquired all or substantially all of the assets, including the name, of the other corporation or business entity.

(5) The Business Corporation Act shall not be construed to control the use of fictitious names.

Source: Laws 1995, LB 109, § 28; Laws 1997, LB 44, § 5; Laws 1997, LB 453, § 3; Laws 1998, LB 1321, § 76; Laws 2003, LB 464, § 4; Laws 2011, LB462, § 3.
Effective date August 27, 2011.

Cross References

Nebraska Banking Act, see section 8-101.01.

(n) FOREIGN CORPORATIONS

21-20,173 Corporate name of foreign corporation.

(1) If the corporate name of a foreign corporation does not satisfy the requirements of section 21-2028, the foreign corporation, in order to obtain or maintain a certificate of authority to transact business in this state, may:

(a) Add the word corporation, incorporated, company, or limited, or the abbreviation corp., inc., co., or ltd., to its corporate name for use in this state; or

(b) Use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4) of this section, the corporate name, including a fictitious name, of a foreign corporation shall not be the same as or deceptively similar to, upon the records of the Secretary of State, any of the names referenced in subdivisions (2)(a) through (f) of this section:

(a) The corporate name of a corporation incorporated or authorized to transact business in this state;

(b) A corporate name reserved or registered under section 21-2029 or 21-2030;

(c) The fictitious name of another foreign corporation authorized to transact business in this state;

(d) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) A trade name registered in this state pursuant to sections 87-208 to 87-219.01; and

(f) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(3) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation or business entity, incorporated or authorized to transact business in this state, that is the same as or deceptively similar to, upon his or her records, the name applied for. The Secretary of State shall authorize use of the name applied for if:

(a) The other corporation or business entity consents to the use in writing; or

(b) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to transact business in this state and the foreign corporation:

(a) Has merged with the other corporation or business entity;

(b) Has been formed by reorganization of the other corporation or business entity; or

(c) Has acquired all or substantially all of the assets, including the name, of the other corporation or business entity.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 21-2028, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of section 21-2028 and obtains an amended certificate of authority under section 21-20,171.

Source: Laws 1995, LB 109, § 173; Laws 1997, LB 44, § 6; Laws 1997, LB 453, § 4; Laws 2003, LB 464, § 6; Laws 2011, LB462, § 4.
Effective date August 27, 2011.

ARTICLE 22

PROFESSIONAL CORPORATIONS

Section

21-2201. Act, how cited.

21-2223. Designated broker; professional corporation.

21-2201 Act, how cited.

Sections 21-2201 to 21-2223 shall be known and may be cited as the Nebraska Professional Corporation Act.

Source: Laws 1969, c. 121, § 1, p. 555; Laws 1994, LB 488, § 1; Laws 2011, LB315, § 2.
Effective date May 18, 2011.

21-2223 Designated broker; professional corporation.

A designated broker as defined in section 81-885.01 may be organized as a professional corporation under the Nebraska Professional Corporation Act.

Source: Laws 2011, LB315, § 3.
Effective date May 18, 2011.



CHAPTER 22

COUNTIES

Article.

1. Names and Boundaries of Counties. 22-141 to 22-161.01.

ARTICLE 1

NAMES AND BOUNDARIES OF COUNTIES

Section

- 22-141. Repealed. Laws 2011, LB 556, § 4.
 22-141.01. Hamilton.
 22-161.01. Merrick.

22-141 Repealed. Laws 2011, LB 556, § 4.

22-141.01 Hamilton.

The county of Hamilton is bounded as follows: Beginning at the northeast meander corner of section 24, township 14 north, range 5 west of the sixth principal meridian; thence south on the line dividing ranges 4 and 5 west to a point on the line dividing townships 8 and 9 north; thence west on the line dividing townships 8 and 9 north to a point on the line dividing ranges 8 and 9 west; thence north on the line dividing ranges 8 and 9 west to the northwest corner of section 7, township 10 north, range 8 west; thence continuing north on the line dividing ranges 8 and 9 west on a bearing of north 1 degree, 6 minutes, 39 seconds west a distance of 3963.32 feet to a point in the south channel of the Platte River; thence north 26 degrees, 16 minutes, 43 seconds east, 4477.82 feet; thence north 39 degrees, 25 minutes, 34 seconds east, 6937.24 feet; thence north 40 degrees, 17 minutes, 8 seconds east, 9415.04 feet; thence north 56 degrees, 16 minutes, 12 seconds east, 3118.09 feet; thence north 33 degrees, 12 minutes, 56 seconds east, 5522.78 feet; thence north 45 degrees, 37 minutes, 50 seconds east, 3233.20 feet; thence north 55 degrees, 58 minutes, 45 seconds east, 12217.41 feet; thence north 32 degrees, 21 minutes, 1 second east, 9051.98 feet; thence north 23 degrees, 37 minutes, 16 seconds east, 3540.46 feet; thence north 59 degrees, 9 minutes, 4 seconds east, 4326.45 feet; thence north 51 degrees, 17 minutes, 37 seconds east, 11127.53 feet; thence south 39 degrees, 36 minutes, 35 seconds east, 464.59 feet; thence north 69 degrees, 18 minutes, 17 seconds east, 1452.28 feet; thence north 55 degrees, 51 minutes, 51 seconds east, 430.40 feet; thence south 77 degrees, 28 minutes, 17 seconds east, 528.85 feet; thence north 79 degrees, 21 minutes, 55 seconds east, 703.44 feet; thence north 27 degrees, 24 minutes, 27 seconds east, 367.28 feet; thence north 41 degrees, 50 minutes, 18 seconds east, 1122.47 feet; thence north 19 degrees, 40 minutes, 41 seconds east, 484.15 feet; thence north 41 degrees, 23 minutes, 30 seconds east, 474.86 feet; thence north 25 degrees, 6 minutes, 30 seconds west, 474.90 feet; thence north 68 degrees, 41 minutes, 38 seconds east, 2605.28 feet; thence north 38 degrees, 57 minutes, 26 seconds east, 9143.17 feet; thence north 57 degrees, 14 minutes, 34 seconds east, 5953.39 feet; thence north 50 degrees, 23 minutes, 34 seconds east, 2012.96

feet; thence north 35 degrees, 48 minutes, 29 seconds east, 1723 feet; thence north 25 degrees, 20 minutes, 59 seconds east, 3001.08 feet; thence north 39 degrees, 17 minutes, 44 seconds east, 2592.82 feet; thence north 27 degrees, 22 minutes, 47 seconds east, 2701.44 feet; thence north 52 degrees, 49 minutes, 38 seconds east, 3343.12 feet; thence north 59 degrees, 44 minutes, 14 seconds east, 9560.61 feet; thence south 28 degrees, 46 minutes, 42 seconds east, 2145.07 feet; thence north 54 degrees, 22 minutes, 14 seconds east, 1262.88 feet; thence north 64 degrees, 12 minutes, 47 seconds east, 2172.54 feet; thence north 75 degrees, 0 minutes, 21 seconds east, 3411.91 feet; thence north 57 degrees, 50 minutes, 44 seconds east, 6229.53 feet; thence north 69 degrees, 35 minutes, 2 seconds east, 3924.66 feet; thence north 60 degrees, 34 minutes, 32 seconds east, 7862.89 feet; thence north 41 degrees, 43 minutes, 47 seconds east, 2178.62 feet; thence north 47 degrees, 29 minutes, 27 seconds east, 2293.19 feet; thence north 20 degrees, 33 minutes, 22 seconds east, 1357.03 feet; thence north 37 degrees, 36 minutes, 34 seconds east, 10909.57 feet; thence north 29 degrees, 57 minutes, 43 seconds east, 10064.70 feet; thence south 1 degree, 57 minutes, 32 seconds east, 987.20 feet to the point of beginning. Note all bearings are based on state plane coordinates used for Merrick and Hamilton Counties. All distances are converted to ground.

Source: Laws 2011, LB556, § 1.

Effective date August 27, 2011.

22-161.01 Merrick.

The county of Merrick is bounded as follows: Beginning at the northeast corner of township 16 north, range 3 west; thence west on the dividing line of townships 16 and 17 north, to the boundaries of the Pawnee Indian reservation; thence by the boundaries of said reservation passing by its south side around to the north line of township 16 north; thence west, to the northwest corner of township 16 north, range 8 west; thence south between ranges 8 and 9 to the meander corner of section 31, township 11 north, range 8 west; thence south on the dividing line of ranges 8 and 9 west on an assumed bearing of south 0 degrees, 53 minutes, 49 seconds east, 3603.44 feet to a point in the south channel of the Platte River; thence north 26 degrees, 16 minutes, 43 seconds east, 4477.82 feet; thence north 39 degrees, 25 minutes, 34 seconds east, 6937.24 feet; thence north 40 degrees, 17 minutes, 8 seconds east, 9415.04 feet; thence north 56 degrees, 16 minutes, 12 seconds east, 3118.10 feet; thence north 33 degrees, 12 minutes, 56 seconds east, 5522.78 feet; thence north 45 degrees, 37 minutes, 50 seconds east, 3233.20 feet; thence north 55 degrees, 58 minutes, 45 seconds east, 12217.41 feet; thence north 32 degrees, 21 minutes, 1 second east, 9051.98 feet; thence north 23 degrees, 37 minutes, 16 seconds east, 3540.46 feet; thence north 59 degrees, 9 minutes, 4 seconds east, 4326.45 feet; thence north 51 degrees, 17 minutes, 37 seconds east, 11127.53 feet; thence south 39 degrees, 36 minutes, 35 seconds east, 464.59 feet; thence north 69 degrees, 18 minutes, 17 seconds east, 1452.28 feet; thence north 55 degrees, 51 minutes, 51 seconds east, 430.40 feet; thence south 77 degrees, 28 minutes, 17 seconds east, 528.85 feet; thence north 79 degrees, 21 minutes, 55 seconds east, 703.44 feet; thence north 27 degrees, 24 minutes, 27 seconds east, 367.28 feet; thence north 41 degrees, 50 minutes, 18 seconds east, 1122.47 feet; thence north 19 degrees, 40 minutes, 41 seconds east, 484.15 feet; thence north 41 degrees, 23 minutes, 30 seconds east, 474.86 feet; thence north 25 degrees, 6 minutes, 30 seconds west, 474.90 feet; thence north 68 degrees, 41 minutes, 38

seconds east, 2605.28 feet; thence north 38 degrees, 57 minutes, 26 seconds east, 9143.18 feet; thence north 57 degrees, 14 minutes, 34 seconds east, 5953.39 feet; thence north 50 degrees, 23 minutes, 34 seconds east, 2012.96 feet; thence north 35 degrees, 48 minutes, 29 seconds east, 1723 feet; thence north 25 degrees, 20 minutes, 59 seconds east, 3001.08 feet; thence north 39 degrees, 17 minutes, 44 seconds east, 2592.82 feet; thence north 27 degrees, 22 minutes, 47 seconds east, 2701.44 feet; thence north 52 degrees, 49 minutes, 38 seconds east, 3343.12 feet; thence north 59 degrees, 44 minutes, 14 seconds east, 9560.61 feet; thence south 28 degrees, 46 minutes, 42 seconds east, 2145.07 feet; thence north 54 degrees, 22 minutes, 14 seconds east, 1262.88 feet; thence north 64 degrees, 12 minutes, 47 seconds east, 2172.54 feet; thence north 75 degrees, 0 minutes, 21 seconds east, 3411.91 feet; thence north 57 degrees, 50 minutes, 44 seconds east, 6229.53 feet; thence north 69 degrees, 35 minutes, 2 seconds east, 3924.66 feet; thence north 60 degrees, 34 minutes, 32 seconds east, 7862.89 feet; thence north 41 degrees, 43 minutes, 47 seconds east, 2178.62 feet; thence north 47 degrees, 29 minutes, 27 seconds east, 2293.19 feet; thence north 20 degrees, 33 minutes, 22 seconds east, 1357.03 feet; thence north 37 degrees, 36 minutes, 34 seconds east, 10909.57 feet; thence north 29 degrees, 57 minutes, 43 seconds east, 10064.70 feet; thence north 1 degree, 57 minutes, 34 seconds west, 769.03 feet to a point in the middle of the south channel of the Platte River, such point being 2132.77 feet north of the southwest corner of the northwest quarter of section 19, township 14 north, range 4 west; thence continuing in the middle of the south channel of the Platte River and assuming the west line of section 19 to have a bearing of south 1 degree, 46 minutes, 44 seconds east; the next 35 courses on such thread of stream; thence south 84 degrees, 28 minutes, 19 seconds east, 60.66 feet; thence north 29 degrees, 30 minutes, 32 seconds east, 130.51 feet; thence south 70 degrees, 11 minutes, 42 seconds east, 131.06 feet; thence north 40 degrees, 23 minutes, 29 seconds east, 27.01 feet; thence north 31 degrees, 48 minutes, 41 seconds west, 130.23 feet; thence north 38 degrees, 43 minutes, 26 seconds east, 153.67 feet; thence south 71 degrees, 56 minutes, 45 seconds east, 194.99 feet; thence north 64 degrees, 11 minutes, 17 seconds east, 153.41 feet; thence north 56 degrees, 6 minutes, 19 seconds east, 108.65 feet; thence north 9 degrees, 37 minutes, 55 seconds east, 60.66 feet; thence north 55 degrees, 53 minutes, 26 seconds east, 184.62 feet; thence south 89 degrees, 4 minutes, 41 seconds east, 267.50 feet; thence north 22 degrees, 39 minutes, 9 seconds east, 124.70 feet; thence north 53 degrees, 36 minutes, 57 seconds east, 149.13 feet; thence north 37 degrees, 5 minutes, 51 seconds west, 124.10 feet; thence north 47 degrees, 57 minutes, 2 seconds east, 65.57 feet; thence south 36 degrees, 3 minutes, 53 seconds east, 301.87 feet; thence north 46 degrees, 48 minutes, 49 seconds east, 115.81 feet; thence north 4 degrees, 29 minutes, 24 seconds west, 72.26 feet; thence north 59 degrees, 37 minutes, 54 seconds east, 102.28 feet; thence north 6 degrees, 30 minutes, 41 seconds west, 317.85 feet; thence north 37 degrees, 40 minutes, 28 seconds east, 182.50 feet; thence north 31 degrees, 10 minutes, 30 seconds west, 119.52 feet; thence north 52 degrees, 46 minutes, 4 seconds east, 95.33 feet; thence north 73 degrees, 10 minutes, 0 seconds east, 64.89 feet; thence south 16 degrees, 50 minutes, 0 seconds east, 109.48 feet; thence south 80 degrees, 32 minutes, 59 seconds east, 109.60 feet; thence north 23 degrees, 1 minute, 57 seconds east, 150.01 feet; thence north 56 degrees, 56 minutes, 49 seconds east, 162.33 feet; thence north 2 degrees, 13 minutes, 20 seconds east, 105.50 feet; thence north 55 degrees, 41 minutes, 50 seconds east, 367.42 feet; thence north 11 degrees, 8 minutes, 4 seconds east, 126.97 feet;

thence north 60 degrees, 16 minutes, 1 second east, 247.07 feet; thence north 25 degrees, 36 minutes, 31 seconds east, 486.91 feet; thence south 86 degrees, 4 minutes, 13 seconds east, 477.93 feet and ending at a point that is perpendicular to the northeast corner of such section 19; thence continuing on the county line between Polk and Merrick counties adjacent to section 17 and section 8, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of said section 17, and assuming the north line of section 19, township 14 north, range 4 west to have a bearing of north 87 degrees, 50 minutes, 16 seconds east; thence north 43 degrees, 19 minutes, 4 seconds west, 2576.37 feet to the point of beginning; thence north 46 degrees, 40 minutes, 56 seconds east, 922.93 feet; thence north 57 degrees, 57 minutes, 4 seconds east, 777.42 feet; thence north 22 degrees, 53 minutes, 36 seconds east, 341.40 feet; thence north 52 degrees, 26 minutes, 41 seconds east, 268.04 feet; thence north 27 degrees, 48 minutes, 39 seconds east, 466.41 feet; thence north 42 degrees, 10 minutes, 35 seconds east, 496.04 feet; thence north 52 degrees, 16 minutes, 36 seconds east, 297.07 feet; thence north 31 degrees, 18 minutes, 19 seconds east, 243.80 feet; thence north 49 degrees, 41 minutes, 58 seconds east, 265.23 feet; thence north 60 degrees, 19 minutes, 0 seconds east, 350.21 feet; thence north 44 degrees, 11 minutes, 59 seconds west, 543.34 feet; thence north 51 degrees, 2 minutes, 28 seconds east, 2051.44 feet; thence north 32 degrees, 40 minutes, 47 seconds west, 482.44 feet; thence north 42 degrees, 17 minutes, 15 seconds east, 177.59 feet; thence north 8 degrees, 12 minutes, 7 seconds east, 284.77 feet; thence north 59 degrees, 57 minutes, 4 seconds east, 806.17 feet; thence north 79 degrees, 30 minutes, 49 seconds east, 393.73 feet; thence south 66 degrees, 48 minutes, 41 seconds east, 90.99 feet; thence north 75 degrees, 13 minutes, 56 seconds east, 224.90 feet; thence north 51 degrees, 45 minutes, 30 seconds east, 177.92 feet; thence north 28 degrees, 41 minutes, 5 seconds east, 174.26 feet to a point that is perpendicular to the northeast corner of government lot 4 of said section 8; thence north 36 degrees, 51 minutes, 23 seconds west, and perpendicular to the geographical centerline of the Platte River, 1242.20 feet and ending at the geographical centerline of said Platte River; thence continuing on the county line between Polk and Merrick counties adjacent to section 9, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of government lot 4 in said section 9, and assuming the south line of the southwest quarter of said section 9 to have a bearing of south 89 degrees, 53 minutes, 34 seconds west; thence north 0 degrees, 16 minutes, 54 seconds east, and on the west line of government lots 4 and 3, 1487.75 feet to the original meander line of the Platte River; thence north 35 degrees, 17 minutes, 2 seconds west, and perpendicular to the geographical centerline of said Platte River, 2859.02 feet to the point of beginning, said point being on said geographical centerline; thence north 54 degrees, 42 minutes, 58 seconds east, and on said geographical centerline, 888.27 feet; thence north 58 degrees, 11 minutes, 51 seconds east, and on said geographical centerline, 1487.03 feet; thence north 40 degrees, 30 minutes, 0 seconds east, and on said geographical centerline, 1281.69 feet and ending at a point that is perpendicular to the northwest corner of government lot 1 in said section 9; thence continuing on the county line between Polk and Merrick counties adjacent to section 4, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southeast corner of government lot 5 in said section 4, and assuming the east line of government lots 3 and 5 in said section 4 to have a bearing of south

0 degrees, 5 minutes, 41 seconds east; thence south 89 degrees, 24 minutes, 52 seconds west, and on the south line of government lots 5 and 4, 3102.76 feet to a point on the original south meander line of the Platte River; thence north 49 degrees, 30 minutes, 0 seconds west, and perpendicular to the geographical centerline of said Platte River, 1321.25 feet to the point of beginning, said point being on the geographical centerline of said Platte River, the next 7 courses on said centerline; thence north 40 degrees, 30 minutes, 0 seconds east, 348.74 feet to a three-fourths seconds rebar with cap; thence north 39 degrees, 16 minutes, 11 seconds east, 1420.98 feet to a three-fourths seconds rebar with cap; thence north 38 degrees, 14 minutes, 59 seconds east, 1222.76 feet to a three-fourths seconds rebar with cap; thence north 36 degrees, 4 minutes, 35 seconds east, 426.21 feet to a three-fourths seconds rebar with cap; thence north 42 degrees, 8 minutes, 26 seconds east, 779.07 feet to a three-fourths seconds rebar with cap; thence north 44 degrees, 45 minutes, 1 second east, 505.14 feet to a three-fourths seconds rebar with cap; thence north 42 degrees, 56 minutes, 58 seconds east, 685.04 feet and ending at a point that is perpendicular to the northeast corner of government lot 2 in said section 4; thence continuing on the county line between Polk and Merrick counties adjacent to section 3, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the northeast corner of government lot 2 in said section 4, and assuming the east line of said government lot 2 to have a bearing of south 0 degrees, 5 minutes, 41 seconds east; thence north 47 degrees, 3 minutes, 2 seconds west, and perpendicular to the geographical centerline of the Platte River, 848.52 feet to the point of beginning, said point being on said geographical centerline; thence north 42 degrees, 56 minutes, 58 seconds east, and on said geographical centerline, 750.96 feet; thence north 33 degrees, 22 minutes, 23 seconds east, and on said geographical centerline, 434.94 feet and ending at a point that is perpendicular to the northwesterly corner of government lot 4 in said section 3; thence continuing on the county line between Polk and Merrick counties adjacent to section 34, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of the southeast quarter of section 34, and assuming the south line of said southeast quarter to have a bearing of north 89 degrees, 10 minutes, 38 seconds east; thence south 88 degrees, 55 minutes, 33 seconds west, 1780.73 feet to the calculated meander corner; thence north 56 degrees, 37 minutes, 37 seconds west, and perpendicular to the geographical centerline of the Platte River, 912.40 feet to the point of beginning; the next 13 courses on the geographical centerline of said Platte River; thence north 33 degrees, 22 minutes, 23 seconds east, 148.31 feet; thence north 42 degrees, 32 minutes, 16 seconds east, 450.87 feet; thence north 35 degrees, 36 minutes, 3 seconds east, 461.73 feet; thence north 21 degrees, 44 minutes, 33 seconds east, 652.02 feet; thence north 22 degrees, 47 minutes, 50 seconds east, 723.43 feet; thence north 17 degrees, 25 minutes, 48 seconds east, 480.50 feet; thence north 18 degrees, 58 minutes, 22 seconds east, 315.96 feet; thence north 28 degrees, 41 minutes, 27 seconds east, 513.70 feet; thence north 10 degrees, 53 minutes, 32 seconds east, 365.66 feet; thence north 31 degrees, 12 minutes, 36 seconds east, 686.04 feet; thence north 29 degrees, 6 minutes, 28 seconds east, 479.52 feet; thence north 11 degrees, 9 minutes, 24 seconds east, 688.60 feet; thence north 35 degrees, 54 minutes, 48 seconds east, 1209.26 feet and ending at a point that is perpendicular to the meander corner, the northeast corner of the northeast quarter of section 34, township 15 north, range 4 west of the sixth principal

meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to sections 26 and 23, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of the southwest quarter of section 26, and assuming the south line of said southwest quarter to have a bearing of south 89 degrees, 32 minutes, 23 seconds west; thence north 53 degrees, 20 minutes, 6 seconds west, 2455.61 feet to the point of beginning, said point being on the geographical centerline of the Platte River; the next 14 courses on said geographical centerline; thence north 29 degrees, 1 minute, 35 seconds east, 191.87 feet; thence north 41 degrees, 18 minutes, 40 seconds east, 943.72 feet; thence north 42 degrees, 12 minutes, 23 seconds east, 1208.49 feet; thence north 43 degrees, 8 minutes, 28 seconds east, 905.77 feet; thence north 54 degrees, 19 minutes, 20 seconds east, 731.56 feet; thence north 57 degrees, 13 minutes, 41 seconds east, 684.45 feet; thence north 56 degrees, 14 minutes, 20 seconds east, 120.34 feet; thence north 53 degrees, 9 minutes, 36 seconds east, 598.24 feet; thence north 62 degrees, 7 minutes, 10 seconds east, 707.55 feet; thence north 59 degrees, 58 minutes, 43 seconds east, 563.34 feet; thence north 49 degrees, 11 minutes, 46 seconds east, 482.37 feet; thence north 57 degrees, 18 minutes, 21 seconds east, 762.06 feet; thence north 71 degrees, 32 minutes, 53 seconds east, 481.69 feet; thence north 61 degrees, 27 minutes, 48 seconds east, 250.65 feet and ending at a point that is perpendicular to the northeast corner of government lot 5 of section 23, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to section 24, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the northeast corner of government lot 5 of section 23, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, and assuming the east line of said government lot 5 to have a bearing of south 0 degrees, 1 minute, 56 seconds east; thence north 28 degrees, 32 minutes, 12 seconds west, and perpendicular to the geographical centerline of the Platte River, 1225.57 feet to the point of beginning, said point being on said geographical centerline; the next 5 courses on said geographical centerline; thence north 61 degrees, 27 minutes, 48 seconds east, 759.65 feet; thence north 54 degrees, 45 minutes, 25 seconds east, 1538.51 feet; thence north 58 degrees, 5 minutes, 44 seconds east, 1675.34 feet; thence north 53 degrees, 15 minutes, 23 seconds east, 1844.73 feet; thence north 46 degrees, 46 minutes, 34 seconds east, 622.22 feet and ending at a point that is perpendicular to the northeast corner of government lot 1 of said section 24, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to sections 17, 18, and 19, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the northeast corner of government lot 1 of section 24, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, and assuming the north line of government lot 1 of section 17, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, to have a bearing of north 56 degrees, 3 minutes, 25 seconds east; thence north 43 degrees, 13 minutes, 26 seconds west, and perpendicular to the geographical centerline of the Platte River, 901.44 feet to the point of beginning, said point being on the geographical centerline; the next 12 courses on said geographical centerline; thence north 46 degrees, 46 minutes, 34 seconds east, 347.92 feet; thence north 52 degrees, 38 minutes, 26 seconds east, 626.31

feet; thence north 41 degrees, 44 minutes, 8 seconds east, 334.55 feet; thence north 51 degrees, 2 minutes, 44 seconds east, 972.55 feet; thence north 40 degrees, 15 minutes, 33 seconds east, 731.79 feet; thence north 36 degrees, 26 minutes, 23 seconds east, 970.59 feet; thence north 36 degrees, 32 minutes, 36 seconds east, 908.72 feet; thence north 58 degrees, 27 minutes, 57 seconds east, 258.30 feet; thence north 42 degrees, 48 minutes, 50 seconds east, 367.48 feet; thence north 43 degrees, 54 minutes, 57 seconds east, 2682.73 feet; thence north 41 degrees, 38 minutes, 34 seconds east, 398.76 feet; thence north 40 degrees, 45 minutes, 24 seconds east, 416.25 feet and ending at a point that is perpendicular to the northeast corner of government lot 1 of said section 17, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to sections 8 and 9, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of lot 5 of said section 8, and assuming the south line of said lot 5 to have a bearing of south 89 degrees, 33 minutes, 8 seconds east; thence north 49 degrees, 14 minutes, 36 seconds west, and perpendicular to the geographical centerline of the Platte River, 1386.78 feet to the point of beginning, said point being on the geographical centerline of said Platte River; the next 26 courses on said geographical centerline; thence north 59 degrees, 9 minutes, 30 seconds east, 435.97 feet; thence north 41 degrees, 24 minutes, 58 seconds east, 144.83 feet; thence north 45 degrees, 47 minutes, 4 seconds east, 298.37 feet; thence north 44 degrees, 1 minute, 35 seconds east, 399.35 feet; thence north 31 degrees, 41 minutes, 6 seconds east, 220.66 feet; thence north 29 degrees, 20 minutes, 52 seconds east, 420.71 feet; thence north 46 degrees, 4 minutes, 0 seconds east, 343.05 feet; thence north 39 degrees, 58 minutes, 42 seconds east, 489.14 feet; thence north 30 degrees, 8 minutes, 23 seconds east, 370.70 feet; thence north 47 degrees, 40 minutes, 21 seconds east, 243.26 feet; thence north 49 degrees, 27 minutes, 19 seconds east, 381.66 feet; thence north 42 degrees, 43 minutes, 37 seconds east, 193.07 feet; thence north 47 degrees, 54 minutes, 34 seconds east, 171.32 feet; thence north 47 degrees, 54 minutes, 34 seconds east, 299.06 feet; thence north 54 degrees, 43 minutes, 13 seconds east, 293.59 feet; thence north 47 degrees, 48 minutes, 38 seconds east, 273.99 feet; thence north 60 degrees, 50 minutes, 29 seconds east, 259.30 feet; thence north 43 degrees, 34 minutes, 13 seconds east, 647.78 feet; thence north 43 degrees, 34 minutes, 13 seconds east, 308.91 feet; thence north 33 degrees, 44 minutes, 23 seconds east, 205.67 feet; thence north 42 degrees, 59 minutes, 37 seconds east, 103.53 feet; thence north 49 degrees, 59 minutes, 5 seconds east, 573.10 feet; thence north 48 degrees, 3 minutes, 27 seconds east, 250.06 feet; thence north 55 degrees, 30 minutes, 20 seconds east, 251.45 feet; thence north 36 degrees, 29 minutes, 4 seconds east, 256.44 feet; thence north 50 degrees, 34 minutes, 37 seconds east, 170.89 feet and ending at a point that is perpendicular to the southwest corner of government lot 4 of section 4, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to section 4, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of lot 4 of said section 4, and assuming the south line of said lot 4 to have a bearing of south 89 degrees, 38 minutes, 18 seconds east; thence north 39 degrees, 25 minutes, 23 seconds west, and perpendicular to the geographical centerline of the Platte River, 1662.07 feet to the point of beginning, said point being on said geographical centerline; the next 7 courses on

said geographical centerline; thence north 53 degrees, 46 minutes, 58 seconds east, 330.14 feet; thence north 58 degrees, 57 minutes, 3 seconds east, 253.55 feet; thence north 44 degrees, 28 minutes, 51 seconds east, 250.91 feet; thence north 50 degrees, 4 minutes, 7 seconds east, 250.02 feet; thence north 56 degrees, 38 minutes, 46 seconds east, 252.04 feet; thence north 45 degrees, 40 minutes, 51 seconds east, 250.51 feet; thence north 43 degrees, 26 minutes, 50 seconds east, 286.41 feet to a point on the west line of north thunderbird lake subdivision extended north; thence south 33 degrees, 33 minutes, 56 seconds east, and on the west line of said subdivision, 1762.06 feet to the southwest corner of said subdivision; thence north 52 degrees, 27 minutes, 34 seconds east, and on the south line of said subdivision, 258.17 feet; thence north 50 degrees, 24 minutes, 39 seconds east, and on the south line of said subdivision, 784.82 feet; thence north 4 degrees, 21 minutes, 44 seconds east, and on the south line of said subdivision, 229.01 feet; thence north 50 degrees, 51 minutes, 33 seconds east, 509.80 feet; thence north 6 degrees, 13 minutes, 43 seconds west, and on the south line of said subdivision, 284.97 feet; thence north 67 degrees, 25 minutes, 50 seconds east, 902.92 feet to a point on the west right-of-way line of said highway number 39; thence north 23 degrees, 0 minutes, 50 seconds west, and on the west right-of-way line of said highway number 39, 226.15 feet; thence north 23 degrees, 41 minutes, 10 seconds west, and on the west right-of-way line of said highway number 39, 305.60 feet; thence north 33 degrees, 36 minutes, 5 seconds west, and on the west right-of-way line of said highway number 39, 305.56 feet; thence north 23 degrees, 14 minutes, 0 seconds west, and on the west right-of-way line of said highway number 39, 299.38 feet; thence north 22 degrees, 6 minutes, 20 seconds west, and on the west right-of-way line of said highway number 39, 116.44 feet; thence north 67 degrees, 53 minutes, 40 seconds east, 260.58 feet and ending at a point on the west line of tri-lakes subdivision, said point being 56.75 feet southeast of the northwest corner of said subdivision; thence continuing on the county line between Polk and Merrick counties in section 3, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Beginning at a point on the west line of tri-lakes subdivision, said point being 56.75 feet southeast of the northwest corner of said subdivision, and assuming the west line of said subdivision to have a bearing of south 22 degrees, 58 minutes, 33 seconds east; thence north 67 degrees, 53 minutes, 40 seconds east, 2957.56 feet to a point on an agreed upon boundary line; thence south 26 degrees, 56 minutes, 23 seconds east, and on said agreed upon boundary line, 1196.15 feet; thence north 87 degrees, 51 minutes, 49 seconds east, 1981.62 feet to a point on the thread of stream of the south channel of the Platte River; thence south 89 degrees, 37 minutes, 0 seconds east, and on said thread of stream, 624.91 feet and ending at the east line of said section 3; thence continuing on the county line between Polk and Merrick counties in section 2, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, and in sections 30 and 31, township 16 north, range 2 west of the sixth principal meridian, Polk County, Nebraska, and in sections 35 and 36, township 16 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at a point on the west line of tri-lakes subdivision, said point being 56.75 feet southeast of the northwest corner of said subdivision, and assuming the west line of said subdivision to have a bearing of south 22 degrees, 58 minutes, 33 seconds east; thence north 67 degrees, 53 minutes, 40 seconds east, 2957.56 feet to a point on an agreed upon boundary line; thence south 26 degrees, 56 minutes, 23 seconds

east, and on said agreed upon boundary line, 1196.15 feet; thence north 87 degrees, 51 minutes, 49 seconds east, 1981.62 feet to a point on the thread of stream of the south channel of the Platte River; thence south 89 degrees, 37 minutes, 0 seconds east, and on said thread of stream, 624.91 feet to the point of beginning, said point being on the west line of said section 2; the next 13 courses on the thread of stream of the south channel of the Platte River; thence north 76 degrees, 31 minutes, 56 seconds east, 1282.77 feet; thence north 64 degrees, 49 minutes, 59 seconds east, 1003.62 feet; thence north 66 degrees, 16 minutes, 54 seconds east, 771.67 feet; thence north 64 degrees, 24 minutes, 8 seconds east, 987.84 feet; thence north 62 degrees, 32 minutes, 13 seconds east, 765.60 feet; thence north 82 degrees, 40 minutes, 10 seconds east, 881.63 feet; thence north 66 degrees, 25 minutes, 46 seconds east, 407.59 feet; thence north 51 degrees, 51 minutes, 31 seconds east, 644.83 feet; thence north 62 degrees, 11 minutes, 14 seconds east, 438.62 feet; thence north 79 degrees, 50 minutes, 8 seconds east, 1220.74 feet; thence north 68 degrees, 59 minutes, 38 seconds east, 1125.78 feet; thence north 58 degrees, 55 minutes, 8 seconds east, 1012.63 feet; thence north 73 degrees, 48 minutes, 20 seconds east, 926.49 feet to the east line of section 36, township 16 north, range 3 west of the sixth principal meridian, Polk County, Nebraska; thence north on the dividing line between ranges two and three west to the south bank of the north channel of the Platte River; thence northeasterly along the south bank of such Platte River to the east line of range 1 west; thence south and on the east line of range 1 west to the southeast corner of township 13 north, range 1 west; thence west on the south line of township 13 north, to the point of beginning.

Source: Laws 2009, LB131, § 1; Laws 2011, LB556, § 2.
Effective date August 27, 2011.



CHAPTER 23
COUNTY GOVERNMENT AND OFFICERS

Article.

- 1. General Provisions.
 - (i) Motor Vehicle and Motorboat Services. 23-186.
 - (j) Ordinances. 23-187.
- 3. Provisions Applicable to Various Projects.
 - (q) Support of Indians. 23-362.
- 11. Salaries of County Officers. 23-1111 to 23-1118.
- 15. Register of Deeds. 23-1503.01 to 23-1528.
- 23. County Employees Retirement. 23-2301 to 23-2320.
- 25. Civil Service System.
 - (d) Method of Payment to Employees. 23-2545.
- 31. County Purchasing. 23-3104 to 23-3115.
- 35. Medical and Multiunit Facilities.
 - (a) General Provisions. 23-3526.

ARTICLE 1

GENERAL PROVISIONS

(i) MOTOR VEHICLE AND MOTORBOAT SERVICES

Section

- 23-186. Consolidation of services; county board; designation of official; county treasurer; duties.

(j) ORDINANCES

- 23-187. Subjects regulated; power to enforce.

(i) MOTOR VEHICLE AND MOTORBOAT SERVICES

23-186 Consolidation of services; county board; designation of official; county treasurer; duties.

(1) Until the implementation date designated by the Director of Motor Vehicles under subsection (2) of this section, a county board may consolidate, under the office of a designated county official, the services provided to the public by the county assessor, the county clerk, and the county treasurer relating to the issuance of certificates of title, registration certificates, certificates of number, license plates, and renewal decals, the notation and cancellation of liens, and the collection of taxes and fees for motor vehicles, all-terrain vehicles, utility-type vehicles, minibikes, snowmobiles, trailers, and motorboats as provided in the Motor Vehicle Certificate of Title Act, the Motor Vehicle Registration Act, the State Boat Act, and sections 18-1738, 18-1738.01, and 60-1803. In a county in which a city of the metropolitan class is located, the county board may designate the county treasurer to provide the services. In any other county, the county board may designate the county assessor, the county clerk, or the county treasurer to provide the services.

(2) Beginning on an implementation date designated by the Director of Motor Vehicles, but no later than January 1, 2011, the county treasurer of each county shall be the county official who provides services to the public relating to the issuance of certificates of title, registration certificates, certificates of number,

license plates, and renewal decals, the notation and cancellation of liens, and the collection of taxes and fees for motor vehicles, all-terrain vehicles, utility-type vehicles, minibikes, snowmobiles, trailers, and motorboats as provided in the Motor Vehicle Certificate of Title Act, the Motor Vehicle Registration Act, the State Boat Act, section 60-1803, and, until the implementation date designated by the director under section 60-3,113.01, sections 18-1738 and 18-1738.01.

Source: Laws 1993, LB 112, § 1; Laws 1995, LB 37, § 1; Laws 1996, LB 464, § 1; Laws 1997, LB 271, § 13; Laws 2003, LB 333, § 32; Laws 2005, LB 274, § 227; Laws 2005, LB 276, § 99; Laws 2009, LB49, § 2; Laws 2010, LB650, § 1; Laws 2011, LB163, § 13. Effective date August 27, 2011.

Cross References

Motor Vehicle Certificate of Title Act, see section 60-101.
Motor Vehicle Registration Act, see section 60-301.
State Boat Act, see section 37-1201.

(j) ORDINANCES

23-187 Subjects regulated; power to enforce.

(1) In addition to the powers granted by section 23-104, a county may, in the manner specified by sections 23-187 to 23-193, regulate the following subjects by ordinance:

- (a) Parking of motor vehicles on public roads, highways, and rights-of-way as it pertains to snow removal for and access by emergency vehicles to areas within the county;
- (b) Motor vehicles as defined in section 60-339 that are abandoned on public or private property;
- (c) Low-speed vehicles as described and operated pursuant to section 60-6,380;
- (d) Graffiti on public or private property;
- (e) False alarms from electronic security systems that result in requests for emergency response from law enforcement or other emergency responders; and
- (f) Violation of the public peace and good order of the county by disorderly conduct, lewd or lascivious behavior, or public nudity.

(2) For the enforcement of any ordinance authorized by this section, a county may impose fines, forfeitures, or penalties and provide for the recovery, collection, and enforcement of such fines, forfeitures, or penalties. A county may also authorize such other measures for the enforcement of ordinances as may be necessary and proper. A fine enacted pursuant to this section shall not exceed five hundred dollars for each offense.

Source: Laws 2009, LB532, § 1; Laws 2011, LB289, § 2.
 Operative date January 1, 2012.

ARTICLE 3

PROVISIONS APPLICABLE TO VARIOUS PROJECTS

(q) SUPPORT OF INDIANS

Section 23-362. Indians; support; state aid to counties; purpose; conditions; audit; certificate of county assessor; alcohol-related programs; participation by county board.

(q) SUPPORT OF INDIANS

23-362 Indians; support; state aid to counties; purpose; conditions; audit; certificate of county assessor; alcohol-related programs; participation by county board.

In order to equitably distribute the added burden of law enforcement imposed upon certain counties of this state by reason of the passage of Public Law 280 of the Eighty-third Congress dealing with state jurisdiction and the resulting withdrawal of federal law enforcement in such counties, there shall each fiscal year be paid out of the state treasury, on the warrant of the Director of Administrative Services as directed by the chairperson of the Nebraska Commission on Law Enforcement and Criminal Justice, not to exceed one hundred one thousand dollars for the benefit of Indians in any county which has land held in trust by the United States Government for the benefit of Indians to be used for purposes of law enforcement and jail operations. Such funds shall be divided as equally as possible between the areas of law enforcement and jail operations. The Auditor of Public Accounts or his or her designee shall conduct, at such time as he or she determines necessary, an audit of the funds distributed pursuant to this section. A detailed report shall be submitted on December 31 of each year, including discussion of the operation and expenditures of the office of the county sheriff and, when completed, a copy of the audit, to the Executive Board of the Legislative Council and the Governor. Such payment shall be made to any county of this state meeting the following conditions:

(1) Such county shall have on file in the office of the Nebraska Commission on Law Enforcement and Criminal Justice a certificate of the county assessor that there are within such county over twenty-five hundred acres of land held in trust by the United States or subject to restriction against alienation imposed by the United States; and

(2) The county board of each such county may participate in alcohol-related programs with nonprofit corporations.

Source: Laws 1957, c. 69, § 1, p. 293; Laws 1961, c. 91, § 1, p. 315; Laws 1967, c. 123, § 1, p. 397; Laws 1969, c. 161, § 1, p. 735; Laws 1974, LB 131, § 1; Laws 1976, LB 871, § 1; Laws 1979, LB 584, § 1; Laws 1983, LB 607, § 1; Laws 1985, LB 263, § 1; Laws 1994, LB 1001, § 1; Laws 2011, LB337, § 1.

Effective date April 27, 2011.

ARTICLE 11

SALARIES OF COUNTY OFFICERS

Section

- 23-1111. County officers; clerks and assistants; county board; budgetary approval.
 23-1114. County officers and deputies; salaries; fixed by county board; when; method of payment.
 23-1118. Employees of certain counties or municipal counties; retirement benefits; establish; approval of voters; contribution rates; funds; investment; employees, defined; reports.

23-1111 County officers; clerks and assistants; county board; budgetary approval.

(1) The county officers in all counties shall have the necessary clerks and assistants for such periods and at such salaries as the county officers may determine, subject to budgetary approval by the county board.

(2) In carrying out its budget-making duties, a county board shall not eliminate an office or unduly hinder a county officer in the conduct of his or her statutory duties. If a county officer challenges the county board's decision in court, the county officer shall have the burden to prove such elimination or hindrance by clear and convincing evidence.

Source: Laws 1943, c. 90, § 11, p. 302; R.S.1943, § 23-1111; Laws 2011, LB62, § 1.
Effective date August 27, 2011.

23-1114 County officers and deputies; salaries; fixed by county board; when; method of payment.

(1) The salaries of all elected officers of the county shall be fixed by the county board prior to January 15 of the year in which a general election will be held for the respective offices.

(2) The salaries of all deputies in the offices of the elected officers and appointive veterans service officers of the county shall be fixed by the county board at such times as necessity may require.

(3) The county board may make payments that include, but are not limited to, salaries described in this section or reimbursable expenses by electronic funds transfer or a similar means of direct deposit.

Source: Laws 1953, c. 63, § 1, p. 204; Laws 1955, c. 72, § 1, p. 224; Laws 1959, c. 85, § 2, p. 391; Laws 1963, c. 118, § 1, p. 463; Laws 1971, LB 574, § 1; Laws 1973, LB 220, § 1; Laws 1975, LB 90, § 1; Laws 1986, LB 1056, § 1; Laws 1996, LB 1085, § 29; Laws 2011, LB278, § 1.
Effective date August 27, 2011.

23-1118 Employees of certain counties or municipal counties; retirement benefits; establish; approval of voters; contribution rates; funds; investment; employees, defined; reports.

(1)(a) Unless the county has adopted a retirement system pursuant to section 23-2329, the county board of any county having a population of one hundred fifty thousand inhabitants or more may, in its discretion and with the approval of the voters, provide retirement benefits for present and future employees of the county. The cost of such retirement benefits shall be funded in accordance with sound actuarial principles with the necessary cost being treated in the county budget in the same way as any other operating expense.

(b) Except as provided in subdivision (c) of this subsection, each employee shall be required to contribute, or have contributed on his or her behalf, an amount at least equal to the county's contribution to the cost of any such retirement program as to service performed after the adoption of such retirement program, but the cost of any benefits based on prior service shall be borne solely by the county.

(c) In a county or municipal county having a population of two hundred thousand or more inhabitants but not more than three hundred thousand inhabitants, the county or municipal county shall establish the employee and employer contribution rates to the retirement program for each year after July 15, 1992. The county or municipal county shall contribute at least an amount equal to each employee's mandatory contribution, if any, to the cost of any such

retirement program and by January 1, 1996, shall be contributing one hundred fifty percent of each employee's mandatory contribution. The combined contributions of the county or municipal county and its employees to the cost of any such retirement program shall not exceed thirteen percent of the employees' salaries.

(2) Before the county board or council provides retirement benefits for the employees of the county or municipal county, such question shall be submitted at a regular general or primary election held within the county or municipal county, and in which election all persons eligible to vote for the officials of the county or municipal county shall be entitled to vote on such question, which shall be submitted in the following language: Shall the county board or council provide retirement benefits for present and future employees of the county or municipal county? If a majority of the votes cast upon such question are in favor of such question, then the county board or council shall be empowered to provide retirement benefits for present and future employees as provided in this section. If such retirement benefits for present and future county and municipal county employees are approved by the voters and authorized by the county board or council, then the funds of such retirement system, in excess of the amount required for current operations as determined by the county board or council, may be invested and reinvested in the class of securities and investments described in section 30-3209.

(3) As used in this section, employees shall mean all persons or officers devoting more than twenty hours per week to employment by the county or municipal county, all elected officers of the county or municipal county, and such other persons or officers as are classified from time to time as permanent employees by the county board or council.

(4) The county or municipal county may pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code, except that the county or municipal county shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the Internal Revenue Code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The county or municipal county shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The county or municipal county shall pick up these contributions by a salary deduction either through a reduction in the cash salary of the member or a combination of a reduction in salary and offset against a future salary increase. Member contributions picked up shall be treated in the same manner and to the same extent as member contributions made prior to the date picked up.

(5)(a) Beginning December 31, 1998, and each December 31 thereafter, the chairperson of the county board or council with a retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code shall file with the Public Employees Retirement Board an annual report on such plan and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;
- (vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and
- (viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the county board of a county or council of the municipal county with a retirement plan established pursuant to this section shall cause to be prepared a quadrennial report and the chairperson shall file the same with the Public Employees Retirement Board and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan.

Source: Laws 1961, c. 97, § 1, p. 327; Laws 1967, c. 257, § 3, p. 680; Laws 1967, c. 129, § 1, p. 412; Laws 1984, LB 216, § 1; Laws 1985, LB 353, § 2; Laws 1992, LB 672, § 30; Laws 1995, LB 369, § 1; Laws 1995, LB 574, § 30; Laws 1998, LB 1191, § 22; Laws 1999, LB 795, § 10; Laws 2001, LB 142, § 31; Laws 2011, LB474, § 10.

Effective date August 27, 2011.

ARTICLE 15

REGISTER OF DEEDS

Section

- 23-1503.01. Instrument submitted for recording; requirements.
- 23-1510. Instruments; endorsement, recording, and indexing; required information.
- 23-1528. Printed form; noncompliance; effect.

23-1503.01 Instrument submitted for recording; requirements.

(1) Any instrument submitted for recording in the office of the register of deeds shall contain a blank space at the top of the first page which is at least

three inches by eight and one-half inches in size for recording information required by section 23-1510 by the register of deeds. If this space or the information required by such section is not provided, the register of deeds may add a page or use the back side of an existing page and charge for the page a fee established by section 33-109 for the recording of an instrument. No attachment or affirmation shall be used in any way to cover any information or printed material on the instrument.

(2) Printed forms primarily intended to be used for recordation purposes shall have a one-inch margin on the two vertical sides and a one-inch margin on the bottom of the page. Nonessential information such as page numbers or customer notations may be placed within the side and bottom margins.

(3) All instruments submitted for recording shall be on paper measuring at least eight and one-half inches by eleven inches and not larger than eight and one-half inches by fourteen inches. The instrument shall be printed, typewritten, or computer-generated in black ink on white paper of not less than twenty-pound weight without watermarks or other visible inclusions. The instrument shall be sufficiently legible to allow for a readable copy to be reproduced using the method of reproduction used by the register of deeds. A font size of at least eight points shall be presumed to be sufficiently legible. Each signature on an instrument shall be in black or dark blue ink and of sufficient color and clarity to ensure that the signature is readable when the instrument is reproduced. The name of each party to the instrument shall be typed, printed, or stamped beneath the original signature. An embossed or inked stamp shall not cover or otherwise materially interfere with any part of the instrument.

(4) This section does not apply to:

- (a) Instruments signed before August 27, 2011;
- (b) Instruments executed outside of the United States;
- (c) Certified copies of instruments issued by governmental agencies, including vital records;
- (d) Instruments signed by an original party who is incapacitated or deceased at the time the instruments are presented for recording;
- (e) Instruments formatted to meet court requirements;
- (f) Federal and state tax liens;
- (g) Forms prescribed by the Uniform Commercial Code; and
- (h) Plats, surveys, or drawings related to plats or surveys.

(5) The changes made to this section by Laws 2011, LB254, do not affect the duty of a register of deeds to file an instrument presented for recordation as set forth in sections 23-1506 and 76-237.

Source: Laws 1990, LB 1153, § 52; Laws 1995, LB 288, § 1; Laws 2011, LB254, § 1.

Effective date August 27, 2011.

23-1510 Instruments; endorsement, recording, and indexing; required information.

(1) The register of deeds shall endorse upon every instrument properly filed in his or her office for recording the minute, hour, day, month, and year when it was so filed and shall forthwith enter the same in the proper indices provided for in sections 23-1508 to 23-1517.02.

(2) Every instrument presented for recording shall have, on the first page below the three-inch margin prescribed in section 23-1503.01, the following information:

- (a) A return address; and
- (b) The title of the instrument.

(3) After the instrument has been recorded, the book and page or computer system reference where it may be found shall be endorsed thereon.

Source: Laws 1885, c. 41, § 5, p. 222; Laws 1887, c. 30, § 7, p. 366; R.S.1913, § 5625; C.S.1922, § 4952; C.S.1929, § 26-1210; R.S. 1943, § 23-1510; Laws 1984, LB 679, § 6; Laws 2011, LB254, § 3.
Effective date August 27, 2011.

23-1528 Printed form; noncompliance; effect.

Any printed form accepted for recordation that does not comply with sections 23-1503 to 23-1527 shall not affect the validity of or the notice otherwise given by the recording.

Source: Laws 2011, LB254, § 2.
Effective date August 27, 2011.

ARTICLE 23

COUNTY EMPLOYEES RETIREMENT

Section	
23-2301.	Terms, defined.
23-2302.	Retirement System for Nebraska Counties; establish; purpose; acceptance of contributions.
23-2306.	Retirement system; members; employees; elected officials; new employee; participation in another governmental plan; how treated; separate employment; effect.
23-2308.	County Employees Retirement Fund; created; investment; system; county clerk; payment; fees.
23-2308.01.	Cash balance benefit; election; effect; administrative services agreements; authorized.
23-2319.01.	Termination of employment; account forfeited; when; County Employer Retirement Expense Fund; created; investment.
23-2320.	Employee; reemployment; status; how treated; reinstatement; repay amount received.

23-2301 Terms, defined.

For purposes of the County Employees Retirement Act, unless the context otherwise requires:

(1) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of an annuity payment. The mortality assumption used for purposes of converting the member cash balance account shall be the 1994 Group Annuity Mortality Table using a unisex rate that is fifty percent male and fifty percent female. For purposes of converting the member cash balance account attributable to contributions made prior to January 1, 1984, that were transferred pursuant to the act, the 1994 Group Annuity Mortality Table for males shall be used;

(2) Annuity means equal monthly payments provided by the retirement system to a member or beneficiary under forms determined by the board

beginning the first day of the month after an annuity election is received in the office of the Nebraska Public Employees Retirement Systems or the first day of the month after the employee's termination of employment, whichever is later. The last payment shall be at the end of the calendar month in which the member dies or in accordance with the payment option chosen by the member;

(3) Annuity start date means the date upon which a member's annuity is first effective and shall be the first day of the month following the member's termination or following the date the application is received by the board, whichever is later;

(4) Cash balance benefit means a member's retirement benefit that is equal to an amount based on annual employee contribution credits plus interest credits and, if vested, employer contribution credits plus interest credits and dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317;

(5)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(6) Date of adoption of the retirement system by each county means the first day of the month next following the date of approval of the retirement system by the county board or January 1, 1987, whichever is earlier;

(7) Date of disability means the date on which a member is determined by the board to be disabled;

(8) Defined contribution benefit means a member's retirement benefit from a money purchase plan in which member benefits equal annual contributions and earnings pursuant to section 23-2309 and, if vested, employer contributions and earnings pursuant to section 23-2310;

(9) Disability means an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or be of a long and indefinite duration;

(10) Employee means all persons or officers who are employed by a county of the State of Nebraska on a permanent basis, persons or officers employed by or serving in a municipal county formed by at least one county participating in the retirement system, persons employed as provided in section 2-1608, all elected officers of a county, and such other persons or officers as are classified from time to time as permanent employees by the county board of the county by which they are employed, except that employee does not include judges,

employees or officers of any county having a population in excess of one hundred fifty thousand inhabitants, or, except as provided in section 23-2306, persons making contributions to the School Employees Retirement System of the State of Nebraska;

(11) Employee contribution credit means an amount equal to the member contribution amount required by section 23-2307;

(12) Employer contribution credit means an amount equal to the employer contribution amount required by section 23-2308;

(13) Final account value means the value of a member's account on the date the account is either distributed to the member or used to purchase an annuity from the plan, which date shall occur as soon as administratively practicable after receipt of a valid application for benefits, but no sooner than forty-five days after the member's termination;

(14) Five-year break in service means a period of five consecutive one-year breaks in service;

(15) Full-time employee means an employee who is employed to work one-half or more of the regularly scheduled hours during each pay period;

(16) Future service means service following the date of adoption of the retirement system;

(17) Guaranteed investment contract means an investment contract or account offering a return of principal invested plus interest at a specified rate. For investments made after July 19, 1996, guaranteed investment contract does not include direct obligations of the United States or its instrumentalities, bonds, participation certificates or other obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or collateralized mortgage obligations and other derivative securities. This subdivision shall not be construed to require the liquidation of investment contracts or accounts entered into prior to July 19, 1996;

(18) Interest credit rate means the greater of (a) five percent or (b) the applicable federal mid-term rate, as published by the Internal Revenue Service as of the first day of the calendar quarter for which interest credits are credited, plus one and one-half percent, such rate to be compounded annually;

(19) Interest credits means the amounts credited to the employee cash balance account and the employer cash balance account at the end of each day. Such interest credit for each account shall be determined by applying the daily portion of the interest credit rate to the account balance at the end of the previous day. Such interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account after a member ceases to be an employee, except that no such credit shall be made with respect to the employee cash balance account and the employer cash balance account for any day beginning on or after the member's date of final account value. If benefits payable to the member's surviving spouse or beneficiary are delayed after the member's death, interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account until such surviving spouse or beneficiary commences receipt of a distribution from the plan;

(20) Member cash balance account means an account equal to the sum of the employee cash balance account and, if vested, the employer cash balance

account and dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317;

(21) One-year break in service means a plan year during which the member has not completed more than five hundred hours of service;

(22) Participation means qualifying for and making the required deposits to the retirement system during the course of a plan year;

(23) Part-time employee means an employee who is employed to work less than one-half of the regularly scheduled hours during each pay period;

(24) Plan year means the twelve-month period beginning on January 1 and ending on December 31;

(25) Prior service means service prior to the date of adoption of the retirement system;

(26) Regular interest means the rate of interest earned each calendar year as determined by the retirement board in conformity with actual and expected earnings on the investments through December 31, 1985;

(27) Required contribution means the deduction to be made from the compensation of employees as provided in the act;

(28) Retirement means qualifying for and accepting the retirement benefit granted under the act after terminating employment;

(29) Retirement board or board means the Public Employees Retirement Board;

(30) Retirement system means the Retirement System for Nebraska Counties;

(31) Service means the actual total length of employment as an employee and is not deemed to be interrupted by (a) temporary or seasonal suspension of service that does not terminate the employee's employment, (b) leave of absence authorized by the employer for a period not exceeding twelve months, (c) leave of absence because of disability, or (d) military service, when properly authorized by the retirement board. Service does not include any period of disability for which disability retirement benefits are received under section 23-2315;

(32) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits;

(33) Termination of employment occurs on the date on which a county which is a member of the retirement system determines that its employer-employee relationship with an employee is dissolved. The county shall notify the board of the date on which such a termination has occurred. Termination of employment does not occur if an employee whose employer-employee relationship with a county is dissolved enters into an employer-employee relationship with the same or another county which participates in the Retirement System for Nebraska Counties and there are less than one hundred twenty days between

the date when the employee's employer-employee relationship ceased with the county and the date when the employer-employee relationship commenced with the same or another county which qualifies the employee for participation in the plan. It shall be the responsibility of the current employer to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a termination benefit has been paid to a member of the retirement system pursuant to section 23-2319, the board shall require the member who has received such benefit to repay the benefit to the retirement system; and

(34) Vesting credit means credit for years, or a fraction of a year, of participation in another Nebraska governmental plan for purposes of determining vesting of the employer account.

Source: Laws 1965, c. 94, § 1, p. 402; Laws 1969, c. 172, § 1, p. 750; Laws 1973, LB 216, § 1; Laws 1974, LB 905, § 1; Laws 1975, LB 47, § 1; Laws 1975, LB 45, § 1; Laws 1984, LB 216, § 2; Laws 1985, LB 347, § 1; Laws 1985, LB 432, § 1; Laws 1986, LB 311, § 2; Laws 1991, LB 549, § 1; Laws 1993, LB 417, § 1; Laws 1994, LB 833, § 1; Laws 1995, LB 369, § 2; Laws 1996, LB 847, § 2; Laws 1996, LB 1076, § 1; Laws 1996, LB 1273, § 14; Laws 1997, LB 624, § 1; Laws 1998, LB 1191, § 23; Laws 1999, LB 703, § 1; Laws 2000, LB 1192, § 1; Laws 2001, LB 142, § 32; Laws 2002, LB 407, § 1; Laws 2002, LB 687, § 3; Laws 2003, LB 451, § 2; Laws 2004, LB 1097, § 2; Laws 2006, LB 366, § 2; Laws 2006, LB 1019, § 1; Laws 2011, LB509, § 2.

Operative date July 1, 2011.

Cross References

Spousal Pension Rights Act, see section 42-1101.

23-2302 Retirement System for Nebraska Counties; establish; purpose; acceptance of contributions.

(1) A county employees retirement system shall be established for the purpose of providing a retirement annuity or other benefits for employees as provided by the County Employees Retirement Act. It shall be known as the Retirement System for Nebraska Counties, and by such name shall transact all business and hold all cash and other property as provided in the County Employees Retirement Act.

(2) The retirement system shall not accept as contributions any money from members or participating counties except the following:

(a) Mandatory contributions and fees established by sections 23-2307 and 23-2308;

(b) Payments on behalf of transferred employees made pursuant to section 23-2306.02 or 23-2306.03;

(c) Money that is a repayment of refunded contributions made pursuant to section 23-2320;

(d) Contributions for military service credit made pursuant to section 23-2323.01;

(e) Actuarially required contributions pursuant to subdivision (4)(b) of section 23-2317;

- (f) Trustee-to-trustee transfers pursuant to section 23-2323.04; or
- (g) Corrections ordered by the board pursuant to section 23-2305.01.

Source: Laws 1965, c. 94, § 2, p. 403; Laws 1985, LB 347, § 2; Laws 1985, LB 432, § 2; Laws 2003, LB 451, § 3; Laws 2011, LB509, § 3.

Operative date July 1, 2011.

23-2306 Retirement system; members; employees; elected officials; new employee; participation in another governmental plan; how treated; separate employment; effect.

(1) The membership of the retirement system shall be composed of all persons who are or were employed by member counties and who maintain an account balance with the retirement system.

(2) The following employees of member counties are authorized to participate in the retirement system: (a) All permanent full-time employees shall begin participation in the retirement system upon employment and full-time elected officials shall begin participation in the retirement system upon taking office, (b) all permanent part-time employees who have attained the age of eighteen years may exercise the option to begin participation in the retirement system, and (c) all part-time elected officials may exercise the option to begin participation in the retirement system. An employee who exercises the option to begin participation in the retirement system shall remain in the system until termination or retirement, regardless of any change of status as a permanent or temporary employee.

(3) On and after July 1, 2010, no employee of a member county shall be authorized to participate in the retirement system provided for in the County Employees Retirement Act unless the employee (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

(4) Within the first one hundred eighty days of employment, a full-time employee may apply to the board for vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned. The board may adopt and promulgate rules and regulations governing the assessment and granting of vesting credit.

(5) Any employee who qualifies for membership in the retirement system pursuant to this section may not be disqualified from membership in the retirement system solely because such employee also maintains separate employment which qualifies the employee for membership in another public retirement system, nor may membership in this retirement system disqualify such an employee from membership in another public retirement system solely by reason of separate employment which qualifies such employee for membership in this retirement system.

(6) A full-time or part-time employee of a city, village, or township who becomes a county employee pursuant to a merger of services shall receive vesting credit for his or her years of participation in a Nebraska governmental

plan, as defined by section 414(d) of the Internal Revenue Code, of the city, village, or township.

(7) A full-time or part-time employee of a city, village, fire protection district, or township who becomes a municipal county employee shall receive credit for his or her years of employment with the city, village, fire protection district, or township for purposes of the vesting provisions of this section.

(8) Counties shall ensure that employees authorized to participate in the retirement system pursuant to this section shall enroll and make required contributions to the retirement system immediately upon becoming an employee. Information necessary to determine membership in the retirement system shall be provided by the employer.

Source: Laws 1965, c. 94, § 6, p. 405; Laws 1975, LB 32, § 1; Laws 1984, LB 216, § 3; Laws 1985, LB 349, § 1; Laws 1991, LB 549, § 3; Laws 1995, LB 501, § 1; Laws 1996, LB 1076, § 2; Laws 1997, LB 250, § 5; Laws 1997, LB 624, § 2; Laws 1998, LB 1191, § 24; Laws 2000, LB 1192, § 2; Laws 2001, LB 142, § 33; Laws 2002, LB 407, § 2; Laws 2002, LB 687, § 5; Laws 2004, LB 1097, § 3; Laws 2006, LB 366, § 3; Laws 2008, LB1147, § 1; Laws 2009, LB188, § 1; Laws 2010, LB950, § 1; Laws 2011, LB509, § 4. Operative date July 1, 2011.

23-2308 County Employees Retirement Fund; created; investment; system; county clerk; payment; fees.

(1) The County Employees Retirement Fund is created. The fund shall be administered by the board and shall consist of contributions and other such sums as provided in section 23-2302. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The county clerk shall pay to the board or an entity designated by the board an amount equal to two hundred fifty percent of the amounts deducted from the compensation of employees in accordance with the provisions of section 23-2307, which two hundred fifty percent equals the employees' contributions plus the county's contributions of one hundred fifty percent of the employees' contributions.

(3) The board may charge the county an administrative processing fee of twenty-five dollars if the reports of necessary information or payments made pursuant to this section are received later than the date on which the board requires that such information or money should be received. In addition, the board may charge the county a late fee of thirty-eight thousandths of one percent of the amount required to be submitted pursuant to this section for each day such amount has not been received or in an amount equal to the amount of any costs incurred by the member due to the late receipt of contributions, whichever is greater. The late fee may be used to make a member's account whole for any costs that may have been incurred by the member due to the late receipt of contributions.

Source: Laws 1965, c. 94, § 8, p. 405; Laws 1981, LB 459, § 2; Laws 1991, LB 549, § 5; Laws 1992, LB 1057, § 2; Laws 1993, LB 417, § 2; Laws 1998, LB 1191, § 25; Laws 2002, LB 407, § 3; Laws 2005, LB 364, § 1; Laws 2011, LB509, § 5. Operative date July 1, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

23-2308.01 Cash balance benefit; election; effect; administrative services agreements; authorized.

(1) It is the intent of the Legislature that, in order to improve the competitiveness of the retirement plan for county employees, a cash balance benefit shall be added to the County Employees Retirement Act on and after January 1, 2003. Each member who is employed and participating in the retirement system prior to January 1, 2003, may either elect to continue participation in the defined contribution benefit as provided in the act prior to January 1, 2003, or elect to participate in the cash balance benefit as set forth in this section. The member shall make the election prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008. If no election is made prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008, the member shall be treated as though he or she elected to continue participating in the defined contribution benefit as provided in the act prior to January 1, 2003. Members who elect to participate in the cash balance benefit on or after November 1, 2007, but before January 1, 2008, shall commence participation in the cash balance benefit on January 1, 2008. Any member who made the election prior to January 1, 2003, does not have to reelect the cash balance benefit on or after November 1, 2007, but before January 1, 2008. A member employed and participating in the retirement system prior to January 1, 2003, who terminates employment on or after January 1, 2003, and returns to employment prior to having a five-year break in service shall participate in the cash balance benefit as set forth in this section.

(2) For a member employed and participating in the retirement system beginning on and after January 1, 2003, or a member employed and participating in the retirement system on January 1, 2003, who, prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008, elects to convert his or her employee and employer accounts to the cash balance benefit:

(a) Except as provided in subdivision (2)(b) of section 23-2319.01, the employee cash balance account shall, at any time, be equal to the following:

(i) The initial employee account balance, if any, transferred from the defined contribution plan account described in section 23-2309; plus

(ii) Employee contribution credits deposited in accordance with section 23-2307; plus

(iii) Interest credits credited in accordance with subdivision (19) of section 23-2301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317; and

(b) The employer cash balance account shall, at any time, be equal to the following:

(i) The initial employer account balance, if any, transferred from the defined contribution plan account described in section 23-2310; plus

(ii) Employer contribution credits deposited in accordance with section 23-2308; plus

(iii) Interest credits credited in accordance with subdivision (19) of section 23-2301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317.

(3) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the counties and their participating employees. The board may develop a schedule for the allocation of the administrative services agreements costs for accounting or record-keeping services and may assess the costs so that each member pays a reasonable fee as determined by the board.

Source: Laws 2002, LB 687, § 6; Laws 2003, LB 451, § 4; Laws 2005, LB 364, § 2; Laws 2006, LB 366, § 5; Laws 2006, LB 1019, § 3; Laws 2007, LB328, § 1; Laws 2009, LB188, § 2; Laws 2010, LB950, § 2; Laws 2011, LB509, § 6.
Operative date July 1, 2011.

23-2319.01 Termination of employment; account forfeited; when; County Employer Retirement Expense Fund; created; investment.

(1) For a member who has terminated employment and is not vested, the balance of the member's employer account or employer cash balance account shall be forfeited. The forfeited account shall be credited to the County Employees Retirement Fund and shall first be used to meet the expense charges incurred by the retirement board in connection with administering the retirement system, which charges shall be credited to the County Employees Defined Contribution Retirement Expense Fund, if the member participated in the defined contribution option, or to the County Employees Cash Balance Retirement Expense Fund, if the member participated in the cash balance option, and the remainder, if any, shall then be used to reduce the county contribution which would otherwise be required to fund future service retirement benefits or to restore employer accounts or employer cash balance accounts. No forfeited amounts shall be applied to increase the benefits any member would otherwise receive under the County Employees Retirement Act.

(2)(a) If a member ceases to be an employee due to the termination of his or her employment by the county and a grievance or other appeal of the termination is filed, transactions involving forfeiture of his or her employer account or employer cash balance account and, except as provided in subdivision (b) of this subsection, transactions for payment of benefits under sections 23-2315 and 23-2319 shall be suspended pending the final outcome of the grievance or other appeal.

(b) If a member elects to receive benefits payable under sections 23-2315 and 23-2319 after a grievance or appeal is filed, the member may receive an amount up to the balance of his or her employee account or member cash balance account or twenty-five thousand dollars payable from the employee account or member cash balance account, whichever is less.

(3) The County Employer Retirement Expense Fund is created. The fund shall be administered by the Public Employees Retirement Board. The fund shall consist of any reduction in a county contribution which would otherwise be required to fund future service retirement benefits or to restore employer

accounts or employer cash balance accounts referred to in subsection (1) of this section. The fund shall be established and maintained separate from any funds held in trust for the benefit of members under the county employees retirement system. Expenses incurred as a result of a county depositing amounts into the fund shall be deducted prior to any additional expenses being allocated. Any remaining amount shall be allocated in accordance with section 23-2319.02. 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 1997, LB 624, § 5; Laws 2000, LB 1200, § 4; Laws 2002, LB 687, § 14; Laws 2003, LB 451, § 10; Laws 2005, LB 364, § 5; Laws 2007, LB328, § 4; Laws 2011, LB509, § 7.
Operative date July 1, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

23-2320 Employee; reemployment; status; how treated; reinstatement; repay amount received.

(1) Except as otherwise provided in this section, a member of the retirement system who has a five-year break in service shall upon reemployment be considered a new employee with respect to the County Employees Retirement Act and shall not receive credit for service prior to his or her reemployment date.

(2)(a) A member who ceases to be an employee before becoming eligible for retirement under section 23-2315 and again becomes a permanent full-time or permanent part-time county employee prior to having a five-year break in service shall immediately be reenrolled in the retirement system and resume making contributions. For purposes of vesting employer contributions made prior to and after the reentry into the retirement system under subsection (3) of section 23-2319, years of participation include years of participation prior to such employee's original termination. For a member who is not vested and has received a termination benefit pursuant to section 23-2319, the years of participation prior to such employee's original termination shall be limited in a ratio equal to the amount that the member repays divided by the termination benefit withdrawn pursuant to section 23-2319.

(b) The reemployed member may repay the value of, or a portion of the value of, the termination benefit withdrawn pursuant to section 23-2319. A reemployed member who elects to repay all or a portion of the value of the termination benefit withdrawn pursuant to section 23-2319 shall repay the actual earnings on such value. Repayment of the termination benefit shall commence within three years of reemployment and shall be completed within five years of reemployment or prior to termination of employment, whichever occurs first, through (i) direct payments to the retirement system, (ii) installment payments made pursuant to a binding irrevocable payroll deduction authorization made by the member, (iii) an eligible rollover distribution as provided under the Internal Revenue Code, or (iv) a direct rollover distribution made in accordance with section 401(a)(31) of the Internal Revenue Code.

(c) The value of the member's forfeited employer account or employer cash balance account, as of the date of forfeiture, shall be restored in a ratio equal to

the amount of the benefit that the member has repaid divided by the termination benefit received. The employer account or employer cash balance account shall be restored first out of the current forfeiture amounts and then by additional employer contributions.

(3) For a member who retired pursuant to section 23-2315 and becomes a permanent full-time employee or permanent part-time employee with a county under the County Employees Retirement Act more than one hundred twenty days after his or her retirement date, the member shall continue receiving retirement benefits. Such a retired member or a retired member who received a lump-sum distribution of his or her benefit shall be considered a new employee as of the date of reemployment and shall not receive credit for any service prior to the member's retirement for purposes of the act.

(4) A member who is reinstated as an employee pursuant to a grievance or appeal of his or her termination by the county shall be a member upon reemployment and shall not be considered to have a break in service for such period of time that the grievance or appeal was pending. Following reinstatement, the member shall repay the value of the amount received from his or her employee account or member cash balance account under subdivision (2)(b) of section 23-2319.01.

Source: Laws 1965, c. 94, § 20, p. 409; Laws 1985, LB 347, § 9; Laws 1991, LB 549, § 12; Laws 1993, LB 417, § 5; Laws 1997, LB 624, § 6; Laws 1999, LB 703, § 3; Laws 2002, LB 407, § 6; Laws 2002, LB 687, § 15; Laws 2003, LB 451, § 11; Laws 2004, LB 1097, § 5; Laws 2007, LB328, § 6; Laws 2008, LB1147, § 4; Laws 2011, LB509, § 8.
Operative date July 1, 2011.

**ARTICLE 25
CIVIL SERVICE SYSTEM**

(d) METHOD OF PAYMENT TO EMPLOYEES

Section 23-2545. Payments to employees; methods authorized.

(d) METHOD OF PAYMENT TO EMPLOYEES

23-2545 Payments to employees; methods authorized.

The county board of each county in this state may authorize payments that include, but are not limited to, salary and reimbursable expenses to any employee by electronic funds transfer or a similar means of direct deposit.

Source: Laws 2011, LB278, § 2.
Effective date August 27, 2011.

**ARTICLE 31
COUNTY PURCHASING**

Section 23-3104. Terms, defined.
23-3107. County board or purchasing agent; administrative duties.
23-3115. Surplus personal property other than mobile equipment; surplus mobile equipment; sale; conditions.

23-3104 Terms, defined.

As used in the County Purchasing Act, unless the context otherwise requires:

(1) Mobile equipment means all vehicles propelled by any power other than muscular, including, but not limited to, motor vehicles, off-road designed vehicles, motorcycles, passenger cars, self-propelled mobile homes, truck-tractors, trucks, cabin trailers, semitrailers, trailers, utility trailers, and road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors;

(2) Personal property includes, but is not limited to, supplies, materials, mobile equipment, and equipment used by or furnished to any county officer, office, department, institution, board, or other agency of the county government. Personal property does not include election ballots;

(3) Services means any and all services except telephone, telegraph, postal, and electric light and power service, other similar services, and election contractual services; and

(4) Purchasing or purchase means the obtaining of personal property or services by sale, lease, or other contractual means. Purchase also includes contracting with sheltered workshops for products or services as provided in Chapter 48, article 15.

Source: Laws 1943, c. 57, § 5, p. 228; R.S.1943, § 23-324.03; R.S.1943, (1983), § 23-324.03; Laws 1985, LB 393, § 4; Laws 1988, LB 602, § 1; Laws 1988, LB 828, § 5; Laws 2003, LB 41, § 1; Laws 2011, LB628, § 1.
Effective date August 27, 2011.

23-3107 County board or purchasing agent; administrative duties.

The county board or purchasing agent, subject to the approval of the county board, shall: (1) Prescribe the manner in which personal property shall be purchased, delivered, and distributed; (2) prescribe dates for making estimates, the future period which they are to cover, the form in which they are submitted, and the manner of their authentication; (3) revise forms from time to time as conditions warrant; (4) provide for the transfer to and between county departments and agencies of personal property which is surplus with one department or agency but which may be needed by another or others; (5) dispose of by sale personal property which has been declared by the county board to be surplus and which is obsolete or not usable by the county. Except as otherwise provided in subsection (2) of section 23-3115, such property with a value of less than two thousand five hundred dollars may be sold without competitive bidding. Except as otherwise provided in subsection (2) of section 23-3115, property with a value of two thousand five hundred dollars or more shall be sold through competitive bidding; (6) prescribe the amount of cash deposit or bond to be submitted with a bid on a contract and the amount of deposit or bond to be given for the performance of a contract, if the amount of the bond is not specifically provided by law; and (7) prescribe the manner in which claims for

personal property or services delivered to any department or agency of the county shall be submitted, approved, and paid.

Source: Laws 1943, c. 57, § 6, p. 228; R.S.1943, § 23-324.04; R.S.1943, (1983), § 23-324.04; Laws 1985, LB 393, § 7; Laws 1988, LB 828, § 7; Laws 2003, LB 41, § 2; Laws 2011, LB628, § 2. Effective date August 27, 2011.

23-3115 Surplus personal property other than mobile equipment; surplus mobile equipment; sale; conditions.

(1) The county board or the purchasing agent, with the approval of the county board, may authorize a county official or employee to sell surplus personal property, other than mobile equipment, which is obsolete or not usable by the county and which has a value of less than two thousand five hundred dollars. In making such authorization, the county board or purchasing agent may place any restriction on the type or value of property to be sold, restrict such authority to a single transaction or to a period of time, or make any other appropriate restrictions or conditions.

(2) The county board or the purchasing agent, with the approval of the county board, may authorize a county official or employee to sell surplus mobile equipment which is obsolete or not usable by the county and which has a value of less than five thousand dollars. Surplus mobile equipment which is obsolete or not usable by the county and which has a value of five thousand dollars or more shall be sold through competitive bidding.

(3) Any county official or employee granted the authority to sell surplus personal property which is obsolete or not usable by the county as prescribed in subsection (1) or (2) of this section shall make a written report to the county board within thirty days after the end of the fiscal year reflecting, for each transaction, the item sold, the name and address of the purchaser, the price paid by the purchaser for each item, and the total amount paid by the purchaser.

(4) The money generated by any sales authorized by this section shall be payable to the county treasurer and shall be credited to the funds of the department, office, or agency to which the property belonged.

(5) No person authorized by the county board or purchasing agent to make such sales shall be authorized to make or imply any warranty of any kind whatsoever as to the nature, use, condition, or fitness for a particular purpose of any property sold pursuant to this section. Any person making sales authorized by this section shall inform the purchaser that such property is being sold as is without any warranty of any kind whatsoever.

Source: Laws 1988, LB 828, § 2; Laws 2011, LB628, § 3. Effective date August 27, 2011.

ARTICLE 35

MEDICAL AND MULTIUNIT FACILITIES

(a) GENERAL PROVISIONS

Section
23-3526. Retirement plan; authorized; reports.

(a) GENERAL PROVISIONS

23-3526 Retirement plan; authorized; reports.

(1) The board of trustees of each facility, as provided by section 23-3501, shall, upon approval of the county board, have the power and authority to establish and fund a retirement plan for the benefit of its full-time employees. The plan may be funded by any actuarially recognized method approved by the county board. Employees participating in the plan may be required to contribute toward funding the benefits. The facility shall pay all costs of establishing and maintaining the plan. The plan may be integrated with old age and survivor's insurance.

(2)(a) Beginning December 31, 1998, and each December 31 thereafter, the chairperson of the board of trustees of a facility with a retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code shall file with the Public Employees Retirement Board an annual report on such plan and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;
- (vii) For each defined contribution plan which is not administered by a retirement system under the County Employees Retirement Act, a full description of investment policies and options available to plan participants; and
- (viii) For each defined benefit plan which is not administered by a retirement system under the County Employees Retirement Act, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan which is not administered by a retirement system under the County Employees Retirement Act contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the board of trustees shall cause to be prepared a quadrennial report for each retirement plan which is not administered by a retirement system under the County Employees Retirement Act, and the chairperson shall file the same with the Public Employees Retirement Board and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section which is not administered by a retirement system under the County

Employees Retirement Act. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan.

Source: Laws 1977, LB 346, § 1; R.S.1943, (1987), § 23-343.121; Laws 1998, LB 1191, § 35; Laws 1999, LB 795, § 11; Laws 2011, LB474, § 11.
Effective date August 27, 2011.

Cross References

County Employees Retirement Act, see section 23-2331.

CHAPTER 24 COURTS

Article.

2. Supreme Court.
 - (a) Organization. 24-201.02 to 24-205.
 - (g) Supreme Court Automation Cash Fund. 24-227.01.
 - (j) Judicial Hearing Officers. 24-230.
3. District Court.
 - (c) Clerk. 24-337.01.
5. County Court.
 - (a) Organization. 24-502 to 24-515.
7. Judges, General Provisions.
 - (a) Judges Retirement. 24-701 to 24-710.13.

ARTICLE 2

SUPREME COURT

(a) ORGANIZATION

Section

- 24-201.02. Supreme Court judicial districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.
- 24-201.04. Supreme Court judicial districts; population figures and maps; basis.
- 24-205. Supreme Court Education Fund; created; use; investment.
- (g) SUPREME COURT AUTOMATION CASH FUND
- 24-227.01. Supreme Court Automation Cash Fund; created; use; investment.
- (j) JUDICIAL HEARING OFFICERS
- 24-230. Judicial hearing officer; appointment by Supreme Court; powers; qualifications; rights of parties.

(a) ORGANIZATION

24-201.02 Supreme Court judicial districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.

(1) Based on the 2010 Census of Population by the United States Department of Commerce, Bureau of the Census, the State of Nebraska is hereby divided into six Supreme Court judicial districts. Each district shall be entitled to one Supreme Court judge.

(2) The numbers and boundaries of the districts are designated and established by maps identified and labeled as maps SC11-19002-1, SC11-19002-2, SC11-19002-3, SC11-19002-4, SC11-19002-5, and SC11-19002-6, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2011, LB699.

(3)(a) The Clerk of the Legislature shall transfer possession of the maps referred to in subsection (2) of this section to the Secretary of State on May 27, 2011.

(b) When questions of interpretation of district boundaries arise, maps referred to in subsection (2) of this section in possession of the Secretary of

State shall serve as the indication of the legislative intent in drawing the district boundaries.

(c) Each election commissioner or county clerk shall obtain copies of maps referred to in subsection (2) of this section for the election commissioner's or clerk's county from the Secretary of State.

(d) The Secretary of State shall also have available for viewing on his or her web site maps referred to in subsection (2) of this section identifying the boundaries for the districts.

Source: Laws 1971, LB 545, § 1; Laws 1981, LB 552, § 1; R.S.1943, (1987), § 5-109; Laws 1990, LB 822, § 9; Laws 1991, LB 616, § 1; Laws 2001, LB 853, § 1; Laws 2011, LB699, § 1.
Effective date May 27, 2011.

Cross References

Constitutional provisions, see Article V, section 5, Constitution of Nebraska.

24-201.04 Supreme Court judicial districts; population figures and maps; basis.

For purposes of section 24-201.02, the Legislature adopts the official population figures and maps from the 2010 Census Redistricting (Public Law 94-171) TIGER/Line Shapefiles published by the United States Department of Commerce, Bureau of the Census.

Source: Laws 1991, LB 616, § 2; Laws 2001, LB 853, § 2; Laws 2011, LB699, § 2.
Effective date May 27, 2011.

24-205 Supreme Court Education Fund; created; use; investment.

The Supreme Court Education Fund is created. The State Court Administrator shall administer the fund. The fund shall consist of money remitted pursuant to section 33-154. Except as otherwise directed by the Supreme Court during the period from November 21, 2009, until June 30, 2013, the fund shall only be used to aid in supporting the mandatory training and education program for judges and employees of the Supreme Court, Court of Appeals, district courts, separate juvenile courts, county courts, and Nebraska Probation System as enacted by rule of the Supreme Court. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2003, LB 760, § 1; Laws 2009, First Spec. Sess., LB3, § 9; Laws 2011, LB378, § 16.
Effective date May 18, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

(g) SUPREME COURT AUTOMATION CASH FUND

24-227.01 Supreme Court Automation Cash Fund; created; use; investment.

The Supreme Court Automation Cash Fund is created. The State Court Administrator shall administer the fund. Except as otherwise directed by the

Supreme Court during the period from November 21, 2009, until June 30, 2013, the fund shall only be used to support automation expenses of the Supreme Court, Court of Appeals, district courts, separate juvenile courts, county courts, and Nebraska Probation System from the computer automation budget program, except that the State Treasurer shall, on or before June 30, 2011, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services, transfer the amount set forth in Laws 2009, LB1, One Hundred First Legislature, First Special Session. Any money in the Supreme Court Automation Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2002, Second Spec. Sess., LB 13, § 1; Laws 2009, First Spec. Sess., LB3, § 10; Laws 2011, LB378, § 17.
Effective date May 18, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

(j) JUDICIAL HEARING OFFICERS

24-230 Judicial hearing officer; appointment by Supreme Court; powers; qualifications; rights of parties.

(1) The Supreme Court may appoint judicial hearing officers as needed to serve on a full-time or part-time basis for county courts sitting as juvenile courts and for separate juvenile courts. A judicial hearing officer is entitled to receive a salary as established by the Supreme Court.

(2) In accordance with the rules of the Supreme Court, a judicial hearing officer may preside in, hear, and determine any case or proceeding initiated under the Nebraska Juvenile Code.

(3) To be qualified for appointment as a judicial hearing officer, 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 judicial hearing officer shall be sworn or affirmed to 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 any judge of the State of Nebraska. A judicial hearing officer may be removed at any time by the Supreme Court.

(4) In any and all cases referred to a judicial hearing officer by a county court sitting as a juvenile court or a separate juvenile court, the parties shall have the right to take exceptions to the findings and recommendations made by the hearing officer 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 judicial hearing officer's report and may accept or reject all or any part of the report and enter judgment based on the court's own determination.

(5) The Supreme Court shall promulgate rules for all other qualifications of judicial hearing officers; for the extent of authority which may be assigned and the procedure for assignment of authority by a county court sitting as a juvenile court or a separate juvenile court; for practice and procedure before such

judicial hearing officers; and for the training of judicial hearing officers, including rules for training sessions and continuing education requirements.

Source: Laws 2011, LB669, § 6.

Operative date August 27, 2011.

ARTICLE 3 DISTRICT COURT

(c) CLERK

Section

24-337.01. Clerk of the district court; assist clerk of county court; agreement; contents.

(c) CLERK

24-337.01 Clerk of the district court; assist clerk of county court; agreement; contents.

When the clerk of the county court or the county court staff are temporarily unavailable or available on less than a full-time basis, the clerk of the district court shall, under the direction of the county court judge and in cooperation and agreement with the Supreme Court and State Court Administrator, assist the clerk of the county court in the provision of county court services which would otherwise require the presence of county court staff. Any agreement entered into under this section must be signed and stipulated to by the State Court Administrator, the county board, and the clerk of the district court after obtaining input from the clerk of the county court, a district court judge, a county court judge, and the county attorney. Any agreement entered into under this section may include, but is not limited to, financial considerations and scheduling.

Source: Laws 2011, LB669, § 5.

Operative date August 27, 2011.

ARTICLE 5 COUNTY COURT

(a) ORGANIZATION

Section

24-502. Court of record; location.

24-507. Clerk magistrates; appointment; serve as clerk of court; assist clerk of district court; agreement; contents; ex officio clerk of the district court; when.

24-512. Repealed. Laws 2011, LB 669, § 30.

24-515. Courtroom and office facilities; costs; standards; property transfers from municipal courts; standards.

(a) ORGANIZATION

24-502 Court of record; location.

There shall be a county court in and for each county in this state. The county court shall be a court of record and shall be located at the county seat.

Source: Laws 1972, LB 1032, § 2; Laws 1990, LB 822, § 12; Laws 2011, LB669, § 2.

Operative date August 27, 2011.

24-507 Clerk magistrates; appointment; serve as clerk of court; assist clerk of district court; agreement; contents; ex officio clerk of the district court; when.

(1) There shall be appointed a clerk magistrate to serve each county. Clerk magistrates shall be appointed by the county judge, or judges if the district has more than one county judge, and shall serve at the pleasure of the county judge or judges, subject to personnel rules adopted by the Supreme Court.

(2) The clerk magistrate shall be the clerk of the county court and if appointed as clerk magistrate for more than one county shall be the clerk of the county court for each county.

(3) In counties when the district court clerk or staff is temporarily unavailable, the clerk magistrate as clerk of the county court shall, under the direction of the district court judge and in cooperation and agreement with the Supreme Court, State Court Administrator, and clerk of the district court, assist the clerk of the district court in the provision of district court services which would otherwise require the presence of district court staff. Any agreement entered into under this subsection must be signed and stipulated to by the State Court Administrator, the county board, and the clerk of the district court after obtaining input from the clerk of the county court, a district court judge, a county court judge, and the county attorney. Any agreement entered into under this subsection may include, but is not limited to, financial considerations and scheduling.

(4) When an agreement has been reached pursuant to subdivision (1)(b) of section 32-524 or subsection (3) of section 32-524 for a clerk magistrate as clerk of the county court to be ex officio clerk of the district court, the clerk magistrate shall perform the duties required by law of the clerk of the district court under the direction of the district court judge for the county and the State Court Administrator.

Source: Laws 1972, LB 1032, § 7; Laws 1986, LB 529, § 2; Laws 2011, LB669, § 3.

Operative date August 27, 2011.

24-512 Repealed. Laws 2011, LB 669, § 30.

24-515 Courtroom and office facilities; costs; standards; property transfers from municipal courts; standards.

Each county shall be responsible for all costs involved in establishing, furnishing, and maintaining appropriate courtroom and office facilities for the county court at the county seat. On July 1, 1985, the courtroom and office facilities of a municipal court shall be transferred, by sale, lease, or other arrangement, from cities of the metropolitan or primary class to the county responsible pursuant to this section for the establishing, furnishing, and maintaining of courtroom and office facilities for the county court at the county seat. Payments by a city and county on the bonded indebtedness on any facility constructed for joint use by a city and county shall continue in the same manner and in the same proportionate shares as payments made prior to July 1, 1985, subject to any sale, lease, or other arrangement pursuant to this section. All other property, equipment, books, and records of the municipal courts shall be transferred on July 1, 1985, to the county court.

The Supreme Court shall prescribe minimum standards for all courtroom and office facilities. The Supreme Court may establish standards by class of county, based on population, caseload, and other pertinent factors.

Source: Laws 1972, LB 1032, § 15; Laws 1984, LB 13, § 10; Laws 1992, LB 1059, § 5; Laws 1993, LB 593, § 2; Laws 2011, LB669, § 4.
Operative date August 27, 2011.

ARTICLE 7

JUDGES, GENERAL PROVISIONS

(a) JUDGES RETIREMENT

Section

- 24-701. Terms, defined.
- 24-701.01. Act, how cited.
- 24-710. Judges; retirement annuity; amount; how computed; cost-of-living adjustment.
- 24-710.07. Repealed. Laws 2011, LB 509, § 55.
- 24-710.09. Repealed. Laws 2011, LB 509, § 55.
- 24-710.10. Repealed. Laws 2011, LB 509, § 55.
- 24-710.11. Repealed. Laws 2011, LB 509, § 55.
- 24-710.13. Annual benefit adjustment; cost-of-living adjustment calculation method.

(a) JUDGES RETIREMENT

24-701 Terms, defined.

For purposes of the Judges Retirement Act, unless the context otherwise requires:

- (1) Fund means the Nebraska Retirement Fund for Judges;
- (2) Judge means and includes (a) all duly elected or appointed Chief Justices or judges of the Supreme Court and judges of the district courts of Nebraska who serve in such capacity on and after January 3, 1957, (b)(i) all duly appointed judges of the Nebraska Workmen’s Compensation Court who served in such capacity on and after September 20, 1957, and prior to July 17, 1986, and (ii) judges of the Nebraska Workers’ Compensation Court who serve in such capacity on and after July 17, 1986, (c) judges of separate juvenile courts, (d) judges of the county courts of the respective counties who serve in such capacity on and after January 5, 1961, (e) judges of the county court and clerk magistrates who were associate county judges and members of the fund at the time of their appointment as clerk magistrates, (f) judges of municipal courts established by Chapter 26, article 1, who served in such capacity on and after October 23, 1967, and prior to July 1, 1985, and (g) judges of the Court of Appeals;
- (3) Prior service means all the periods of time any person has served as a (a) judge of the Supreme Court or judge of the district court prior to January 3, 1957, (b) judge of the county court prior to January 5, 1961, (c) judge of the Nebraska Workmen’s Compensation Court prior to September 20, 1957, (d) judge of the separate juvenile court, or (e) judge of the municipal court prior to October 23, 1967;
- (4)(a) Current service means the period of service (i) any judge of the Supreme Court or judge of the district court serves in such capacity from and after January 3, 1957, (ii)(A) any judge of the Nebraska Workmen’s Compensation Court served in such capacity from and after September 20, 1957, and prior to July 17, 1986, and (B) any judge of the Nebraska Workers’ Compensation Court serves in such capacity on and after July 17, 1986, (iii) any county judge serves in such capacity from and after January 5, 1961, (iv) any judge of a separate juvenile court serves in such capacity, (v) any judge of the municipal court served in such capacity subsequent to October 23, 1967, and prior to July 1, 1985, (vi) any judge of the county court or associate county judge serves in such capacity subsequent to January 4, 1973, (vii) any clerk magistrate, who

was an associate county judge and a member of the fund at the time of appointment as a clerk magistrate, serves in such capacity from and after July 1, 1986, and (viii) any judge of the Court of Appeals serves in such capacity on or after September 6, 1991.

(b) Current service shall not be deemed to be interrupted by (i) temporary or seasonal suspension of service that does not terminate the employee's employment, (ii) leave of absence authorized by the employer for a period not exceeding twelve months, (iii) leave of absence because of disability, or (iv) military service, when properly authorized by the board. Current service does not include any period of disability for which disability retirement benefits are received under section 24-709;

(5) Military service means active service of (a) any judge of the Supreme Court or judge of the district court in any of the armed forces of the United States during a war or national emergency prior or subsequent to September 18, 1955, if such service commenced while such judge was holding the office of judge, (b) any judge of the Nebraska Workmen's Compensation Court or the Nebraska Workers' Compensation Court in any of the armed forces of the United States during a war or national emergency prior or subsequent to September 20, 1957, if such service commenced while such judge was holding the office of judge, (c) any judge of the municipal court in any of the armed forces of the United States during a war or national emergency prior or subsequent to October 23, 1967, and prior to July 1, 1985, if such service commenced while such judge was holding the office of judge, (d) any judge of the county court or associate county judge in any of the armed forces of the United States during a war or national emergency prior or subsequent to January 4, 1973, if such service commenced while such judge was holding the office of judge, (e) any clerk magistrate, who was an associate county judge and a member of the fund at the time of appointment as a clerk magistrate, in any of the armed forces of the United States during a war or national emergency on or after July 1, 1986, if such service commenced while such clerk magistrate was holding the office of clerk magistrate, and (f) any judge of the Court of Appeals in any of the armed forces of the United States during a war or national emergency on or after September 6, 1991, if such service commenced while such judge was holding the office of judge. The board shall have the power to determine when a national emergency exists or has existed for the purpose of applying this definition and provision;

(6) Creditable service means the total number of years served as a judge, including prior service, military service, and current service, computed to the nearest one-twelfth year. For current service prior to the time that the member has contributed the required percentage of salary until the maximum benefit as limited by section 24-710 has been earned, creditable service does not include current service for which member contributions are not made or are withdrawn and not repaid;

(7)(a) Compensation means the statutory salary of a judge or the salary being received by such judge pursuant to law. Compensation does not include compensation for unused sick leave or unused vacation leave converted to cash payments, insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compen-

sation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125 and 457 of the Internal Revenue Code as defined in section 49-801.01 or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as defined in section 49-801.01 shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(8) Beneficiary means a person so designated by a judge in the last designation of beneficiary on file with the board or, if no designated person survives or if no designation is on file, the estate of such judge;

(9) Normal form annuity means a series of equal monthly payments payable at the end of each calendar month during the life of a retired judge as provided in sections 24-707 and 24-710, except as provided in section 42-1107. The first payment shall include all amounts accrued since the effective date of the award of the annuity. The last payment shall be at the end of the calendar month in which such judge dies. If at the time of death the amount of annuity payments such judge has received is less than contributions to the fund made by such judge, plus regular interest, the difference shall be paid to the beneficiary or estate;

(10) Board means the Public Employees Retirement Board;

(11) Member means a judge eligible to participate in the retirement system established under the Judges Retirement Act;

(12) Original member means a judge who first served as a judge prior to December 25, 1969, who does not elect to become a future member pursuant to subsection (8) of section 24-703 or section 24-710.01, and who was retired on or before December 31, 1992;

(13) Future member means a judge who first served as a judge on or after December 25, 1969, or means a judge who first served as a judge prior to December 25, 1969, who elects to become a future member on or before June 30, 1970, as provided in subsection (8) of section 24-703 or section 24-710.01;

(14) Final average compensation means the average monthly compensation for the three twelve-month periods of service as a judge in which compensation was the greatest or, in the event of a judge serving less than three twelve-month periods, the average monthly compensation for such judge's period of service;

(15) Regular interest means interest fixed at a rate equal to the daily treasury yield curve for one-year treasury securities, as published by the Secretary of the Treasury of the United States, that applies on July 1 of each year, which may be credited monthly, quarterly, semiannually, or annually as the board may direct;

(16) Normal retirement date means the first day of the month following attainment of age sixty-five;

(17) Actuarial equivalence means the equality in value of the aggregate amounts expected to be received under different forms of payment. The determinations are to be based on the 1994 Group Annuity Mortality Table reflecting sex-distinct factors blended using seventy-five percent of the male table and twenty-five percent of the female table. An interest rate of eight percent per annum shall be reflected in making these determinations;

(18) Current benefit means (a) until July 1, 2000, the initial benefit increased by all adjustments made pursuant to section 24-710.08 and (b) on or after July 1, 2000, the initial benefit increased by all adjustments made pursuant to the Judges Retirement Act;

(19) Initial benefit means the retirement benefit calculated at the time of retirement;

(20) Plan year means the twelve-month period beginning on July 1 and ending on June 30 of the following year;

(21) Retirement system or system means the Nebraska Judges Retirement System as provided in the Judges Retirement Act;

(22) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under the qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits; and

(23) Termination of employment occurs on the date on which the State Court Administrator's office determines that the judge's employer-employee relationship with the State of Nebraska is dissolved. The State Court Administrator's office shall notify the board of the date on which such a termination has occurred. Termination of employment does not include ceasing employment as a judge if the judge returns to regular employment as a judge or is employed on a regular basis by another agency of the State of Nebraska and there are less than one hundred twenty days between the date when the judge's employer-employee relationship ceased and the date when the employer-employee relationship recommences.

Source: Laws 1955, c. 83, § 1, p. 244; Laws 1957, c. 77, § 1, p. 315; Laws 1957, c. 79, § 1, p. 318; Laws 1959, c. 95, § 1, p. 409; Laws 1959, c. 189, § 13, p. 687; Laws 1965, c. 115, § 1, p. 440; Laws 1969, c. 178, § 1, p. 759; Laws 1971, LB 987, § 4; Laws 1972, LB 1032, § 120; Laws 1973, LB 226, § 10; Laws 1974, LB 905, § 3; Laws 1983, LB 223, § 1; Laws 1984, LB 13, § 32; Laws 1984, LB 750, § 1; Laws 1986, LB 92, § 1; Laws 1986, LB 311, § 9; Laws 1986, LB 351, § 1; Laws 1986, LB 529, § 17; Laws 1986, LB 811, § 12; Laws 1989, LB 506, § 2; Laws 1991, LB 549, § 15; Laws 1991, LB 732, § 36; Laws 1992, LB 682, § 1; Laws 1994, LB 833, § 12; Laws 1996, LB 700, § 1; Laws 1996, LB 847, § 11; Laws 1996, LB 1076, § 8; Laws 1996, LB 1273, § 19; Laws 1997, LB 624, § 9; Laws 1999, LB 674, § 1; Laws 2000, LB 1192, § 4; Laws 2001, LB 408, § 6; Laws 2003, LB 451, § 14; Laws 2011, LB6, § 1.

Effective date August 27, 2011.

Cross References

Spousal Pension Rights Act, see section 42-1101.

24-701.01 Act, how cited.

Sections 24-701 to 24-714 shall be known and may be cited as the Judges Retirement Act.

Source: Laws 1996, LB 847, § 12; Laws 1997, LB 624, § 10; Laws 1998, LB 532, § 1; Laws 1998, LB 1191, § 36; Laws 2001, LB 408, § 7; Laws 2002, LB 407, § 11; Laws 2004, LB 1097, § 10; Laws 2010, LB950, § 8; Laws 2011, LB509, § 9.
Operative date July 1, 2011.

24-710 Judges; retirement annuity; amount; how computed; cost-of-living adjustment.

(1) The retirement annuity of a judge who is an original member, who has not made the election provided for in subsection (8) of section 24-703 or section 24-710.01, and who retires under section 24-708 or 24-709 shall be computed as follows: Each such judge shall be entitled to receive an annuity, each monthly payment of which shall be in an amount equal to three and one-third percent of his or her final average compensation as such judge, multiplied by the number of his or her years of creditable service. The amount stated in this section shall be supplemental to any benefits received by such judge under the Nebraska and federal old age and survivors' insurance acts at the date of retirement, but the monthly combined benefits received thereunder and by the Judges Retirement Act shall not exceed sixty-five percent of the final average compensation such judge was receiving when he or she last served as such judge. The amount of retirement annuity of a judge who retires under section 24-708 or 24-709 shall not be less than twenty-five dollars per month if he or she has four years or more of service credit.

(2) The retirement annuity of a judge who is a future member and who retires after July 1, 1986, under section 24-708 or 24-709 shall be computed as follows: Each such judge shall be entitled to receive an annuity, each monthly payment of which shall be in an amount equal to three and one-half percent of his or her final average compensation as such judge, multiplied by the number of his or her years of creditable service, except that prior to an actuarial factor adjustment for purposes of calculating an optional form of annuity benefits under subsection (3) of this section, the monthly benefits received under this subsection shall not exceed seventy percent of the final average compensation such judge was receiving when he or she last served as such judge.

(3) Except as provided in section 42-1107, any member may, when filing an application as provided by the retirement system, elect to receive, in lieu of the normal form annuity benefits to which the member or his or her beneficiary may otherwise be entitled under the Judges Retirement Act, an optional form of annuity benefits which the board may by rules and regulations provide, the value of which, determined by accepted actuarial methods and on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file in the office of the director, is equal to the value of the benefit replaced. The board shall (a) adopt and promulgate appropriate rules and regulations establishing joint and survivorship annuities, with and without reduction on the death of the first annuitant, and such other forms of annuities as may in its judgment be appropriate and establishing benefits as provided in sections 24-707 and 24-707.01, (b) prescribe appropriate forms for making the

election by the members, and (c) provide for the necessary actuarial services to make the required valuations.

(4) A one-time cost-of-living adjustment shall be made for each retired judge and each surviving beneficiary who is receiving a retirement annuity as provided for in this section. The annuity shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1992, except that such increases shall not exceed three percent per year of retirement and the total increase shall not exceed two hundred fifty dollars per month.

Source: Laws 1955, c. 83, § 10, p. 249; Laws 1957, c. 79, § 4, p. 323; Laws 1959, c. 95, § 4, p. 413; Laws 1965, c. 116, § 3, p. 448; Laws 1965, c. 117, § 1, p. 489; Laws 1969, c. 178, § 4, p. 766; Laws 1973, LB 478, § 2; Laws 1974, LB 740, § 1; Laws 1975, LB 49, § 1; Laws 1977, LB 467, § 2; Laws 1977, LB 344, § 5; Laws 1981, LB 459, § 4; Laws 1981, LB 462, § 4; Laws 1986, LB 92, § 5; Laws 1986, LB 311, § 13; Laws 1989, LB 506, § 7; Laws 1991, LB 549, § 18; Laws 1992, LB 672, § 32; Laws 1992, LB 682, § 3; Laws 1994, LB 833, § 22; Laws 1996, LB 1273, § 21; Laws 1997, LB 624, § 15; Laws 2004, LB 1097, § 15; Laws 2011, LB509, § 11.

Operative date July 1, 2011.

24-710.07 Repealed. Laws 2011, LB 509, § 55.

Operative date July 1, 2011.

24-710.09 Repealed. Laws 2011, LB 509, § 55.

Operative date July 1, 2011.

24-710.10 Repealed. Laws 2011, LB 509, § 55.

Operative date July 1, 2011.

24-710.11 Repealed. Laws 2011, LB 509, § 55.

Operative date July 1, 2011.

24-710.13 Annual benefit adjustment; cost-of-living adjustment calculation method.

(1) Beginning July 1, 2011, and each July 1 thereafter, the board shall determine the number of retired members or beneficiaries described in subdivision (4)(b) of this section in the retirement system and an annual benefit adjustment shall be made by the board for each retired member or beneficiary under one of the cost-of-living adjustment calculation methods found in subsection (2), (3), or (4) of this section. Each retired member or beneficiary, if eligible, shall receive an annual benefit adjustment under the cost-of-living adjustment calculation method that provides the retired member or beneficiary the greatest annual benefit adjustment increase. No retired member or beneficiary shall receive an annual benefit adjustment under more than one of the cost-of-living adjustment calculation methods provided in this section.

(2) The current benefit paid to a retired member or beneficiary under this subsection shall be adjusted so that the purchasing power of the benefit being

paid is not less than seventy-five percent of the purchasing power of the initial benefit. The purchasing power of the initial benefit in any year following the year in which the initial benefit commenced shall be calculated by dividing the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the current year by the Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the year in which the benefit commenced. The result shall be multiplied by the product that results when the amount of the initial benefit is multiplied by seventy-five percent. In any year in which applying the adjustment provided in subsection (3) of this section results in a benefit which would be less than seventy-five percent of the purchasing power of the initial benefit as calculated in this subsection, the adjustment shall instead be equal to the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers factor from the prior year to the current year.

(3) The current benefit paid to a retired member or beneficiary under this subsection shall be increased annually by the lesser of (a) the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year or (b) two and one-half percent.

(4)(a) The current benefit paid to a retired member or beneficiary under this subsection shall be calculated by multiplying the retired member's or beneficiary's total monthly benefit by the lesser of (i) the cumulative change in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the last adjustment of the total monthly benefit of each retired member or beneficiary through June 30 of the year for which the annual benefit adjustment is being calculated or (ii) an amount equal to three percent per annum compounded for the period from the last adjustment of the total monthly benefit of each retired member or beneficiary through June 30 of the year for which the annual benefit adjustment is being calculated.

(b) In order for a retired member or beneficiary to receive the cost-of-living adjustment calculation method provided in this subsection, the retired member or beneficiary shall be (i) a retired member or beneficiary who has been receiving a retirement benefit for at least five years if the member had at least twenty-five years of creditable service, (ii) a member who has been receiving a disability retirement benefit for at least five years pursuant to section 24-709, or (iii) a beneficiary who has been receiving a death benefit pursuant to section 24-707 or 24-707.01 for at least five years, if the member's or beneficiary's monthly accrual rate is less than or equal to the minimum accrual rate as determined by this subsection.

(c) The monthly accrual rate under this subsection is the retired member's or beneficiary's total monthly benefit divided by the number of years of creditable service earned by the retired or deceased member.

(d) The total monthly benefit under this subsection is the total benefit received by a retired member or beneficiary pursuant to the Judges Retirement Act and previous adjustments made pursuant to this section or any other provision of the act that grants a benefit or cost-of-living increase, but the total monthly benefit shall not include sums received by an eligible retired member or eligible beneficiary from federal sources.

(e) The minimum accrual rate under this subsection is forty-five dollars and thirty cents until adjusted pursuant to this subsection. Beginning July 1, 2011, the board shall annually adjust the minimum accrual rate to reflect the cumulative percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the last adjustment of the minimum accrual rate.

(5) Beginning July 1, 2011, and each July 1 thereafter, each retired member or beneficiary shall receive the sum of the annual benefit adjustment and such retiree's total monthly benefit less withholding, which sum shall be the retired member's or beneficiary's adjusted total monthly benefit. Each retired member or beneficiary shall receive the adjusted total monthly benefit until the expiration of the annuity option selected by the member or until the retired member or beneficiary again qualifies for the annual benefit adjustment, whichever occurs first.

(6) The annual benefit adjustment pursuant to this section shall not cause a current benefit to be reduced, and a retired member or beneficiary shall never receive less than the adjusted total monthly benefit until the annuity option selected by the member expires.

(7) The board shall adjust the annual benefit adjustment provided in this section so that the cost-of-living adjustment provided to the retired member or beneficiary at the time of the annual benefit adjustment does not exceed the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year. If the consumer price index used in this section is discontinued or replaced, a substitute index published by the United States Department of Labor shall be selected by the board which shall be a reasonable representative measurement of the cost-of-living for retired employees.

(8) The state shall contribute to the Nebraska Retirement Fund for Judges an annual level dollar payment certified by the board. For the 2011-12 fiscal year through the 2012-13 fiscal year, the annual level dollar payment certified by the board shall equal 1.04778 percent of six million eight hundred ninety-five thousand dollars.

Source: Laws 2011, LB509, § 10.
Operative date July 1, 2011.



CHAPTER 25

COURTS; CIVIL PROCEDURE

Article.

- 2. Commencement and Limitation of Actions. 25-212.
- 5. Commencement of Actions; Process.
 - (b) Service and Return of Summons. 25-505.01 to 25-514.01.
- 13. Judgments.
 - (e) Manner of Entering Judgment. 25-1319 to 25-1325.
- 15. Executions and Exemptions.
 - (a) Executions. 25-1501.01.
- 22. General Provisions.
 - (b) Clerks of Courts; Duties. 25-2209.
 - (d) Miscellaneous. 25-2221.
- 24. Interpreters. 25-2406.
- 27. Provisions Applicable to County Courts.
 - (a) Miscellaneous Procedural Provisions. 25-2705, 25-2708.
- 28. Small Claims Court. 25-2805.
- 29. Dispute Resolution.
 - (a) Dispute Resolution Act. 25-2911, 25-2921.
 - (d) Referral of Civil Cases. 25-2943.

ARTICLE 2

COMMENCEMENT AND LIMITATION OF ACTIONS

Section

25-212. Actions not specified.

25-212 Actions not specified.

An action for relief not otherwise provided for in Chapter 25 can only be brought within four years after the cause of action shall have accrued.

Source: R.S.1867, Code § 16, p. 396; R.S.1913, § 7574; C.S.1922, § 8517; C.S.1929, § 20-212; R.S.1943, § 25-212; Laws 2011, LB9, § 1. Effective date August 27, 2011.

ARTICLE 5

COMMENCEMENT OF ACTIONS; PROCESS

(b) SERVICE AND RETURN OF SUMMONS

Section

- 25-505.01. Service of summons; methods; State Court Administrator; maintain list.
- 25-506.01. Process; by whom served.
- 25-507.01. Summons; proof of service; return date.
- 25-508.01. Service on individual.
- 25-509.01. Service on corporation.
- 25-510.02. Service on state or political subdivision.
- 25-511.02. Service on dissolved corporation.
- 25-512.01. Service on partnership.
- 25-513.01. Service on unincorporated association.
- 25-514.01. Service on agent.

(b) SERVICE AND RETURN OF SUMMONS

25-505.01 Service of summons; methods; State Court Administrator; maintain list.

(1) Unless otherwise limited by statute or by the court, a plaintiff may elect to have service made by any of the following methods:

(a) Personal service which shall be made by leaving the summons with the individual to be served;

(b) Residence service which shall be made by leaving the summons at the usual place of residence of the individual to be served, with some person of suitable age and discretion residing therein;

(c) Certified mail service which shall be made by (i) within ten days of issuance, sending the summons to the defendant by certified mail with a return receipt requested showing to whom and where delivered and the date of delivery, and (ii) filing with the court proof of service with the signed receipt attached; or

(d) Designated delivery service which shall be made by (i) within ten days of issuance, sending the summons by a designated delivery service to the defendant, (ii) obtaining a signed delivery receipt showing to whom and where delivered and the date of delivery, and (iii) filing with the court proof of service with a copy of the signed delivery receipt attached. As used in this subdivision, a designated delivery service means a delivery service designated as such pursuant to 26 U.S.C. 7502(f) and a signed delivery receipt includes an electronic or facsimile receipt with an image of the recipient's signature.

(2) Failure to make service by the method elected by the plaintiff does not affect the validity of the service.

(3) The State Court Administrator shall maintain on the web site of the Supreme Court a list of designated delivery services.

Source: Laws 1983, LB 447, § 22; Laws 1984, LB 845, § 21; Laws 2009, LB35, § 6; Laws 2011, LB669, § 7.
Operative date May 27, 2011.

Cross References

Workers' compensation cases, manner of service, see sections 48-174, 48-175, 48-175.01, and 48-190.

25-506.01 Process; by whom served.

(1) Unless the plaintiff has elected certified mail service or designated delivery service, the summons shall be served by the sheriff of the county where service is made, by a person authorized by section 25-507 or otherwise authorized by law, or by a person, corporation, partnership, or limited liability company not a party to the action specially appointed by the court for that purpose.

(2) Certified mail service or designated delivery service shall be made by the plaintiff or plaintiff's attorney.

Source: Laws 1983, LB 447, § 23; Laws 1994, LB 1224, § 36; Laws 1999, LB 319, § 1; Laws 2009, LB35, § 7; Laws 2011, LB669, § 8.
Operative date May 27, 2011.

Cross References

Workers' compensation cases, manner of service, see sections 48-174, 48-175, 48-175.01, and 48-190.

25-507.01 Summons; proof of service; return date.

(1) Within twenty days after the date of issue, the person serving the summons, other than by certified mail service or designated delivery service, shall make proof of service to the court stating the time, place, including the address if applicable, name of the person with whom the summons was left, and method of service, or return the unserved summons to the court with a statement of the reason for the failure to serve.

(2) When service is by certified mail service or designated delivery service, the plaintiff or plaintiff's attorney shall file proof of service within ten days after the signed receipt is received or is available electronically, whichever occurs first.

(3) Failure to make proof of service or delay in doing so does not affect the validity of the service.

Source: Laws 1983, LB 447, § 24; Laws 2009, LB35, § 8; Laws 2011, LB669, § 9.

Operative date May 27, 2011.

Cross References

Workers' compensation cases, manner and time of service, see sections 48-174, 48-175, 48-175.01, and 48-190.

25-508.01 Service on individual.

(1) An individual party, other than a person under the age of fourteen years, may be served by personal, residence, certified mail, or designated delivery service.

(2) A party under the age of fourteen years may be served by personal, residence, certified mail, or designated delivery service upon an adult person with whom the minor resides and who is the minor's parent or guardian or the person having care of the minor. If none of these can be found, a party under the age of fourteen years may be served by personal service.

(3) If the person to be served is an incapacitated person for whom a conservator or guardian has been appointed or is confined in any institution, notice of the service shall be given to the conservator or guardian or the superintendent or similar official of the institution. Failure to give such notice does not affect the validity of the service on the incapacitated person.

Source: Laws 1983, LB 447, § 25; Laws 2011, LB669, § 10.

Operative date May 27, 2011.

25-509.01 Service on corporation.

A corporation may be served by personal, residence, certified mail, or designated delivery service upon any officer, director, managing agent, or registered agent, or by leaving the process at the corporation's registered office with a person employed therein, or by certified mail or designated delivery service to the corporation's registered office.

Source: Laws 1983, LB 447, § 26; Laws 2011, LB669, § 11.

Operative date May 27, 2011.

Cross References

For process and service on foreign insurance corporation, see sections 44-135, 44-2009 to 44-2013, and 44-5507.
Registered office of corporation, see sections 21-1934, 21-19,152, 21-2031, and 21-20,174.

25-510.02 Service on state or political subdivision.

(1) The State of Nebraska, any state agency as defined in section 81-8,210, and any employee of the state as defined in section 81-8,210 sued in an official capacity may be served by leaving the summons at the office of the Attorney General with the Attorney General, deputy attorney general, or someone designated in writing by the Attorney General, or by certified mail or designated delivery service addressed to the office of the Attorney General.

(2) Any county, city, or village of this state may be served by personal, residence, certified mail, or designated delivery service upon the chief executive officer or clerk.

(3) Any political subdivision of this state, as defined in subdivision (1) of section 13-903, other than a county, city, or village, may be served by personal, residence, certified mail, or designated delivery service upon the chief executive officer, clerk, secretary, or other official whose duty it is to maintain the official records, or any member of the governing board or body, or by certified mail or designated delivery service to the principal office of the political subdivision.

Source: Laws 1983, LB 447, § 27; Laws 2011, LB669, § 12.
Operative date May 27, 2011.

25-511.02 Service on dissolved corporation.

A dissolved corporation may be served by personal, residence, certified mail, or designated delivery service upon any appointed receiver. If there is no receiver, a dissolved corporation may be served by personal, residence, certified mail, or designated delivery service upon any person who at the time of dissolution was an officer, director, managing agent, or registered agent, or upon any officer or director designated in the last annual report filed with the Secretary of State.

Source: Laws 1983, LB 447, § 28; Laws 2011, LB669, § 13.
Operative date May 27, 2011.

25-512.01 Service on partnership.

A partnership or limited partnership may be served by personal, residence, certified mail, or designated delivery service upon any partner except a limited partner, or by certified mail or designated delivery service at its usual place of business, or the process may be left at its usual place of business with an employee of the partnership or limited partnership.

Source: Laws 1983, LB 447, § 29; Laws 2011, LB669, § 14.
Operative date May 27, 2011.

Cross References

Registration and agent for service of process of foreign limited partnerships, see section 67-281.

25-513.01 Service on unincorporated association.

An unincorporated association may be served by personal, residence, certified mail, or designated delivery service upon an officer or managing agent, or by certified mail or designated delivery service to the association at its usual

place of business, or by leaving the process at its usual place of business with an employee of the unincorporated association.

Source: Laws 1983, LB 447, § 30; Laws 2011, LB669, § 15.
Operative date May 27, 2011.

25-514.01 Service on agent.

Any party may be served by personal, residence, certified mail, or designated delivery service upon an agent authorized by appointment or by law to receive service of process.

Source: Laws 1983, LB 447, § 31; Laws 2011, LB669, § 16.
Operative date May 27, 2011.

**ARTICLE 13
JUDGMENTS**

(e) MANNER OF ENTERING JUDGMENT

Section	
25-1319.	Complete record; duty of clerk.
25-1320.	Complete record; when made; judge to sign.
25-1321.	Complete record; contents.
25-1323.	Repealed. Laws 2011, LB 17, § 8.
25-1324.	Repealed. Laws 2011, LB 17, § 8.
25-1325.	Repealed. Laws 2011, LB 17, § 8.

(e) MANNER OF ENTERING JUDGMENT

25-1319 Complete record; duty of clerk.

The clerk shall make a complete record of every civil, criminal, and appeal case filed in the court as soon as it is finally determined.

Source: R.S.1867, Code § 444, p. 467; R.S.1913, § 8012; C.S.1922, § 8953; C.S.1929, § 20-1319; R.S.1943, § 25-1319; Laws 2011, LB17, § 1.
Operative date January 1, 2012.

25-1320 Complete record; when made; judge to sign.

The clerk shall make up the complete record required under section 25-1319 in the vacation next after the term at which the same was determined, and the presiding judge of such court shall, at its next term thereafter, subscribe the same.

Source: R.S.1867, Code § 445, p. 467; R.S.1913, § 8013; C.S.1922, § 8954; C.S.1929, § 20-1320; R.S.1943, § 25-1320; Laws 2011, LB17, § 2.
Operative date January 1, 2012.

25-1321 Complete record; contents.

The complete record shall include the complaint, the process, the return, the pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the court maintained in the state's electronic case management system and either in paper form or on microfilm. All journal entries and all such filings as are required to be entered in full in the register of actions shall, by reference, be made a part of the complete record for all

purposes, including the taxing of fees and costs. Evidence introduced at any proceeding is not part of the complete record of the cause.

Source: R.S.1867, Code § 446, p. 467; R.S.1913, § 8014; C.S.1922, § 8955; C.S.1929, § 20-1321; Laws 1941, c. 33, § 1, p. 143; C.S.Supp.,1941, § 20-1321; R.S.1943, § 25-1321; Laws 2002, LB 876, § 25; Laws 2011, LB17, § 3.
Operative date January 1, 2012.

25-1323 Repealed. Laws 2011, LB 17, § 8.

Operative date January 1, 2012.

25-1324 Repealed. Laws 2011, LB 17, § 8.

Operative date January 1, 2012.

25-1325 Repealed. Laws 2011, LB 17, § 8.

Operative date January 1, 2012.

ARTICLE 15

EXECUTIONS AND EXEMPTIONS

(a) EXECUTIONS

Section

25-1501.01. District court judgment; execution issued to any county in state; procedure; lien on real estate; procedure.

(a) EXECUTIONS

25-1501.01 District court judgment; execution issued to any county in state; procedure; lien on real estate; procedure.

Any person having a judgment rendered by a district court may request the clerk of such court to issue execution on the judgment in the same manner as execution is issued upon other judgments rendered in the district court and direct the execution on the judgment to any county in the state. Such person may request that garnishment, attachment, or any other aid to execution for personal property or wages be directed to any county without the necessity of filing a transcript of the judgment in the receiving county, and any hearing or proceeding with regard to such execution or aid in execution shall be heard in the court in which the judgment was originally rendered. Such execution shall not serve as a lien on real estate in a county other than the county where the judgment was rendered unless a transcript of the judgment is filed with the clerk of the district court in the county in which the real estate is located.

Source: Laws 2011, LB15, § 1.
Effective date August 27, 2011.

ARTICLE 22

GENERAL PROVISIONS

(b) CLERKS OF COURTS; DUTIES

Section

25-2209. Clerk of district court; required records enumerated; compilation and filing; methods authorized.

Section

(d) MISCELLANEOUS

25-2221. Time; how computed; offices may be closed, when; federal holiday schedule observed; exceptions.

(b) CLERKS OF COURTS; DUTIES

25-2209 Clerk of district court; required records enumerated; compilation and filing; methods authorized.

The clerk of the district court shall keep records to be called the appearance docket, the trial docket, the journal, the complete record, the execution docket, the fee book, the general index, and the judgment record. Such records may be compiled, filed, and maintained on a computer system. Effective not later than October 1, 1992, provision for dockets and records of the district courts shall be established by rule of the Supreme Court. The journal may be compiled and filed on microfilm. The recording of all instruments by the roll form of microfilm may be substituted for the method of recording instruments in books. If this method of recording instruments on microfilm is used, a security copy on silver negative microfilm in roll form must be maintained and filed off premises under safe conditions to insure the protection of the records. The internal reference copies or work copies of the instruments recorded on microfilm may be in any photographic form to provide the necessary information as may be determined by the official in charge, and shall meet the microfilm standards as prescribed by the State Records Administrator.

Source: R.S.1867, Code § 321, p. 448; G.S.1873, c. 57, § 321, p. 579; R.S.1913, § 8557; C.S.1922, § 9508; C.S.1929, § 20-2209; R.S. 1943, § 25-2209; Laws 1971, LB 128, § 1; Laws 1992, LB 1059, § 13; Laws 2011, LB17, § 4.
Operative date January 1, 2012.

(d) MISCELLANEOUS

25-2221 Time; how computed; offices may be closed, when; federal holiday schedule observed; exceptions.

Except as may be otherwise more specifically provided, the period of time within which an act is to be done in any action or proceeding shall be computed by excluding the day of the act, event, or default after which the designated period of time begins to run. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a day during which the offices of courts of record may be legally closed as provided in this section, in which event the period shall run until the end of the next day on which the office will be open.

All courts and their offices may be closed on Saturdays, Sundays, days on which a specifically designated court is closed by order of the Chief Justice of the Supreme Court, and these holidays: New Year's Day, January 1; Birthday of Martin Luther King, Jr., the third Monday in January; President's Day, the third Monday in February; Arbor Day, the last Friday in April; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Columbus Day, the second Monday in October; Veterans Day, November 11; Thanksgiving Day, the fourth Thursday in November; the day after Thanksgiving; Christmas Day, December 25; and all days declared by law

or proclamation of the Governor to be holidays. Such days shall be designated as nonjudicial days. If any such holiday falls on Sunday, the following Monday shall be a holiday. If any such holiday falls on Saturday, the preceding Friday shall be a holiday. Court services shall be available on all other days. If the date designated by the state for observance of any legal holiday pursuant to this section, except Veterans Day, is different from the date of observance of such holiday pursuant to a federal holiday schedule, the federal holiday schedule shall be observed.

Source: R.S.1867, Code § 895, p. 549; R.S.1913, § 8570; C.S.1922, § 9521; C.S.1929, § 20-2222; R.S.1943, § 25-2221; Laws 1959, c. 108, § 1, p. 437; Laws 1967, c. 151, § 1, p. 448; Laws 1969, c. 844, § 1, p. 3179; Laws 1973, LB 34, § 1; Laws 1975, LB 218, § 1; Laws 1978, LB 855, § 1; Laws 1988, LB 821, § 1; Laws 1988, LB 909, § 1; Laws 2002, LB 876, § 55; Laws 2003, LB 760, § 6; Laws 2011, LB669, § 17.
Operative date August 27, 2011.

**ARTICLE 24
INTERPRETERS**

Section
25-2406. Interpreters; fees and expenses.

25-2406 Interpreters; fees and expenses.

The fees and expenses of an interpreter shall be fixed and ordered paid by the judge before whom such proceeding takes place, in accordance with a fee schedule established by the Supreme Court, and be paid out of the General Fund with funds appropriated to the Supreme Court for that purpose or from other funds, including grant money, made available to the Supreme Court for such purpose.

Source: Laws 1973, LB 116, § 6; Laws 1999, LB 54, § 3; Laws 2011, LB669, § 18.
Operative date August 27, 2011.

**ARTICLE 27
PROVISIONS APPLICABLE TO COUNTY COURTS**

(a) MISCELLANEOUS PROCEDURAL PROVISIONS

Section
25-2705. Trial by jury; demand for; exceptions; time; laws applicable.
25-2708. Estates, guardianships, conservatorships, and trusts; real estate; certificate of pending proceeding; filing; county judge; duties; guardian or conservator; filing required.

(a) MISCELLANEOUS PROCEDURAL PROVISIONS

25-2705 Trial by jury; demand for; exceptions; time; laws applicable.

(1) Either party to any case in county court, except criminal cases arising under city or village ordinances, traffic infractions, other infractions, and any matter arising under the Nebraska Probate Code or the Nebraska Uniform Trust Code, may demand a trial by jury. In civil cases, the demand shall be in writing and shall be filed with the court:

- (a) By a plaintiff on the date the complaint is filed with the court;
- (b) By a defendant on or before the date the answer is filed with the court;
- (c) By a counterclaimant on the date the counterclaim is filed with the court;
- (d) By a counterclaim defendant on or before the date the reply to the counterclaim is filed with the court;
- (e) By a third-party plaintiff on the date the third-party complaint is filed with the court;
- (f) By a third-party defendant on or before the date the answer to the third-party complaint is filed with the court;
- (g) By a cross-claimant on the date the cross-claim is filed with the court; and
- (h) By a cross-claim defendant on or before the date the answer to the cross-claim is filed with the court.

(2) All provisions of law relating to juries in the district courts shall apply to juries in the county courts, and the district court jury list shall be used, except that juries in the county courts shall consist of six persons.

Source: Laws 1972, LB 1032, § 36; Laws 1973, LB 6, § 1; Laws 1973, LB 548, § 1; Laws 1975, LB 481, § 5; Laws 1979, LB 534, § 6; Laws 1984, LB 13, § 18; Laws 1987, LB 77, § 4; R.S.Supp.,1988, § 24-536; Laws 2003, LB 130, § 116; Laws 2011, LB669, § 19. Operative date August 27, 2011.

Cross References

Nebraska Probate Code, see section 30-2201.
Nebraska Uniform Trust Code, see section 30-3801.

25-2708 Estates, guardianships, conservatorships, and trusts; real estate; certificate of pending proceeding; filing; county judge; duties; guardian or conservator; filing required.

In any proceeding in the county court involving (1) the probate of wills, (2) the administration of estates, (3) the determination of heirs, (4) the determination of inheritance tax, (5) guardianships, (6) conservatorships, where real estate is any part of the assets of the estate or proceeding, or (7) trusts, where real estate is specifically described as an asset of the trust, the county judge before whom the proceeding is pending shall issue a certificate which shall be filed with the register of deeds of the county in which the real estate is located within ten days after the description of the real estate is filed in the proceeding. A guardian or conservator shall file a copy of his or her letters with the register of deeds in every county in which the ward has real property or an interest in real property. The certificate shall be in the following form:

This is to certify that there is pending in the county court of
County, a proceeding

(describe proceeding and name of person involved)

in which the following described real estate is involved, to wit:

.....

(describe real estate)

.....
County Judge

Source: Laws 1969, c. 240, § 1, p. 885; Laws 1971, LB 41, § 1; R.S.Supp.,1971, § 24-562.01; Laws 1972, LB 1032, § 59; Laws 1975, LB 481, § 7; Laws 1980, LB 694, § 1; R.S.1943, (1985), § 24-559; Laws 2003, LB 130, § 117; Laws 2011, LB157, § 1. Operative date January 1, 2012.

ARTICLE 28

SMALL CLAIMS COURT

Section
25-2805. Trial without jury; transfer to county court; fee; jury demand; timeframe.

25-2805 Trial without jury; transfer to county court; fee; jury demand; timeframe.

All matters in the Small Claims Court shall be tried to the court without a jury. Except as provided in section 25-2618.01, any defendant in an action or such defendant’s attorney may transfer the case to the regular docket of the county court by giving notice to the court at least two days prior to the time set for the hearing. Upon such notice the case shall be transferred to the regular docket of the county court. The party causing the transfer of a case from the Small Claims Court to the regular docket shall pay as a fee the difference between the fee for filing a claim in Small Claims Court and the fee for filing a claim on the regular docket.

In any action transferred to the regular docket, there shall be no motions challenging pleadings unless ordered by the court upon a showing that any such procedure is necessary to the prompt and just determination of the action. In any action transferred to the regular docket, a defendant shall file an answer. Any jury demand in cases transferred from the Small Claims Court to county court shall be made within the timeframes provided in section 25-2705.

Source: Laws 1972, LB 1032, § 25; Laws 1975, LB 283, § 2; Laws 1980, LB 892, § 2; Laws 1981, LB 42, § 11; Laws 1984, LB 13, § 15; Laws 1987, LB 77, § 3; R.S.Supp.,1988, § 24-525; Laws 1997, LB 151, § 10; Laws 2002, LB 876, § 58; Laws 2011, LB669, § 20. Operative date August 27, 2011.

ARTICLE 29

DISPUTE RESOLUTION

(a) DISPUTE RESOLUTION ACT

Section
25-2911. Dispute resolution; types of cases; referral of cases.
25-2921. Dispute Resolution Cash Fund; created; use; investment.

(d) REFERRAL OF CIVIL CASES

25-2943. Referral of civil cases to mediation or alternative dispute resolution; rules of practice.

(a) DISPUTE RESOLUTION ACT

25-2911 Dispute resolution; types of cases; referral of cases.

(1) The following types of cases may be accepted for dispute resolution at an approved center:

(a) Civil claims and disputes, including, but not limited to, consumer and commercial complaints, disputes between neighbors, disputes between business associates, disputes between landlords and tenants, and disputes within communities;

(b) Disputes concerning child custody, parenting time, visitation, or other access and other areas of domestic relations;

(c) Juvenile offenses and disputes involving juveniles; and

(d) Contested guardianship and contested conservatorship proceedings.

(2) An approved center may accept cases referred by a court, an attorney, a law enforcement officer, a social service agency, a school, or any other interested person or agency or upon the request of the parties involved. A case may be referred prior to the commencement of formal judicial proceedings or may be referred as a pending court case. In order for a referral to be effective, all parties involved must consent to such referral. If a court refers a case to an approved center, the center shall provide information to the court as to whether an agreement was reached. If the court requests a copy of the agreement, the center shall provide it.

Source: Laws 1991, LB 90, § 11; Laws 2007, LB554, § 25; Laws 2011, LB157, § 2.

Operative date January 1, 2012.

Cross References

Farm Mediation Act, see section 2-4801.

25-2921 Dispute Resolution Cash Fund; created; use; investment.

The Dispute Resolution Cash Fund is created. The State Court Administrator shall administer the fund. The fund shall consist of proceeds received pursuant to subdivision (10) of section 25-2908 and section 33-155. Except as otherwise directed by the Supreme Court during the period from November 21, 2009, until June 30, 2013, the fund shall be used to supplement the administration of the office and the support of the approved centers. It is the intent of the Legislature that any General Fund money supplanted by the Dispute Resolution Cash Fund may be used for the support and maintenance of the State Library. 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 1996, LB 922, § 2; Laws 2003, LB 760, § 8; Laws 2009, First Spec. Sess., LB3, § 12; Laws 2011, LB378, § 18.

Effective date May 18, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

(d) REFERRAL OF CIVIL CASES

25-2943 Referral of civil cases to mediation or alternative dispute resolution; rules of practice.

A court may refer a civil case, including a contested guardianship or contested conservatorship proceeding, to mediation or another form of alternative dispute resolution and, unless otherwise ordered following a hearing upon a

motion to object to such referral, may state a date for the case to return to court. Such date shall be no longer than ninety days after the date the order was signed unless the court grants an extension upon request of the parties. Any agreement or resolution made in mediation or another form of alternative dispute resolution shall be voluntarily entered into by the parties. An individual trial court, an appellate court, or the Supreme Court on its own initiative may adopt rules of practice governing the procedures for referral of cases to mediation and other forms of dispute resolution. Such services may be provided by approved centers on a sliding scale of fees under the Dispute Resolution Act.

Source: Laws 2008, LB1014, § 9; Laws 2011, LB157, § 3.
Operative date January 1, 2012.

CHAPTER 28

CRIMES AND PUNISHMENTS

Article.

1. Provisions Applicable to Offenses Generally.
 - (a) General Provisions. 28-101 to 28-106.
3. Offenses against the Person.
 - (a) General Provisions. 28-306 to 28-335.
 - (c) Homicide of the Unborn Child Act. 28-394.
4. Drugs and Narcotics. 28-401.01 to 28-462.
9. Offenses Involving Integrity and Effectiveness of Government Operation. 28-934.
12. Offenses against Public Health and Safety. 28-1204.04, 28-1254.
13. Miscellaneous Offenses.
 - (h) Picketing. 28-1320.02.

ARTICLE 1

PROVISIONS APPLICABLE TO OFFENSES GENERALLY

(a) GENERAL PROVISIONS

Section

- 28-101. Code, how cited.
- 28-105. Felonies; classification of penalties; sentences; where served; eligibility for probation.
- 28-106. Misdemeanors; classification of penalties; sentences; where served.

(a) GENERAL PROVISIONS

28-101 Code, how cited.

Sections 28-101 to 28-1356 shall be known and may be cited as the Nebraska Criminal Code.

Source: Laws 1977, LB 38, § 1; Laws 1980, LB 991, § 8; Laws 1982, LB 465, § 1; Laws 1985, LB 371, § 1; Laws 1985, LB 406, § 1; Laws 1986, LB 956, § 12; Laws 1986, LB 969, § 1; Laws 1987, LB 451, § 1; Laws 1988, LB 170, § 1; Laws 1988, LB 463, § 41; Laws 1989, LB 372, § 1; Laws 1990, LB 50, § 10; Laws 1990, LB 571, § 2; Laws 1990, LB 1018, § 1; Laws 1991, LB 135, § 1; Laws 1991, LB 477, § 2; Laws 1992, LB 1098, § 5; Laws 1992, LB 1184, § 8; Laws 1994, LB 988, § 1; Laws 1994, LB 1035, § 1; Laws 1994, LB 1129, § 1; Laws 1995, LB 371, § 1; Laws 1995, LB 385, § 11; Laws 1996, LB 908, § 2; Laws 1997, LB 90, § 1; Laws 1997, LB 814, § 6; Laws 1998, LB 218, § 2; Laws 1999, LB 6, § 1; Laws 1999, LB 49, § 1; Laws 1999, LB 163, § 1; Laws 1999, LB 511, § 1; Laws 2002, LB 276, § 1; Laws 2002, LB 824, § 1; Laws 2003, LB 17, § 1; Laws 2003, LB 43, § 8; Laws 2003, LB 273, § 2; Laws 2004, LB 943, § 1; Laws 2006, LB 57, § 1; Laws 2006, LB 287, § 4; Laws 2006, LB 1086, § 6; Laws 2006, LB 1199, § 1; Laws 2007, LB142, § 1; Laws 2008, LB764, § 1; Laws 2008, LB1055, § 1; Laws 2009, LB63, § 2; Laws 2009, LB97, § 9; Laws 2009, LB155, § 1; Laws 2010, LB252, § 1; Laws

2010, LB594, § 1; Laws 2010, LB894, § 1; Laws 2010, LB1103, § 11; Laws 2011, LB20, § 1; Laws 2011, LB226, § 1; Laws 2011, LB667, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB20, section 1, with LB226, section 1, and LB667, section 1, to reflect all amendments.

Note: Changes made by LB226 became effective August 27, 2011. Changes made by LB20 became operative January 1, 2012. Changes made by LB667 became operative January 1, 2012.

28-105 Felonies; classification of penalties; sentences; where served; eligibility for probation.

(1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, felonies are divided into nine classes which are distinguished from one another by the following penalties which are authorized upon conviction:

Class I felony	Death
Class IA felony	Life imprisonment
Class IB felony	Maximum - life imprisonment Minimum - twenty years imprisonment
Class IC felony	Maximum - fifty years imprisonment Mandatory minimum - five years imprisonment
Class ID felony	Maximum - fifty years imprisonment Mandatory minimum - three years imprisonment
Class II felony	Maximum - fifty years imprisonment Minimum - one year imprisonment
Class III felony	Maximum - twenty years imprisonment, or twenty-five thousand dollars fine, or both Minimum - one year imprisonment
Class IIIA felony	Maximum - five years imprisonment, or ten thousand dollars fine, or both Minimum - none
Class IV felony	Maximum - five years imprisonment, or ten thousand dollars fine, or both Minimum - none

(2) All sentences of imprisonment for Class IA, IB, IC, ID, II, and III felonies and sentences of one year or more for Class IIIA and IV felonies shall be served in institutions under the jurisdiction of the Department of Correctional Services. Sentences of less than one year shall be served in the county jail except as provided in this subsection. If the department certifies that it has programs and facilities available for persons sentenced to terms of less than one year, the court may order that any sentence of six months or more be served in any institution under the jurisdiction of the department. Any such certification shall be given by the department to the State Court Administrator, who shall forward copies thereof to each judge having jurisdiction to sentence in felony cases.

(3) Nothing in this section shall limit the authority granted in sections 29-2221 and 29-2222 to increase sentences for habitual criminals.

(4) A person convicted of a felony for which a mandatory minimum sentence is prescribed shall not be eligible for probation.

Source: Laws 1977, LB 38, § 5; Laws 1989, LB 592, § 1; Laws 1995, LB 371, § 2; Laws 1997, LB 364, § 1; Laws 1998, LB 900, § 1; Laws 1998, LB 1266, § 1; Laws 2002, Third Spec. Sess., LB 1, § 1; Laws 2011, LB12, § 1.
Effective date August 27, 2011.

28-106 Misdemeanors; classification of penalties; sentences; where served.

(1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, misdemeanors are divided into seven classes which are distinguished from one another by the following penalties which are authorized upon conviction:

Class I misdemeanor	Maximum - not more than one year imprisonment, or one thousand dollars fine, or both Minimum - none
Class II misdemeanor	Maximum - six months imprisonment, or one thousand dollars fine, or both Minimum - none
Class III misdemeanor	Maximum - three months imprisonment, or five hundred dollars fine, or both Minimum - none
Class IIIA misdemeanor	Maximum - seven days imprisonment, five hundred dollars fine, or both Minimum - none
Class IV misdemeanor	Maximum - no imprisonment, five hundred dollars fine Minimum - one hundred dollars fine
Class V misdemeanor	Maximum - no imprisonment, one hundred dollars fine Minimum - none
Class W misdemeanor	Driving under the influence or implied consent First conviction Maximum - sixty days imprisonment and five hundred dollars fine Mandatory minimum - seven days imprisonment and five hundred dollars fine Second conviction Maximum - six months imprisonment and five hundred dollars fine Mandatory minimum - thirty days imprisonment and five hundred dollars fine Third conviction Maximum - one year imprisonment and one thousand dollars fine Mandatory minimum - ninety days imprisonment and one thousand dollars fine

(2) Sentences of imprisonment in misdemeanor cases shall be served in the county jail, except that in the following circumstances the court may, in its discretion, order that such sentences be served in institutions under the jurisdiction of the Department of Correctional Services:

- (a) If the sentence is for a term of one year upon conviction of a Class I misdemeanor;
- (b) If the sentence is to be served concurrently or consecutively with a term for conviction of a felony; or
- (c) If the Department of Correctional Services has certified as provided in section 28-105 as to the availability of facilities and programs for short-term prisoners and the sentence is for a term of six months or more.

Source: Laws 1977, LB 38, § 6; Laws 1982, LB 568, § 1; Laws 1986, LB 153, § 1; Laws 1992, LB 291, § 1; Laws 1998, LB 309, § 1; Laws

2002, LB 82, § 3; Laws 2005, LB 594, § 1; Laws 2011, LB675, § 1.

Operative date January 1, 2012.

ARTICLE 3

OFFENSES AGAINST THE PERSON

(a) GENERAL PROVISIONS

Section

- 28-306. Motor vehicle homicide; penalty.
- 28-311. Criminal child enticement; attempt; penalties.
- 28-311.08. Unlawful intrusion; penalty; court; duties; registration under Sex Offender Registration Act; statute of limitations.
- 28-335. Abortion by other than licensed physician; penalty; physical presence; violation; penalty.

(c) HOMICIDE OF THE UNBORN CHILD ACT

- 28-394. Motor vehicle homicide of an unborn child; penalty.

(a) GENERAL PROVISIONS

28-306 Motor vehicle homicide; penalty.

(1) A person who causes the death of another unintentionally while engaged in the operation of a motor vehicle in violation of the law of the State of Nebraska or in violation of any city or village ordinance commits motor vehicle homicide.

(2) Except as provided in subsection (3) of this section, motor vehicle homicide is a Class I misdemeanor.

(3)(a) If the proximate cause of the death of another is the operation of a motor vehicle in violation of section 60-6,213 or 60-6,214, motor vehicle homicide is a Class IIIA felony.

(b) If the proximate cause of the death of another is the operation of a motor vehicle in violation of section 60-6,196 or 60-6,197.06, motor vehicle homicide is a Class III felony. The court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least one year and not more than fifteen years and shall order that the operator's license of such person be revoked for the same period.

(c) If the proximate cause of the death of another is the operation of a motor vehicle in violation of section 60-6,196 or 60-6,197.06, motor vehicle homicide is a Class II felony if the defendant has a prior conviction for a violation of section 60-6,196 or 60-6,197.06, under a city or village ordinance enacted in conformance with section 60-6,196, or under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the defendant was convicted would have been a violation of section 60-6,196. The court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of fifteen years and shall order that the operator's license of such person be revoked for the same period.

(d) An order of the court described in subdivision (b) or (c) of this subsection shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

(4) The crime punishable under this section shall be treated as a separate and distinct offense from any other offense arising out of acts alleged to have been committed while the person was in violation of this section.

Source: Laws 1977, LB 38, § 21; Laws 1979, LB 1, § 1; Laws 1992, LB 291, § 2; Laws 1993, LB 370, § 9; Laws 1993, LB 575, § 3; Laws 1997, LB 364, § 3; Laws 2001, LB 38, § 1; Laws 2004, LB 208, § 1; Laws 2006, LB 925, § 1; Laws 2011, LB667, § 3.
Operative date January 1, 2012.

Cross References

Operator's license, assessment of points and revocation, see sections 60-496 to 60-497.01, 60-498 to 60-498.04, 60-499, and 60-4.182 et seq.

28-311 Criminal child enticement; attempt; penalties.

(1)(a) No person, by any means and without privilege to do so, shall knowingly solicit, coax, entice, or lure or attempt to solicit, coax, entice, or lure any child under the age of fourteen years to enter into any vehicle, whether or not the person knows the age of the child.

(b) No person, by any means and without privilege to do so, shall solicit, coax, entice, or lure or attempt to solicit, coax, entice, or lure any child under the age of fourteen years to enter into any place with the intent to seclude the child from his or her parent, guardian, or other legal custodian or the general public, whether or not the person knows the age of the child. For purposes of this subdivision, seclude means to take, remove, hide, secrete, conceal, isolate, or otherwise unlawfully separate.

(2) It is an affirmative defense to a charge under this section that:

(a) The person had the express or implied permission of the parent, guardian, or other legal custodian of the child in undertaking the activity;

(b)(i) The person is a law enforcement officer, emergency services provider as defined in section 71-507, firefighter, or other person who regularly provides emergency services, is the operator of a bookmobile or other such vehicle operated by the state or a political subdivision and used for informing, educating, organizing, or transporting children, is a paid employee of, or a volunteer for, a nonprofit or religious organization which provides activities for children, or is an employee or agent of or a volunteer acting under the direction of any board of education and (ii) the person listed in subdivision (2)(b)(i) of this section was, at the time the person undertook the activity, acting within the scope of his or her lawful duties in that capacity; or

(c) The person undertook the activity in response to a bona fide emergency situation or the person undertook the activity in response to a reasonable belief that it was necessary to preserve the health, safety, or welfare of the child.

(3) Any person who violates this section commits criminal child enticement and is guilty of a Class IIIA felony. If such person has previously been convicted of (a) criminal child enticement under this section, (b) sexual assault of a child in the first degree under section 28-319.01, (c) sexual assault of a child in the second or third degree under section 28-320.01, (d) child enticement by means of an electronic communication device under section 28-320.02, or (e) assault under section 28-308, 28-309, or 28-310, kidnapping under section 28-313, or false imprisonment under section 28-314 or 28-315 when the victim was under

eighteen years of age when such person violates this section, such person is guilty of a Class III felony.

Source: Laws 1999, LB 49, § 2; Laws 2006, LB 1199, § 3; Laws 2009, LB97, § 10; Laws 2011, LB665, § 1.
Effective date May 12, 2011.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-311.08 Unlawful intrusion; penalty; court; duties; registration under Sex Offender Registration Act; statute of limitations.

(1) It shall be unlawful for any person to knowingly intrude upon any other person without his or her consent or knowledge in a place of solitude or seclusion.

(2) For purposes of this section:

(a) Intrude means either the:

(i) Viewing of another person in a state of undress as it is occurring; or
(ii) Recording by video, photographic, digital, or other electronic means of another person in a state of undress; and

(b) Place of solitude or seclusion means a place where a person would intend to be in a state of undress and have a reasonable expectation of privacy, including, but not limited to, any facility, public or private, used as a restroom, tanning booth, locker room, shower room, fitting room, or dressing room.

(3)(a) Violation of this section involving an intrusion as defined in subdivision (2)(a)(i) of this section is a Class I misdemeanor.

(b) Violation of this section involving an intrusion as defined in subdivision (2)(a)(ii) of this section is a Class IV felony.

(c) Violation of this section is a Class III felony if video or an image from the intrusion is distributed to another person or otherwise made public in any manner which would enable it to be viewed by another person.

(4) As part of sentencing following a conviction for a violation of this section, the court shall make a finding as to the ages of the defendant and the victim at the time the offense occurred. If the defendant is found to have been nineteen years of age or older and the victim is found to have been less than eighteen years of age at such time, then the defendant shall be required to register under the Sex Offender Registration Act.

(5) No person shall be prosecuted for unlawful intrusion pursuant to subdivision (3)(b) or (c) of this section unless the indictment for such offense is found by a grand jury or a complaint filed before a magistrate within three years after the later of:

(a) The commission of the crime;

(b) Law enforcement's or a victim's receipt of actual or constructive notice of either the existence of a video or other electronic recording of the unlawful intrusion or the distribution of images, video, or other electronic recording of the unlawful intrusion; or

(c) The youngest victim of the intrusion reaching the age of twenty-one years.

Source: Laws 1996, LB 908, § 1; Laws 2011, LB61, § 1.
Effective date August 27, 2011.

Cross References

Sex Offender Registration Act, see section 29-4001.

28-335 Abortion by other than licensed physician; penalty; physical presence; violation; penalty.

(1) The performing of an abortion by any person other than a licensed physician is a Class IV felony.

(2) No abortion shall be performed, induced, or attempted unless the physician who uses or prescribes any instrument, device, medicine, drug, or other substance to perform, induce, or attempt the abortion is physically present in the same room with the patient when the physician performs, induces, or attempts to perform or induce the abortion. Any person who knowingly or recklessly violates this subsection shall be guilty of a Class IV felony. No civil or criminal penalty shall be assessed against the patient upon whom the abortion is performed, induced, or attempted to be performed or induced.

Source: Laws 1977, LB 38, § 50; Laws 2011, LB521, § 1.
Effective date August 27, 2011.

(c) HOMICIDE OF THE UNBORN CHILD ACT

28-394 Motor vehicle homicide of an unborn child; penalty.

(1) A person who causes the death of an unborn child unintentionally while engaged in the operation of a motor vehicle in violation of the law of the State of Nebraska or in violation of any city or village ordinance commits motor vehicle homicide of an unborn child.

(2) Except as provided in subsection (3) of this section, motor vehicle homicide of an unborn child is a Class I misdemeanor.

(3)(a) If the proximate cause of the death of an unborn child is the operation of a motor vehicle in violation of section 60-6,213 or 60-6,214, motor vehicle homicide of an unborn child is a Class IV felony.

(b) Except as provided in subdivision (3)(c) of this section, if the proximate cause of the death of an unborn child is the operation of a motor vehicle in violation of section 60-6,196 or 60-6,197.06, motor vehicle homicide of an unborn child is a Class IV felony and the court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years after the date ordered by the court and shall order that the operator's license of such person be revoked for the same period. The revocation shall not run concurrently with any jail term imposed.

(c) If the proximate cause of the death of an unborn child is the operation of a motor vehicle in violation of section 60-6,196 or 60-6,197.06 and the defendant has a prior conviction for a violation of section 60-6,196 or a city or village ordinance enacted in conformance with section 60-6,196, motor vehicle homicide of an unborn child is a Class III felony and the court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years after the date ordered by the court and shall order that the operator's license of such person be revoked for the same period. The revocation shall not run concurrently with any jail term imposed.

(4) The crime punishable under this section shall be treated as a separate and distinct offense from any other offense arising out of acts alleged to have been committed while the person was in violation of this section.

Source: Laws 2002, LB 824, § 8; Laws 2004, LB 208, § 2; Laws 2011, LB667, § 4.
Operative date January 1, 2012.

ARTICLE 4

DRUGS AND NARCOTICS

Section

- 28-401.01. Act, how cited.
- 28-405. Controlled substances; schedules; enumerated.
- 28-414. Controlled substance; prescription; transfer; destruction; requirements.
- 28-416. Prohibited acts; violations; penalties.
- 28-435.01. Health care facility; peer review organization or professional association; report required; contents; confidentiality; immunity; failure to report; civil penalty; disposition.
- 28-456.01. Pseudoephedrine or phenylpropanolamine; limitation on acquisition; violation; penalty.
- 28-458. Methamphetamine precursor; terms, defined.
- 28-459. Methamphetamine precursor; seller; duties; waiver authorized.
- 28-460. Methamphetamine precursor; access to exchange to law enforcement.
- 28-461. Methamphetamine precursor; seller; immunity.
- 28-462. Methamphetamine precursor; prohibited acts; penalty.

28-401.01 Act, how cited.

Sections 28-401 to 28-456.01 and 28-458 to 28-462 shall be known and may be cited as the Uniform Controlled Substances Act.

Source: Laws 1977, LB 38, § 98; R.S.1943, (1995), § 28-438; Laws 2001, LB 113, § 17; Laws 2001, LB 398, § 2; Laws 2005, LB 117, § 2; Laws 2007, LB463, § 1120; Laws 2011, LB20, § 2.
Operative date January 1, 2012.

28-405 Controlled substances; schedules; enumerated.

The following are the schedules of controlled substances referred to in the Uniform Controlled Substances Act:

Schedule I

(a) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetylmethadol;
- (2) Allylprodine;
- (3) Alphacetylmethadol, except levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;
- (4) Alphameprodine;
- (5) Alphamethadol;
- (6) Benzethidine;
- (7) Betacetylmethadol;
- (8) Betameprodine;

- (9) Betamethadol;
- (10) Betaprodine;
- (11) Clonitazene;
- (12) Dextromoramide;
- (13) Difenoxin;
- (14) Diampromide;
- (15) Diethylthiambutene;
- (16) Dimenoxadol;
- (17) Dimepheptanol;
- (18) Dimethylthiambutene;
- (19) Dioxaphetyl butyrate;
- (20) Dipipanone;
- (21) Ethylmethylthiambutene;
- (22) Etonitazene;
- (23) Etoxeridine;
- (24) Furethidine;
- (25) Hydroxypethidine;
- (26) Ketobemidone;
- (27) Levomoramide;
- (28) Levophenacylmorphan;
- (29) Morpheridine;
- (30) Noracymethadol;
- (31) Norlevorphanol;
- (32) Normethadone;
- (33) Norpipanone;
- (34) Phenadoxone;
- (35) Phenampromide;
- (36) Phenomorphan;
- (37) Phenoperidine;
- (38) Piritramide;
- (39) Proheptazine;
- (40) Properidine;
- (41) Propiram;
- (42) Racemoramide;
- (43) Trimeperidine;
- (44) Alpha-methylfentanyl, N-(1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl)propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine;
- (45) Tilidine;
- (46) 3-Methylfentanyl, N-(3-methyl-1-(2-phenylethyl)-4-piperidyl)-N-phenylpropanamide, its optical and geometric isomers, salts, and salts of isomers;
- (47) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts, and salts of isomers;

(48) PEPAP, 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine, its optical isomers, salts, and salts of isomers;

(49) Acetyl-alpha-methylfentanyl, N-(1-(1-methyl-2-phenethyl)-4-piperidinyl)-N-phenylacetamide, its optical isomers, salts, and salts of isomers;

(50) Alpha-methylthiofentanyl, N-(1-methyl-2-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(51) Benzylfentanyl, N-(1-benzyl-4-piperidyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(52) Beta-hydroxyfentanyl, N-(1-(2-hydroxy-2-phenethyl)-4-piperidinyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(53) Beta-hydroxy-3-methylfentanyl, (other name: N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide), its optical and geometric isomers, salts, and salts of isomers;

(54) 3-methylthiofentanyl, N-(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide, its optical and geometric isomers, salts, and salts of isomers;

(55) N-(1-(2-thienyl)methyl-4-piperidyl)-N-phenylpropanamide (thienylfentanyl), its optical isomers, salts, and salts of isomers;

(56) Thiofentanyl, N-phenyl-N-(1-(2-thienyl)ethyl-4-piperidinyl)-propanamide, its optical isomers, salts, and salts of isomers; and

(57) Para-fluorofentanyl, N-(4-fluorophenyl)-N-(1-(2-phenethyl)-4-piperidinyl)propanamide, its optical isomers, salts, and salts of isomers.

(b) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine, except hydrochloride salt;
- (11) Heroin;
- (12) Hydromorphenol;
- (13) Methyldesorphine;
- (14) Methyldihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myrophine;

- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Pholcodine; and
- (23) Thebacon.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, and, for purposes of this subdivision only, isomer shall include the optical, position, and geometric isomers:

(1) Bufotenine. Trade and other names shall include, but are not limited to: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; and mappine;

(2) Diethyltryptamine. Trade and other names shall include, but are not limited to: N,N-Diethyltryptamine; and DET;

(3) Dimethyltryptamine. Trade and other names shall include, but are not limited to: DMT;

(4) 4-bromo-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; and 4-bromo-2,5-DMA;

(5) 4-methoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methoxy-alpha-methylphenethylamine; and paramethoxyamphetamine, PMA;

(6) 4-methyl-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; DOM; and STP;

(7) 5-methoxy-N,N-dimethyltryptamine;

(8) Ibogaine. Trade and other names shall include, but are not limited to: 7-Ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2':1,2) azepino (5,4-b) indole; and Tabernanthe iboga;

(9) Lysergic acid diethylamide;

(10) Marijuana;

(11) Mescaline;

(12) Peyote. Peyote shall mean all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant or its seeds or extracts;

(13) Psilocybin;

(14) Psilocyn;

(15) Tetrahydrocannabinols, including, but not limited to, synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug

product approved by the federal Food and Drug Administration; Delta 6 cis or trans tetrahydrocannabinol and their optical isomers; and Delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers. Since nomenclature of these substances is not internationally standardized, compounds of these structures shall be included regardless of the numerical designation of atomic positions covered;

- (16) 3,4-methylenedioxy amphetamine;
- (17) 5-methoxy-3,4-methylenedioxy-amphetamine;
- (18) 3,4,5-trimethoxy amphetamine;
- (19) N-ethyl-3-piperidyl benzilate;
- (20) N-methyl-3-piperidyl benzilate;
- (21) Thiophene analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-(2-thienyl)-cyclohexyl)-piperidine; 2-thienyl analog of phencyclidine; TCP; and TCP;
- (22) 2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 2,5-dimethoxy-alpha-methylphenethylamine; and 2,5-DMA;
- (23) Hashish or concentrated cannabis;
- (24) Parahexyl. Trade and other names shall include, but are not limited to: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo(b,d)pyran; and Synhexyl;
- (25) Ethylamine analog of phencyclidine. Trade and other names shall include, but are not limited to: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; and PCE;
- (26) Pyrrolidine analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy; and PHP;
- (27) 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional, and geometric isomers, salts, and salts of isomers;
- (28) 4-Bromo-2,5-dimethoxyphenethylamine. Some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B; and Nexus;
- (29) Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;
- (30) 2,5-dimethoxy-4-ethylamphet-amine; and DOET;
- (31) 1-(1-(2-thienyl)cyclohexyl)pyrrolidine; and TCPy;
- (32) Alpha-methyltryptamine, which is also known as AMT;
- (33) 5-Methoxy-N,N-diisopropyltryptamine, which is also known as 5-MeO-DIPT;
- (34) Salvia divinorum or Salvinorin A. Salvia divinorum or Salvinorin A includes all parts of the plant presently classified botanically as Salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, derivative, mixture, or preparation of such plant, its seeds, or its extracts, including salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation; and

(35) Any material, compound, mixture, or preparation containing any quantity of synthetically produced cannabinoids as listed in subdivisions (i) through (viii) of this subdivision, including their salts, isomers, and salts of isomers, unless specifically excepted elsewhere in this section. Since nomenclature of these synthetically produced cannabinoids is not internationally standardized and may continually evolve, these structures or compounds of these structures shall be included under this subdivision, regardless of their specific numerical designation of atomic positions covered, so long as it can be determined through some form of scientific testing or analysis that the substance contains properties that fit within one or more of the following categories:

(i) Tetrahydrocannabinols: Meaning tetrahydrocannabinols naturally contained in a plant of the genus *cannabis* (*cannabis* plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *cannabis*, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 *cis* or *trans* tetrahydrocannabinol, and their optical isomers Delta 6 *cis* or *trans* tetrahydrocannabinol, and their optical isomers Delta 3,4 *cis* or *trans* tetrahydrocannabinol, and its optical isomers;

(ii) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(iii) Naphthylmethylindoles: Any compound containing a 1 H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(iv) Naphthoylpyrroles: Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(v) Naphthylideneindenes: Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(vi) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent;

(vii) Cyclohexylphenols: Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not substituted in the cyclohexyl ring to any extent; and

(viii) Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl,

alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Mecloqualone;
- (2) Methaqualone; and

(3) Gamma-Hydroxybutyric Acid. Some other names include: GHB; Gamma-hydroxybutyrate; 4-Hydroxybutyrate; 4-Hydroxybutanoic Acid; Sodium Oxybate; and Sodium Oxybutyrate.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

- (1) Fenethylamine;
- (2) N-ethylamphetamine;
- (3) Aminorex; aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;
- (4) Cathinone; 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone; and norephedrone;
- (5) Methcathinone, its salts, optical isomers, and salts of optical isomers. Some other names: 2-(methylamino)-propionophenone; alpha-(methylamino)propionophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropionophenone; methylcathinone; monomethylpropion; ephedrone; N-methylcathinone; AL-464; AL-422; AL-463; and UR1432;
- (6) (+/-)cis-4-methylaminorex; and (+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine;
- (7) N,N-dimethylamphetamine; N,N-alpha-trimethylbenzeneethanamine; and N,N-alpha-trimethylphenethylamine; and
- (8) Benzylpiperazine, 1-benzylpiperazine.

(f) Any controlled substance analogue to the extent intended for human consumption.

Schedule II

(a) Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, buprenorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone and their salts, but including the following:

- (i) Raw opium;
- (ii) Opium extracts;

- (iii) Opium fluid;
- (iv) Powdered opium;
- (v) Granulated opium;
- (vi) Tincture of opium;
- (vii) Codeine;
- (viii) Ethylmorphine;
- (ix) Etorphine hydrochloride;
- (x) Hydrocodone;
- (xi) Hydromorphone;
- (xii) Metopon;
- (xiii) Morphine;
- (xiv) Oxycodone;
- (xv) Oxymorphone;
- (xvi) Oripavine;
- (xvii) Thebaine; and
- (xviii) Dihydroetorphine;

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivision (1) of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of these substances, including cocaine and its salts, optical isomers, and salts of optical isomers, except that the substances shall not include decocainized coca leaves or extractions which do not contain cocaine or ecgonine; and

(5) Concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.

(b) Unless specifically excepted or unless in another schedule any of the following opiates, including their isomers, esters, ethers, salts, and salts of their isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:

- (1) Alphaprodine;
- (2) Anileridine;
- (3) Bezitramide;
- (4) Diphenoxylate;
- (5) Fentanyl;
- (6) Isomethadone;
- (7) Levomethorphan;
- (8) Levorphanol;
- (9) Metazocine;

- (10) Methadone;
 - (11) Methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;
 - (12) Moramide-intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid;
 - (13) Pethidine or meperidine;
 - (14) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
 - (15) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
 - (16) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
 - (17) Phenazocine;
 - (18) Piminodine;
 - (19) Racemethorphan;
 - (20) Racemorphan;
 - (21) Dihydrocodeine;
 - (22) Bulk Propoxyphene in nondosage forms;
 - (23) Sufentanil;
 - (24) Alfentanil;
 - (25) Levo-alpha-acetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;
 - (26) Carfentanil;
 - (27) Remifentanil; and
 - (28) Tapentadol.
- (c) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:
- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
 - (2) Phenmetrazine and its salts;
 - (3) Methamphetamine, its salts, isomers, and salts of its isomers; and
 - (4) Methylphenidate.
- (d) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designations:
- (1) Amobarbital;
 - (2) Secobarbital;
 - (3) Pentobarbital;
 - (4) Phencyclidine; and
 - (5) Glutethimide.
- (e) Hallucinogenic substances known as:
- (1) Nabilone. Another name for nabilone: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-Hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo(b,d)pyran-9-one.

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine: Phenylacetone. Trade and other names shall include, but are not limited to: Phenyl-2-propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone; or

(2) Immediate precursors to phencyclidine, PCP:

(i) 1-phenylcyclohexylamine; or

(ii) 1-piperidinocyclohexanecarbonitrile, PCC.

Schedule III

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Benzphetamine;

(2) Chlorphentermine;

(3) Clortermine; and

(4) Phendimetrazine.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules of this section;

(2) Chlorhexadol;

(3) Lysergic acid;

(4) Lysergic acid amide;

(5) Methyprylon;

(6) Sulfondiethylmethane;

(7) Sulfonethylmethane;

(8) Sulfonmethane;

(9) Nalorphine;

(10) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;

(11) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

(12) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on July 20, 2002;

(13) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (+/-)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone; and

(14) Tiletamine and zolazepam or any salt thereof. Trade or other names for a tiletamine-zolazepam combination product shall include, but are not limited to: telazol. Trade or other names for tiletamine shall include, but are not limited to: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Trade or other names for zolazepam shall include, but are not limited to: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-(3,4-e) (1,4)-diazepin-7(1H)-one, and flupyrzapon.

(c) Unless specifically excepted or unless listed in another schedule:

(1) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(i) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(ii) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(iii) Not more than three hundred milligrams of dihydrocodeinone which is also known as hydrocodone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(iv) Not more than three hundred milligrams of dihydrocodeinone which is also known as hydrocodone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(v) Not more than one and eight-tenths grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(vi) Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(vii) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams, or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(viii) Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(2) Any material, compound, mixture, or preparation containing any of the following narcotic drug or its salts, as set forth below:

(i) Buprenorphine.

(d) Unless contained on the administration's list of exempt anabolic steroids as the list existed on June 1, 2007, any anabolic steroid, which shall include any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts of isomers is possible within the specific chemical designation:

- (1) Boldenone;
- (2) Boldione;
- (3) Chlorotestosterone (4-chlortestosterone);
- (4) Clostebol;
- (5) Dehydrochloromethyltestosterone;
- (6) Desoxymethyltestosterone;
- (7) Dihydrotestosterone (4-dihydrotestosterone);
- (8) Drostanolone;
- (9) Ethylestrenol;
- (10) Fluoxymesterone;
- (11) Formebolone (formebolone);
- (12) Mesterolone;
- (13) Methandienone;
- (14) Methandranone;
- (15) Methandriol;
- (16) Methandrostenolone;
- (17) Methenolone;
- (18) Methyltestosterone;
- (19) Mibolerone;
- (20) Nandrolone;
- (21) Norethandrolone;
- (22) Oxandrolone;
- (23) Oxymesterone;
- (24) Oxymetholone;
- (25) Stanolone;
- (26) Stanozolol;
- (27) Testolactone;
- (28) Testosterone;
- (29) Trenbolone;
- (30) 19-nor-4,9(10)-androstadienedione; and
- (31) Any salt, ester, or ether of a drug or substance described or listed in this subdivision if the salt, ester, or ether promotes muscle growth.

(e) Hallucinogenic substances known as:

- (1) Dronabinol, synthetic, in sesame oil and encapsulated in a soft gelatin capsule in a Food and Drug Administration approved drug product. Some other names for dronabinol are (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo (b,d)pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol.

Schedule IV

- (a) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Barbitol;
- (2) Chloral betaine;
- (3) Chloral hydrate;
- (4) Chlordiazepoxide, but not including librax (chlordiazepoxide hydrochloride and clindinium bromide) or menrium (chlordiazepoxide and water soluble esterified estrogens);
- (5) Clonazepam;
- (6) Clorazepate;
- (7) Diazepam;
- (8) Ethchlorvynol;
- (9) Ethinamate;
- (10) Flurazepam;
- (11) Mebutamate;
- (12) Meprobamate;
- (13) Methohexital;
- (14) Methylphenobarbital;
- (15) Oxazepam;
- (16) Paraldehyde;
- (17) Petrichloral;
- (18) Phenobarbital;
- (19) Prazepam;
- (20) Alprazolam;
- (21) Bromazepam;
- (22) Camazepam;
- (23) Clobazam;
- (24) Clotiazepam;
- (25) Cloxazolam;
- (26) Delorazepam;
- (27) Estazolam;
- (28) Ethyl loflazepate;
- (29) Fludiazepam;
- (30) Flunitrazepam;
- (31) Halazepam;
- (32) Haloxazolam;
- (33) Ketazolam;
- (34) Loprazolam;
- (35) Lorazepam;
- (36) Lormetazepam;
- (37) Medazepam;
- (38) Nimetazepam;
- (39) Nitrazepam;
- (40) Nordiazepam;

- (41) Oxazolam;
- (42) Pinazepam;
- (43) Temazepam;
- (44) Tetrazepam;
- (45) Triazolam;
- (46) Midazolam;
- (47) Quazepam;
- (48) Zolpidem;
- (49) Dichloralphenazone; and
- (50) Zaleplon.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, whether optical, position, or geometric, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Diethylpropion;
- (2) Phentermine;
- (3) Pemoline, including organometallic complexes and chelates thereof;
- (4) Mazindol;
- (5) Pipradrol;
- (6) SPA, ((-)-1-dimethylamino- 1,2-diphenylethane);
- (7) Cathine. Another name for cathine is ((+)-norpseudoephedrine);
- (8) Fencamfamin;
- (9) Fenproporex;
- (10) Mefenorex;
- (11) Modafinil; and
- (12) Sibutramine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following narcotic drugs, or their salts or isomers calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

- (1) Propoxyphene in manufactured dosage forms; and
- (2) Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts: Pentazocine.

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of

the following substance, including its salts, isomers, and salts of such isomers: Butorphanol.

(g)(1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, optical isomers, and salts of such optical isomers: Ephedrine.

(2) The following drug products containing ephedrine, its salts, optical isomers, and salts of such optical isomers, are excepted from subdivision (g)(1) of Schedule IV if they (A) are stored behind a counter, in an area not accessible to customers, or in a locked case so that a customer needs assistance from an employee to access the drug product; (B) are sold by a person, eighteen years of age or older, in the course of his or her employment to a customer eighteen years of age or older with the following restrictions: No customer shall be allowed to purchase, receive, or otherwise acquire more than three and six-tenths grams of ephedrine base during a twenty-four-hour period; no customer shall purchase, receive, or otherwise acquire more than nine grams of ephedrine base during a thirty-day period; and the customer shall display a valid driver's or operator's license, a Nebraska state identification card, a military identification card, an alien registration card, or a passport as proof of identification; (C) are labeled and marketed in a manner consistent with the pertinent OTC Tentative Final or Final Monograph; (D) are manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse; and (E) are not marketed, advertised, or represented in any manner for the indication of stimulation, mental alertness, euphoria, ecstasy, a buzz or high, heightened sexual performance, or increased muscle mass:

- (i) Primatene Tablets;
- (ii) Bronkaid Dual Action Caplets; and
- (iii) Pazo Hemorrhoidal Ointment.

Schedule V

(a) Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts calculated as the free anhydrous base or alkaloid, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams;

(2) Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams;

(3) Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams;

(4) Not more than two and five-tenths milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit;

(5) Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams; and

(6) Not more than five-tenths milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(b) Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers: Pyrovalerone.

Source: Laws 1977, LB 38, § 65; Laws 1978, LB 748, § 50; Laws 1980, LB 696, § 2; Laws 1985, LB 323, § 2; Laws 1985, LB 406, § 3; Laws 1986, LB 1160, § 1; Laws 1987, LB 473, § 1; Laws 1990, LB 571, § 6; Laws 1992, LB 1019, § 32; Laws 1994, LB 1210, § 3; Laws 1995, LB 406, § 5; Laws 1996, LB 1213, § 4; Laws 1998, LB 1073, § 8; Laws 1999, LB 594, § 1; Laws 2000, LB 1115, § 2; Laws 2001, LB 113, § 10; Laws 2002, LB 500, § 1; Laws 2003, LB 245, § 1; Laws 2005, LB 382, § 2; Laws 2007, LB247, § 2; Laws 2008, LB902, § 1; Laws 2009, LB123, § 1; Laws 2009, LB151, § 1; Laws 2010, LB792, § 1; Laws 2011, LB19, § 1.

Effective date February 23, 2011.

28-414 Controlled substance; prescription; transfer; destruction; requirements.

(1)(a) Except as otherwise provided in this subsection or section 28-412 or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule II of section 28-405 shall not be dispensed without the written prescription bearing the signature of a practitioner authorized to prescribe. No prescription for a controlled substance listed in Schedule II of section 28-405 shall be filled more than six months from the date of issuance. A prescription for a controlled substance listed in Schedule II of section 28-405 shall not be refilled.

(b) In emergency situations as defined by rule and regulation of the department, a controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed prescription bearing the word “emergency” or pursuant to an oral prescription reduced to writing in accordance with subdivision (3)(b) of this section, except for the prescribing practitioner’s signature, and bearing the word “emergency”.

(c) In nonemergency situations:

(i) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed prescription if the original written, signed prescription is presented to the pharmacist for review before the controlled substance is dispensed, except as provided in subdivision (1)(c)(ii) or (1)(c)(iii) of this section;

(ii) A narcotic drug listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed prescription (A) to be compounded for direct parenteral administration to a patient for the purpose of home infusion therapy or (B) for administration to a patient enrolled in a hospice care program and bearing the words “hospice patient”;

(iii) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed prescription for administration to a resident of a long-term care facility; and

(iv) For purposes of subdivisions (1)(c)(ii) and (1)(c)(iii) of this section, a facsimile of a written, signed prescription shall serve as the original written

prescription and shall be maintained in accordance with subdivision (3)(a) of this section.

(d)(i) A prescription for a controlled substance listed in Schedule II of section 28-405 may be partially filled if the pharmacist does not supply the full quantity prescribed and he or she makes a notation of the quantity supplied on the face of the prescription. The remaining portion of the prescription may be filled within seventy-two hours of the first partial filling. The pharmacist shall notify the prescribing practitioner if the remaining portion of the prescription is not or cannot be filled within such period. No further quantity may be supplied after such period without a new written, signed prescription.

(ii) A prescription for a controlled substance listed in Schedule II of section 28-405 written for a patient in a long-term care facility or for a patient with a medical diagnosis documenting a terminal illness may be partially filled. Such prescription shall bear the words “terminally ill” or “long-term care facility patient” on its face. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the prescribing practitioner prior to partially filling the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. For each partial filling, the dispensing pharmacist shall record on the back of the prescription or on another appropriate record, uniformly maintained and readily retrievable, the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. The total quantity of controlled substances listed in Schedule II which is dispensed in all partial fillings shall not exceed the total quantity prescribed. A prescription for a Schedule II controlled substance for a patient in a long-term care facility or a patient with a medical diagnosis documenting a terminal illness is valid for sixty days from the date of issuance or until discontinuance of the prescription, whichever occurs first.

(2)(a) Except as otherwise provided in this subsection or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule III, IV, or V of section 28-405 shall not be dispensed without a written or oral medical order. Such medical order is valid for six months after the date of issuance. Authorization from a practitioner authorized to prescribe is required to refill a prescription for a controlled substance listed in Schedule III, IV, or V of section 28-405. Such prescriptions shall not be refilled more than five times within six months after the date of issuance. Original prescription information for any controlled substance listed in Schedule III, IV, or V of section 28-405 may be transferred between pharmacies for purposes of refill dispensing pursuant to section 38-2871.

(b) A controlled substance listed in Schedule III, IV, or V of section 28-405 may be dispensed pursuant to a facsimile of a written, signed prescription. The facsimile of a written, signed prescription shall serve as the original written prescription for purposes of this subsection and shall be maintained in accordance with the provisions of subdivision (3)(c) of this section.

(c) A prescription for a controlled substance listed in Schedule III, IV, or V of section 28-405 may be partially filled if (i) each partial filling is recorded in the same manner as a refilling, (ii) the total quantity dispensed in all partial fillings does not exceed the total quantity prescribed, and (iii) each partial filling is dispensed within six months after the prescription was issued.

(3)(a) Prescriptions for all controlled substances listed in Schedule II of section 28-405 shall be kept in a separate file by the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such files readily available to the department and law enforcement for inspection without a search warrant.

(b) All prescriptions for controlled substances listed in Schedule II of section 28-405 shall contain the name and address of the patient, the name and address of the prescribing practitioner, the Drug Enforcement Administration number of the prescribing practitioner, the date of issuance, and the prescribing practitioner's signature. If the prescription is for an animal, it shall also state the name and address of the owner of the animal and the species of the animal.

(c) Prescriptions for all controlled substances listed in Schedule III, IV, or V of section 28-405 shall be maintained either separately from other prescriptions or in a form in which the information required is readily retrievable from ordinary business records of the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such records readily available to the department and law enforcement for inspection without a search warrant.

(d) All prescriptions for controlled substances listed in Schedule III, IV, or V of section 28-405 shall contain the name and address of the patient, the name and address of the prescribing practitioner, the Drug Enforcement Administration number of the prescribing practitioner, the date of issuance, and for written prescriptions, the prescribing practitioner's signature. If the prescription is for an animal, it shall also state the owner's name and address and species of the animal.

(e) A registrant who is the owner of a controlled substance may transfer:

(i) Any controlled substance listed in Schedule I or II of section 28-405 to another registrant as provided by law or by rule and regulation of the department; and

(ii) Any controlled substance listed in Schedule III, IV, or V of section 28-405 to another registrant if such owner complies with subsection (4) of section 28-411.

(f)(i) The owner of any stock of controlled substances may cause such controlled substances to be destroyed pursuant to this subdivision when the need for such substances ceases. Complete records of controlled substances destruction pursuant to this subdivision shall be maintained by the registrant for five years from the date of destruction.

(ii) When the owner is a registrant:

(A) Controlled substances listed in Schedule II, III, IV, or V of section 28-405 may be destroyed by a pharmacy inspector, by a reverse distributor, or by the federal Drug Enforcement Administration. Upon destruction, any forms required by the administration to document such destruction shall be completed;

(B) Liquid controlled substances in opened containers which originally contained fifty milliliters or less or compounded liquid controlled substances within the facility where they were compounded may be destroyed if witnessed by two individuals credentialed under the Uniform Credentialing Act and designated by the facility and recorded in accordance with subsection (4) of section 28-411; or

(C) Solid controlled substances in opened unit-dose containers or which have been adulterated within a hospital where they were to be administered to patients at such hospital may be destroyed if witnessed by two individuals credentialed under the Uniform Credentialing Act and designated by the hospital and recorded in accordance with subsection (4) of section 28-411.

(iii) When the owner is a patient, such owner may transfer the controlled substances to a pharmacy for immediate destruction by two individuals credentialed under the Uniform Credentialing Act and designated by the pharmacy.

(iv) When the owner is a resident of a long-term care facility or hospital, a controlled substance listed in Schedule II, III, IV, or V of section 28-405 shall be destroyed by two individuals credentialed under the Uniform Credentialing Act and designated by the facility or hospital.

(g) Before dispensing any controlled substance listed in Schedule II, III, IV, or V of section 28-405, the dispensing practitioner shall affix a label to the container in which the controlled substance is dispensed. Such label shall bear the name and address of the pharmacy or dispensing practitioner, the name of the patient, the date of filling, the consecutive number of the prescription under which it is recorded in the practitioner's prescription records, the name of the prescribing practitioner, and the directions for use of the controlled substance. Unless the prescribing practitioner writes "do not label" or words of similar import on the original written prescription or so designates in an oral prescription, such label shall also bear the name of the controlled substance.

Source: Laws 1977, LB 38, § 74; Laws 1988, LB 273, § 5; Laws 1995, LB 406, § 7; Laws 1996, LB 1108, § 4; Laws 1997, LB 307, § 8; Laws 1999, LB 594, § 4; Laws 2000, LB 819, § 65; Laws 2001, LB 398, § 12; Laws 2004, LB 1005, § 2; Laws 2005, LB 382, § 3; Laws 2007, LB463, § 1122; Laws 2009, LB195, § 3; Laws 2011, LB179, § 1.

Effective date August 27, 2011.

Cross References

Uniform Credentialing Act, see section 38-101.

28-416 Prohibited acts; violations; penalties.

(1) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person knowingly or intentionally: (a) To manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance; or (b) to create, distribute, or possess with intent to distribute a counterfeit controlled substance.

(2) Except as provided in subsections (4), (5), (7), (8), (9), and (10) of this section, any person who violates subsection (1) of this section with respect to: (a) A controlled substance classified in Schedule I, II, or III of section 28-405 which is an exceptionally hazardous drug shall be guilty of a Class II felony; (b) any other controlled substance classified in Schedule I, II, or III of section 28-405 shall be guilty of a Class III felony; or (c) a controlled substance classified in Schedule IV or V of section 28-405 shall be guilty of a Class IIIA felony.

(3) A person knowingly or intentionally possessing a controlled substance, except marijuana or any substance containing a quantifiable amount of the

substances, chemicals, or compounds described, defined, or delineated in subdivision (c)(35) of Schedule I of section 28-405, unless such substance was obtained directly or pursuant to a medical order issued by a practitioner authorized to prescribe while acting in the course of his or her professional practice, or except as otherwise authorized by the act, shall be guilty of a Class IV felony.

(4)(a) Except as authorized by the Uniform Controlled Substances Act, any person eighteen years of age or older who knowingly or intentionally manufactures, distributes, delivers, dispenses, or possesses with intent to manufacture, distribute, deliver, or dispense a controlled substance or a counterfeit controlled substance (i) to a person under the age of eighteen years, (ii) in, on, or within one thousand feet of the real property comprising a public or private elementary, vocational, or secondary school, a community college, a public or private college, junior college, or university, or a playground, or (iii) within one hundred feet of a public or private youth center, public swimming pool, or video arcade facility shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(b) For purposes of this subsection:

(i) Playground shall mean any outdoor facility, including any parking lot appurtenant to the facility, intended for recreation, open to the public, and with any portion containing three or more apparatus intended for the recreation of children, including sliding boards, swingsets, and teeterboards;

(ii) Video arcade facility shall mean any facility legally accessible to persons under eighteen years of age, intended primarily for the use of pinball and video machines for amusement, and containing a minimum of ten pinball or video machines; and

(iii) Youth center shall mean any recreational facility or gymnasium, including any parking lot appurtenant to the facility or gymnasium, intended primarily for use by persons under eighteen years of age which regularly provides athletic, civic, or cultural activities.

(5)(a) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to manufacture, transport, distribute, carry, deliver, dispense, prepare for delivery, offer for delivery, or possess with intent to do the same a controlled substance or a counterfeit controlled substance.

(b) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to aid and abet any person in the manufacture, transportation, distribution, carrying, delivery, dispensing, preparation for delivery, offering for delivery, or possession with intent to do the same of a controlled substance or a counterfeit controlled substance.

(c) Any person who violates subdivision (a) or (b) of this subsection shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(6) It shall not be a defense to prosecution for violation of subsection (4) or (5) of this section that the defendant did not know the age of the person through whom the defendant violated such subsection.

(7) Any person who violates subsection (1) of this section with respect to cocaine or any mixture or substance containing a detectable amount of cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(8) Any person who violates subsection (1) of this section with respect to base cocaine (crack) or any mixture or substance containing a detectable amount of base cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(9) Any person who violates subsection (1) of this section with respect to heroin or any mixture or substance containing a detectable amount of heroin in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(10) Any person who violates subsection (1) of this section with respect to amphetamine, its salts, optical isomers, and salts of its isomers, or with respect to methamphetamine, its salts, optical isomers, and salts of its isomers, in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(11) Any person knowingly or intentionally possessing marijuana weighing more than one ounce but not more than one pound shall be guilty of a Class III misdemeanor.

(12) Any person knowingly or intentionally possessing marijuana weighing more than one pound shall be guilty of a Class IV felony.

(13) Any person knowingly or intentionally possessing marijuana weighing one ounce or less or any substance containing a quantifiable amount of the substances, chemicals, or compounds described, defined, or delineated in subdivision (c)(35) of Schedule I of section 28-405 shall:

(a) For the first offense, be guilty of an infraction, receive a citation, be fined three hundred dollars, and be assigned to attend a course as prescribed in section 29-433 if the judge determines that attending such course is in the best interest of the individual defendant;

(b) For the second offense, be guilty of a Class IV misdemeanor, receive a citation, and be fined four hundred dollars and may be imprisoned not to exceed five days; and

(c) For the third and all subsequent offenses, be guilty of a Class IIIA misdemeanor, receive a citation, be fined five hundred dollars, and be imprisoned not to exceed seven days.

(14) Any person convicted of violating this section, if placed on probation, shall, as a condition of probation, satisfactorily attend and complete appropriate treatment and counseling on drug abuse provided by a program authorized under the Nebraska Behavioral Health Services Act or other licensed drug treatment facility.

(15) Any person convicted of violating this section, if sentenced to the Department of Correctional Services, shall attend appropriate treatment and counseling on drug abuse.

(16) Any person knowingly or intentionally possessing a firearm while in violation of subsection (1) of this section shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(17) A person knowingly or intentionally in possession of money used or intended to be used to facilitate a violation of subsection (1) of this section shall be guilty of a Class IV felony.

(18) In addition to the penalties provided in this section:

(a) If the person convicted or adjudicated of violating this section is eighteen years of age or younger and has one or more licenses or permits issued under the Motor Vehicle Operator's License Act:

(i) For the first offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for thirty days and (B) require such person to attend a drug education class;

(ii) For a second offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for ninety days and (B) require such person to complete no fewer than twenty and no more than forty hours of community service and to attend a drug education class; and

(iii) For a third or subsequent offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for twelve months and (B) require such person to complete no fewer

than sixty hours of community service, to attend a drug education class, and to submit to a drug assessment by a licensed alcohol and drug counselor; and

(b) If the person convicted or adjudicated of violating this section is eighteen years of age or younger and does not have a permit or license issued under the Motor Vehicle Operator's License Act:

(i) For the first offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until thirty days after the date of such order and (B) require such person to attend a drug education class;

(ii) For a second offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until ninety days after the date of such order and (B) require such person to complete no fewer than twenty hours and no more than forty hours of community service and to attend a drug education class; and

(iii) For a third or subsequent offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until twelve months after the date of such order and (B) require such person to complete no fewer than sixty hours of community service, to attend a drug education class, and to submit to a drug assessment by a licensed alcohol and drug counselor.

A copy of an abstract of the court's conviction or adjudication shall be transmitted to the Director of Motor Vehicles pursuant to sections 60-497.01 to 60-497.04 if a license or permit is impounded or a juvenile is prohibited from obtaining a license or permit under this subsection.

Source: Laws 1977, LB 38, § 76; Laws 1978, LB 808, § 2; Laws 1980, LB 696, § 3; Laws 1985, LB 406, § 4; Laws 1986, LB 504, § 1; Laws 1989, LB 592, § 2; Laws 1991, LB 742, § 1; Laws 1993, LB 117, § 2; Laws 1995, LB 371, § 6; Laws 1997, LB 364, § 8; Laws 1999, LB 299, § 1; Laws 2001, LB 398, § 14; Laws 2003, LB 46, § 1; Laws 2004, LB 1083, § 86; Laws 2005, LB 117, § 3; Laws 2008, LB844, § 1; Laws 2010, LB800, § 4; Laws 2011, LB19, § 2; Laws 2011, LB463, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB19, section 2, with LB463, section 1, to reflect all amendments.

Note: Changes made by LB19 became effective February 23, 2011. Changes made by LB463 became operative May 12, 2011.

Cross References

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

Nebraska Behavioral Health Services Act, see section 71-801.

28-435.01 Health care facility; peer review organization or professional association; report required; contents; confidentiality; immunity; failure to report; civil penalty; disposition.

(1) A health care facility licensed under the Health Care Facility Licensure Act or a peer review organization or professional association relating to a profession regulated under the Uniform Controlled Substances 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 licensee, including settlements made prior to suit, arising out of the acts or omissions of the licensee; or

(b) Takes action adversely affecting the privileges or membership of a licensee 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 the Health Care Quality Improvement Act or section 25-12,123 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in either of such acts or such section.

(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 2007, LB463, § 1124; Laws 2011, LB431, § 11.
Effective date April 27, 2011.

Cross References

Health Care Facility Licensure Act, see section 71-401.

Health Care Quality Improvement Act, see section 71-7904.

Nebraska Hospital-Medical Liability Act, see section 44-2855.

Patient Safety Improvement Act, see section 71-8701.

28-456.01 Pseudoephedrine or phenylpropanolamine; limitation on acquisition; violation; penalty.

(1) No person shall purchase, receive, or otherwise acquire, other than wholesale acquisition by a retail business in the normal course of its trade or business, any drug product containing more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base during a twenty-four-hour period unless purchased pursuant to a medical order. Any person who violates this section shall be guilty of a Class IV

misdemeanor for the first offense and a Class III misdemeanor for each subsequent offense.

(2) No person shall purchase, receive, or otherwise acquire, other than wholesale acquisition by a retail business in the normal course of its trade or business, any drug product containing more than nine grams of pseudoephedrine base or nine grams of phenylpropanolamine base during a thirty-day period unless purchased pursuant to a medical order. Any person who violates this section shall be guilty of a Class IV misdemeanor for the first offense and a Class III misdemeanor for each subsequent offense.

Source: Laws 2005, LB 117, § 6; Laws 2009, LB151, § 3; Laws 2011, LB20, § 8.

Operative date January 1, 2012.

28-458 Methamphetamine precursor; terms, defined.

For purposes of sections 28-458 to 28-462:

(1) Exchange means the National Precursor Log Exchange administered by the National Association of Drug Diversion Investigators;

(2) Methamphetamine precursor means any drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine that is required to be documented pursuant to the logbook requirements of 21 U.S.C. 830;

(3) Seller means any person who lawfully sells a methamphetamine precursor pursuant to subdivision (1)(d) of section 28-456 or his or her employer; and

(4) Stop-sale alert means a notification sent to a seller indicating that the completion of a methamphetamine precursor sale would result in a violation of subdivision (1)(d)(i) or (ii) of section 28-456.

Source: Laws 2011, LB20, § 3.

Operative date January 1, 2012.

28-459 Methamphetamine precursor; seller; duties; waiver authorized.

(1) Beginning January 1, 2012, each seller shall, before completing a sale of a methamphetamine precursor, electronically submit required information to the exchange, if the exchange is available to sellers. Required information shall include, but not be limited to:

(a) The name, age, and address of the person purchasing, receiving, or otherwise acquiring the methamphetamine precursor;

(b) The name of the product and quantity of product purchased;

(c) The date and time of the purchase;

(d) The name or initials of the seller who sold the product; and

(e) The type of identification presented by the customer, the governmental entity that issued the identification, and the number on the identification.

(2) If a seller experiences mechanical or electronic failure of the electronic logging equipment on the sales end of the transaction or a failure of the exchange and is unable to comply with subsection (1) of this section, the seller shall maintain a written log or an alternative electronic recordkeeping mechanism or may refrain from selling any methamphetamine precursor until such time as the seller is able to comply with subsection (1) of this section.

(3) The Attorney General may grant a waiver exempting a seller from compliance with subsection (1) of this section upon a showing of good cause by the seller that he or she is otherwise unable to submit log information by electronic means, including, but not limited to, any financial, technological, or other reason which would place an undue burden on the seller, as established by the Attorney General.

(4) Whenever the exchange generates a stop-sale alert, the seller shall not complete the sale unless the seller has a reasonable fear of imminent bodily harm if he or she does not complete the sale. The exchange shall contain an override function to the stop-sale alert for the seller to use in a situation in which a reasonable fear of imminent bodily harm is present.

(5) This section does not apply if a lawful prescription for the methamphetamine precursor is presented to a pharmacist licensed under the Uniform Credentialing Act.

Source: Laws 2011, LB20, § 4.
Operative date January 1, 2012.

Cross References

Uniform Credentialing Act, see section 38-101.

28-460 Methamphetamine precursor; access to exchange to law enforcement.

As a condition of use in Nebraska, the National Association of Drug Diversion Investigators shall provide real-time access to the exchange through its online portal to law enforcement in this state as authorized by the Attorney General and no fee or charge shall be imposed on a seller for the use of the exchange.

Source: Laws 2011, LB20, § 5.
Operative date January 1, 2012.

28-461 Methamphetamine precursor; seller; immunity.

A seller utilizing in good faith sections 28-458 to 28-462 shall be immune from any civil cause of action based upon an act or omission in carrying out such sections.

Source: Laws 2011, LB20, § 6.
Operative date January 1, 2012.

28-462 Methamphetamine precursor; prohibited acts; penalty.

Beginning January 1, 2013, a seller that knowingly fails to submit methamphetamine precursor information to the exchange as required by sections 28-458 to 28-462 or knowingly submits incorrect information to the exchange shall be guilty of a Class IV misdemeanor.

Source: Laws 2011, LB20, § 7.
Operative date January 1, 2012.

ARTICLE 9

**OFFENSES INVOLVING INTEGRITY AND EFFECTIVENESS
OF GOVERNMENT OPERATION**

Section

28-934. Assault with a bodily fluid against a public safety officer; penalty; order to collect evidence.

28-934 Assault with a bodily fluid against a public safety officer; penalty; order to collect evidence.

(1) Any person who knowingly and intentionally strikes any public safety officer with any bodily fluid is guilty of assault with a bodily fluid against a public safety officer.

(2) Except as provided in subsection (3) of this section, assault with a bodily fluid against a public safety officer is a Class I misdemeanor.

(3) Assault with a bodily fluid against a public safety officer is a Class IIIA felony if the person committing the offense strikes with a bodily fluid the eyes, mouth, or skin of a public safety officer and knew the source of the bodily fluid was infected with the human immunodeficiency virus, hepatitis B, or hepatitis C at the time the offense was committed.

(4) Upon a showing of probable cause by affidavit to a judge of this state that an offense as defined in subsection (1) of this section has been committed and that identifies the probable source of the bodily fluid or bodily fluids used to commit the offense, the judge shall grant an order or issue a search warrant authorizing the collection of any evidence, including any bodily fluid or medical records or the performance of any medical or scientific testing or analysis, that may assist with the determination of whether or not the person committing the offense or the person from whom the person committing the offense obtained the bodily fluid or bodily fluids is infected with the human immunodeficiency virus, hepatitis B, or hepatitis C.

(5) As used in this section:

(a) Bodily fluid means any naturally produced secretion or waste product generated by the human body and shall include, but not be limited to, any quantity of human blood, urine, saliva, mucus, vomitus, seminal fluid, or feces; and

(b) Public safety officer includes any of the following persons who are engaged in the performance of their official duties at the time of the offense: A peace officer; a probation officer; an employee of a county, city, or village jail; an employee of the Department of Correctional Services; an employee of the secure youth confinement facility operated by the Department of Correctional Services, if the person committing the offense is committed to such facility; an employee of the Youth Rehabilitation and Treatment Center-Geneva or the Youth Rehabilitation and Treatment Center-Kearney; or an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act.

Source: Laws 2011, LB226, § 2.

Effective date August 27, 2011.

Cross References

Sex Offender Commitment Act, see section 71-1201.

ARTICLE 12**OFFENSES AGAINST PUBLIC HEALTH AND SAFETY****Section**

28-1204.04. Unlawful possession of a firearm at a school; penalty; exceptions; confiscation of certain firearms; disposition.

Section

28-1254. Motor vehicle operation with person under age of sixteen years; prohibited acts; violation; penalty.

28-1204.04 Unlawful possession of a firearm at a school; penalty; exceptions; confiscation of certain firearms; disposition.

(1) Any person who possesses a firearm in a school, on school grounds, in a school-owned vehicle, or at a school-sponsored activity or athletic event is guilty of the offense of unlawful possession of a firearm at a school. Unlawful possession of a firearm at a school is a Class IV felony. This subsection shall not apply to (a) the issuance of firearms to or possession by members of the armed forces of the United States, active or reserve, National Guard of this state, or Reserve Officers Training Corps or peace officers or other duly authorized law enforcement officers when on duty or training, (b) the possession of firearms by peace officers or other duly authorized law enforcement officers when contracted by a school to provide school security or school event control services, (c) firearms which may lawfully be possessed by the person receiving instruction, for instruction under the immediate supervision of an adult instructor, (d) firearms which may lawfully be possessed by a member of a college or university rifle team, within the scope of such person's duties as a member of the team, (e) firearms which may lawfully be possessed by a person employed by a college or university in this state as part of an agriculture or a natural resources program of such college or university, within the scope of such person's employment, (f) firearms contained within a private vehicle operated by a nonstudent adult which are not loaded and (i) are encased or (ii) are in a locked firearm rack that is on a motor vehicle, or (g) a handgun carried as a concealed handgun by a valid holder of a permit issued under the Concealed Handgun Permit Act in a vehicle or on his or her person while riding in or on a vehicle into or onto any parking area, which is open to the public and used by a school if, prior to exiting the vehicle, the handgun is locked inside the glove box, trunk, or other compartment of the vehicle, a storage box securely attached to the vehicle, or, if the vehicle is a motorcycle, a hardened compartment securely attached to the motorcycle while the vehicle is in or on such parking area, except as prohibited by federal law. For purposes of this subsection, encased means enclosed in a case that is expressly made for the purpose of containing a firearm and that is completely zipped, snapped, buckled, tied, or otherwise fastened with no part of the firearm exposed.

(2) Any firearm possessed in violation of subsection (1) of this section shall be confiscated without warrant by a peace officer or may be confiscated without warrant by school administrative or teaching personnel. Any firearm confiscated by school administrative or teaching personnel shall be delivered to a peace officer as soon as practicable.

(3) Any firearm confiscated by or given to a peace officer pursuant to subsection (2) of this section shall be declared a common nuisance and shall be held by the peace officer prior to his or her delivery of the firearm to the property division of the law enforcement agency which employs the peace officer. The property division of such law enforcement agency shall hold such firearm for as long as the firearm is needed as evidence. After the firearm is no longer needed as evidence, it shall be destroyed in such manner as the court may direct.

(4) Whenever a firearm is confiscated and held pursuant to this section or section 28-1204.02, the peace officer who received such firearm shall cause to be filed within ten days after the confiscation a petition for destruction of such firearm. The petition shall be filed in the district court of the county in which the confiscation is made. The petition shall describe the firearm held, state the name of the owner, if known, allege the essential elements of the violation which caused the confiscation, and conclude with a prayer for disposition and destruction in such manner as the court may direct. At any time after the confiscation of the firearm and prior to court disposition, the owner of the firearm seized may petition the district court of the county in which the confiscation was made for possession of the firearm. The court shall release the firearm to such owner only if the claim of ownership can reasonably be shown to be true and either (a) the owner of the firearm can show that the firearm was taken from his or her property or place of business unlawfully or without the knowledge and consent of the owner and that such property or place of business is different from that of the person from whom the firearm was confiscated or (b) the owner of the firearm is acquitted of the charge of unlawful possession of a handgun in violation of section 28-1204, unlawful transfer of a firearm to a juvenile, or unlawful possession of a firearm at a school. No firearm having significant antique value or historical significance as determined by the Nebraska State Historical Society shall be destroyed. If a firearm has significant antique value or historical significance, it shall be sold at auction and the proceeds shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1994, LB 988, § 6; Laws 2002, LB 82, § 8; Laws 2009, LB63, § 13; Laws 2009, LB430, § 8; Laws 2011, LB512, § 1. Operative date January 1, 2012.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

28-1254 Motor vehicle operation with person under age of sixteen years; prohibited acts; violation; penalty.

(1) It shall be unlawful for any person to operate or be in the actual physical control of a motor vehicle with a person under the age of sixteen years as a passenger:

(a) While the person operating or in the actual physical control of the motor vehicle is under the influence of alcoholic liquor or any drug;

(b) When the person operating or in the actual physical control of the motor vehicle has a concentration of eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood;

(c) When the person operating or in the actual physical control of the motor vehicle 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; or

(d) If the person operating or in the actual physical control of the motor vehicle refuses to submit to a chemical test or tests when directed to do so by a peace officer pursuant to section 60-6,197.

(2) A violation of this section shall be a Class I misdemeanor.

(3) The crime punishable under this section shall be treated as a separate and distinct offense from any other offense arising out of acts alleged to have been committed while the person was in violation of this section.

Source: Laws 2011, LB667, § 2.

Operative date January 1, 2012.

ARTICLE 13

MISCELLANEOUS OFFENSES

(h) PICKETING

Section

28-1320.02. Unlawful picketing of a funeral; terms, defined.

(h) PICKETING

28-1320.02 Unlawful picketing of a funeral; terms, defined.

For purposes of sections 28-1320.01 to 28-1320.03, the following definitions apply:

(1) Funeral means the ceremonies and memorial services held in connection with the burial or cremation of the dead but does not include funeral processions on public streets or highways; and

(2) Picketing of a funeral means protest activities engaged in by a person or persons located within five hundred feet of a cemetery, mortuary, church, or other place of worship during a funeral.

Source: Laws 2006, LB 287, § 2; Laws 2011, LB284, § 1.

Effective date August 27, 2011.



CHAPTER 29 CRIMINAL PROCEDURE

Article.

1. Definitions and General Rules of Procedure. 29-122.
2. Powers and Duties of Certain Officers. 29-215.
4. Warrant and Arrest of Accused. 29-404.
16. Prosecution on Information. 29-1603.
19. Preparation for Trial.
 - (c) Discovery. 29-1917.
22. Judgment on Conviction.
 - (a) Judgment on Conviction. 29-2203, 29-2204.
 - (c) Probation. 29-2252 to 29-2262.08.
25. Special Procedure in Cases of Homicide. 29-2520 to 29-2524.
30. Postconviction Proceedings. 29-3001.
36. Pretrial Diversion. 29-3608.
39. Public Defenders and Appointed Counsel.
 - (c) County Revenue Assistance Act. 29-3921.
40. Sex Offenders.
 - (a) Sex Offender Registration Act. 29-4003.
43. Sexual Assault and Domestic Violence. 29-4306.

ARTICLE 1

DEFINITIONS AND GENERAL RULES OF PROCEDURE

Section

- 29-122. Criminal responsibility; intoxication; not a defense; exceptions.

29-122 Criminal responsibility; intoxication; not a defense; exceptions.

A person who is intoxicated is criminally responsible for his or her conduct. Intoxication is not a defense to any criminal offense and shall not be taken into consideration in determining the existence of a mental state that is an element of the criminal offense unless the defendant proves, by clear and convincing evidence, that he or she did not (1) know that it was an intoxicating substance when he or she ingested, inhaled, injected, or absorbed the substance causing the intoxication or (2) ingest, inhale, inject, or absorb the intoxicating substance voluntarily.

Source: Laws 2011, LB100, § 1.
Effective date August 27, 2011.

ARTICLE 2

POWERS AND DUTIES OF CERTAIN OFFICERS

Section

- 29-215. Law enforcement officers; jurisdiction; powers; contracts authorized.

29-215 Law enforcement officers; jurisdiction; powers; contracts authorized.

(1) A law enforcement officer has the power and authority to enforce the laws of this state and of the political subdivision which employs the law enforcement officer or otherwise perform the functions of that office anywhere within his or her primary jurisdiction.

(2) Any law enforcement officer who is within this state, but beyond his or her primary jurisdiction, has the power and authority to enforce the laws of this state or any legal ordinance of any city or incorporated village or otherwise perform the functions of his or her office, including the authority to arrest and detain suspects, as if enforcing the laws or performing the functions within his or her primary jurisdiction in the following cases:

(a) Any such law enforcement officer, if in a fresh attempt to apprehend a person suspected of committing a felony, may follow such person into any other jurisdiction in this state and there arrest and detain such person and return such person to the law enforcement officer's primary jurisdiction;

(b) Any such law enforcement officer, if in a fresh attempt to apprehend a person suspected of committing a misdemeanor or a traffic infraction, may follow such person anywhere in an area within twenty-five miles of the boundaries of the law enforcement officer's primary jurisdiction and there arrest and detain such person and return such person to the law enforcement officer's primary jurisdiction;

(c) Any such law enforcement officer shall have such enforcement and arrest and detention authority when responding to a call in which a local, state, or federal law enforcement officer is in need of assistance. A law enforcement officer in need of assistance shall mean (i) a law enforcement officer whose life is in danger or (ii) a law enforcement officer who needs assistance in making an arrest and the suspect (A) will not be apprehended unless immediately arrested, (B) may cause injury to himself or herself or others or damage to property unless immediately arrested, or (C) may destroy or conceal evidence of the commission of a crime; and

(d) Any municipality or county may, under the provisions of the Interlocal Cooperation Act or the Joint Public Agency Act, enter into a contract with any other municipality or county for law enforcement services or joint law enforcement services. Under such an agreement, law enforcement personnel may have such enforcement authority within the jurisdiction of each of the participating political subdivisions if provided for in the agreement. Unless otherwise provided in the agreement, each participating political subdivision shall provide liability insurance coverage for its own law enforcement personnel as provided in section 13-1802.

(3) When probable cause exists to believe that a person is operating or in the actual physical control of any motor vehicle, motorboat, personal watercraft, or aircraft while under the influence of alcoholic liquor or of any drug or otherwise in violation of section 28-1465, 28-1466, 28-1472, 37-1254.01, 37-1254.02, 60-4,163, 60-4,164, 60-6,196, 60-6,197, 60-6,211.01, or 60-6,211.02, the law enforcement officer has the power and authority to do any of the following or any combination thereof:

(a) Transport such person to a facility outside of the law enforcement officer's primary jurisdiction for appropriate chemical testing of the person;

(b) Administer outside of the law enforcement officer's primary jurisdiction any post-arrest test advisement to the person; or

(c) With respect to such person, perform other procedures or functions outside of the law enforcement officer's primary jurisdiction which are directly and solely related to enforcing the laws that concern a person operating or being in the actual physical control of any motor vehicle, motorboat, personal watercraft, or aircraft while under the influence of alcoholic liquor or of any

other drug or otherwise in violation of section 28-1465, 28-1466, 28-1472, 37-1254.01, 37-1254.02, 60-4,163, 60-4,164, 60-6,196, 60-6,197, 60-6,211.01, or 60-6,211.02.

(4) For purposes of this section:

(a) Law enforcement officer has the same meaning as peace officer as defined in section 49-801 and also includes conservation officers of the Game and Parks Commission; and

(b) Primary jurisdiction means the geographic area within the territorial limits of the state or political subdivision which employs the law enforcement officer.

Source: Laws 1994, LB 254, § 1; Laws 1999, LB 87, § 68; Laws 2003, LB 17, § 9; Laws 2011, LB667, § 5.
Operative date January 1, 2012.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

Motor vehicle pursuit, see section 29-211.

Uniform Act on Fresh Pursuit, see section 29-421.

ARTICLE 4

WARRANT AND ARREST OF ACCUSED

Section

29-404. Complaint; filing; procedure; warrant; issuance.

29-404 Complaint; filing; procedure; warrant; issuance.

No complaint shall be filed with the magistrate unless such complaint is in writing and signed by the prosecuting attorney or by any other complainant. If the complainant is a person other than the prosecuting attorney or a city or village attorney prosecuting the violation of a municipal ordinance, he or she shall either have the consent of the prosecuting attorney or shall furnish to the magistrate a bond with good and sufficient sureties in such amount as the magistrate shall determine to indemnify the person complained against for wrongful or malicious prosecution. Whenever a complaint shall be filed with the magistrate, charging any person with the commission of an offense against the laws of this state, it shall be the duty of such magistrate to issue a warrant for the arrest of the person accused, if he or she has reasonable grounds to believe that the offense charged has been committed. The prosecuting attorney shall consent to the filing of such complaint if he or she is in possession of sufficient evidence to warrant the belief that the person named as defendant in such complaint is guilty of the crime alleged and can be convicted thereof. The Attorney General shall have the same power to consent to the filing of complaints as the prosecuting attorneys have in their respective counties.

Source: G.S.1873, c. 58, § 286, p. 790; R.S.1913, § 8940; C.S.1922, § 9964; C.S.1929, § 29-404; R.S.1943, § 29-404; Laws 1965, c. 148, § 1, p. 490; Laws 1975, LB 168, § 2; Laws 1977, LB 497, § 1; Laws 2011, LB669, § 21.
Operative date August 27, 2011.

ARTICLE 16

PROSECUTION ON INFORMATION

Section

29-1603. Allegations; how made; joinder of offenses; rights of defendant.

29-1603 Allegations; how made; joinder of offenses; rights of defendant.

(1) All informations shall be in writing and signed by the county attorney, complainant, or some other person, and the offenses charged therein shall be stated with the same fullness and precision in matters of substance as is required in indictments in like cases.

(2)(a) Any information charging a violation of section 28-303 and in which the death penalty is sought shall contain a notice of aggravation which alleges one or more aggravating circumstances, as such aggravating circumstances are provided in section 29-2523. The notice of aggravation shall be filed as provided in section 29-1602. It shall constitute sufficient notice to describe the alleged aggravating circumstances in the language provided in section 29-2523.

(b) The state shall be permitted to add to or amend a notice of aggravation at any time up to and including the thirtieth day prior to the trial of guilt.

(c) The existence or contents of a notice of aggravation shall not be disclosed to the jury until after the verdict is rendered in the trial of guilt.

(3) Different offenses and different degrees of the same offense may be joined in one information, in all cases in which the same might by different counts be joined in one indictment; and in all cases a defendant or defendants shall have the same right, as to proceedings therein, as the defendant or defendants would have if prosecuted for the same offense upon indictment.

Source: Laws 1885, c. 108, § 3, p. 397; R.S.1913, § 9064; C.S.1922, § 10088; C.S.1929, § 29-1603; R.S.1943, § 29-1603; Laws 2002, Third Spec. Sess., LB 1, § 5; Laws 2011, LB669, § 22.
Operative date August 27, 2011.

ARTICLE 19

PREPARATION FOR TRIAL

(c) DISCOVERY

Section

29-1917. Deposition of witness; when; procedure; use at trial.

(c) DISCOVERY

29-1917 Deposition of witness; when; procedure; use at trial.

(1) Except as provided in section 29-1926, at any time after the filing of an indictment or information in a felony prosecution, the prosecuting attorney or the defendant may request the court to allow the taking of a deposition of any person other than the defendant who may be a witness in the trial of the offense. The court may order the taking of the deposition when it finds the testimony of the witness:

(a) May be material or relevant to the issue to be determined at the trial of the offense; or

(b) May be of assistance to the parties in the preparation of their respective cases.

(2) An order granting the taking of a deposition shall include the time and place for taking such deposition and such other conditions as the court determines to be just.

(3) The proceedings in taking the deposition of a witness pursuant to this section and returning it to the court shall be governed in all respects as the taking of depositions in civil cases.

(4) A deposition taken pursuant to this section may be used at the trial by any party solely for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

Source: Laws 1969, c. 235, § 6, p. 870; Laws 1988, LB 90, § 2; Laws 1993, LB 178, § 1; Laws 2011, LB667, § 6.
Operative date January 1, 2012.

Cross References

Child victim or child witness, use of videotape deposition, see section 29-1926.

ARTICLE 22

JUDGMENT ON CONVICTION

(a) JUDGMENT ON CONVICTION

Section

- 29-2203. Defense of not responsible by reason of insanity; how pleaded; burden of proof; notice before trial; examination of defendant; acquittal; further proceedings.
- 29-2204. Indeterminate sentence; court; duties; study of offender; when; costs; defendant under eighteen years of age; disposition.

(c) PROBATION

- 29-2252. Probation administrator; duties.
- 29-2255. Interlocal agreement; costs; requirements.
- 29-2258. District probation officer; duties; powers.
- 29-2259. Probation administrator; office; salaries; expenses; office space; prepare budget; interpreter services.
- 29-2259.01. Probation Cash Fund; created; use; investment.
- 29-2259.02. State Probation Contractual Services Cash Fund; created; use; investment.
- 29-2261. Presentence investigation, when; contents; psychiatric examination; persons having access to records; reports authorized.
- 29-2262.07. Probation Program Cash Fund; created; use; investment.
- 29-2262.08. Transferred to section 43-286.01.

(a) JUDGMENT ON CONVICTION

29-2203 Defense of not responsible by reason of insanity; how pleaded; burden of proof; notice before trial; examination of defendant; acquittal; further proceedings.

(1) Any person prosecuted for an offense may plead that he or she is not responsible by reason of insanity at the time of the offense and in such case the burden shall be upon the defendant to prove the defense of not responsible by reason of insanity by a preponderance of the evidence. No evidence offered by the defendant for the purpose of establishing his or her insanity shall be admitted in the trial of the case unless notice of intention to rely upon the insanity defense is given to the county attorney and filed with the court not later than sixty days before trial.

(2) Upon the filing of the notice the court, on motion of the state, may order the defendant to be examined at a time and place designated in the order, by

one or more qualified experts, appointed by the court, to inquire into the sanity or insanity of the defendant at the time of the commission of the alleged offense. The court may order that the examination be conducted at one of the regional centers or at any appropriate facility. The presence of counsel at the examination shall be within the discretion of the court. The results of such examination shall be sent to the court and to the prosecuting attorney. In misdemeanor or felony cases, the defendant may request the court to order the prosecuting attorney to permit the defendant to inspect and copy the results of such examination pursuant to the procedures set forth in sections 29-1912 to 29-1921. In the interest of justice and good cause shown the court may waive the requirements provided in this section.

(3) If the trier of fact acquits the defendant on the grounds of insanity, the verdict shall reflect whether the trier acquits him or her on that ground alone or on other grounds as well. When the defendant is acquitted solely on the ground of insanity, the court shall have exclusive jurisdiction over the defendant for disposition consistent with the terms of this section and sections 29-3701 to 29-3704.

(4) For purposes of this section, insanity does not include any temporary condition that was proximately caused by the voluntary ingestion, inhalation, injection, or absorption of intoxicating liquor, any drug or other mentally debilitating substance, or any combination thereof.

Source: Laws 1909, c. 74, § 1, p. 333; R.S.1913, § 9139; C.S.1922, § 10164; C.S.1929, § 29-2204; R.S.1943, § 29-2203; Laws 1973, LB 501, § 1; Laws 1976, LB 806, § 17; Laws 1981, LB 213, § 2; Laws 1984, LB 183, § 1; Laws 2011, LB100, § 2.
Effective date August 27, 2011.

Cross References

Constitutional provisions:

Due process, see Article I, section 3, Constitution of Nebraska.

Acquittal on grounds of insanity, special procedures, see sections 29-3701 to 29-3706.

Escape from mental health treatment facility or program, effect, see section 71-939.

Mental Health Commitment Act, Nebraska, see section 71-901.

29-2204 Indeterminate sentence; court; duties; study of offender; when; costs; defendant under eighteen years of age; disposition.

(1) Except when a term of life imprisonment is required by law, in imposing an indeterminate sentence upon an offender the court shall:

(a)(i) Until July 1, 1998, fix the minimum and maximum limits of the sentence to be served within the limits provided by law, except that when a maximum limit of life is imposed by the court for a Class IB felony, the minimum limit may be any term of years not less than the statutory mandatory minimum; and

(ii) Beginning July 1, 1998:

(A) Fix the minimum and maximum limits of the sentence to be served within the limits provided by law for any class of felony other than a Class IV felony, except that when a maximum limit of life is imposed by the court for a Class IB felony, the minimum limit may be any term of years not less than the statutory mandatory minimum. If the criminal offense is a Class IV felony, the court shall fix the minimum and maximum limits of the sentence, but the minimum limit fixed by the court shall not be less than the minimum provided by law nor more

than one-third of the maximum term and the maximum limit shall not be greater than the maximum provided by law; or

(B) Impose a definite term of years, in which event the maximum term of the sentence shall be the term imposed by the court and the minimum term shall be the minimum sentence provided by law;

(b) Advise the offender on the record the time the offender will serve on his or her minimum term before attaining parole eligibility assuming that no good time for which the offender will be eligible is lost; and

(c) Advise the offender on the record the time the offender will serve on his or her maximum term before attaining mandatory release assuming that no good time for which the offender will be eligible is lost.

If any discrepancy exists between the statement of the minimum limit of the sentence and the statement of parole eligibility or between the statement of the maximum limit of the sentence and the statement of mandatory release, the statements of the minimum limit and the maximum limit shall control the calculation of the offender's term. If the court imposes more than one sentence upon an offender or imposes a sentence upon an offender who is at that time serving another sentence, the court shall state whether the sentences are to be concurrent or consecutive.

(2)(a) When the court is of the opinion that imprisonment may be appropriate but desires more detailed information as a basis for determining the sentence to be imposed than has been provided by the presentence report required by section 29-2261, the court shall commit an offender to the Department of Correctional Services for a period not exceeding ninety days. The department shall conduct a complete study of the offender during that time, inquiring into such matters as his or her previous delinquency or criminal experience, social background, capabilities, and mental, emotional, and physical health and the rehabilitative resources or programs which may be available to suit his or her needs. By the expiration of the period of commitment or by the expiration of such additional time as the court shall grant, not exceeding a further period of ninety days, the offender shall be returned to the court for sentencing and the court shall be provided with a written report of the results of the study, including whatever recommendations the department believes will be helpful to a proper resolution of the case. After receiving the report and the recommendations, the court shall proceed to sentence the offender in accordance with subsection (1) of this section. The term of the sentence shall run from the date of original commitment under this subsection.

(b) In order to encourage the use of this procedure in appropriate cases, all costs incurred during the period the defendant is held in a state institution under this subsection shall be a responsibility of the state and the county shall be liable only for the cost of delivering the defendant to the institution and the cost of returning him or her to the appropriate court for sentencing or such other disposition as the court may then deem appropriate.

(3) Except when a term of life is required by law, whenever the defendant was under eighteen years of age at the time he or she committed the crime for which he or she was convicted, the court may, in its discretion, instead of imposing the penalty provided for the crime, make such disposition of the defendant as the court deems proper under the Nebraska Juvenile Code. Prior to making a disposition which commits the juvenile to the Office of Juvenile

Services, the court shall order the juvenile to be evaluated by the office if the juvenile has not had an evaluation within the past twelve months.

Source: G.S.1873, c. 58, § 498, p. 832; R.S.1913, § 9140; C.S.1922, § 10165; C.S.1929, § 29-2205; R.S.1943, § 29-2204; Laws 1974, LB 620, § 7; Laws 1988, LB 790, § 3; Laws 1993, LB 31, § 9; Laws 1993, LB 529, § 1; Laws 1993, LB 627, § 1; Laws 1994, LB 988, § 8; Laws 1995, LB 371, § 12; Laws 1997, LB 364, § 14; Laws 1998, LB 1073, § 10; Laws 2002, Third Spec. Sess., LB 1, § 8; Laws 2011, LB12, § 2.
Effective date August 27, 2011.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

(c) PROBATION

29-2252 Probation administrator; duties.

The administrator shall:

- (1) Supervise and administer the office;
- (2) Establish and maintain policies, standards, and procedures for the system, with the concurrence of the Supreme Court;
- (3) Prescribe and furnish such forms for records and reports for the system as shall be deemed necessary for uniformity, efficiency, and statistical accuracy;
- (4) Establish minimum qualifications for employment as a probation officer in this state and establish and maintain such additional qualifications as he or she deems appropriate for appointment to the system. Qualifications for probation officers shall be established in accordance with subsection (4) of section 29-2253. An ex-offender released from a penal complex or a county jail may be appointed to a position of deputy probation or parole officer. Such ex-offender shall maintain a record free of arrests, except for minor traffic violations, for one year immediately preceding his or her appointment;
- (5) Establish and maintain advanced periodic inservice training requirements for the system;
- (6) Cooperate with all agencies, public or private, which are concerned with treatment or welfare of persons on probation;
- (7) Organize and conduct training programs for probation officers;
- (8) Collect, develop, and maintain statistical information concerning probationers, probation practices, and the operation of the system;
- (9) Interpret the probation program to the public with a view toward developing a broad base of public support;
- (10) Conduct research for the purpose of evaluating and improving the effectiveness of the system;
- (11) Adopt and promulgate such rules and regulations as may be necessary or proper for the operation of the office or system;
- (12) Transmit a report during each even-numbered year to the Supreme Court on the operation of the office for the preceding two calendar years which shall include a historical analysis of probation officer workload, including participation in non-probation-based programs and services. The report shall

be transmitted by the Supreme Court to the Governor and the Clerk of the Legislature;

(13) Administer the payment by the state of all salaries, travel, and actual and necessary expenses incident to the conduct and maintenance of the office;

(14) Use the funds provided under section 29-2262.07 to augment operational or personnel costs associated with the development, implementation, and evaluation of enhanced probation-based programs and non-probation-based programs and services in which probation personnel or probation resources are utilized pursuant to an interlocal agreement authorized by subdivision (16) of this section and to purchase services to provide such programs aimed at enhancing adult probationer or non-probation-based program participant supervision in the community and treatment needs of probationers and non-probation-based program participants. Enhanced probation-based programs include, but are not limited to, specialized units of supervision, related equipment purchases and training, and programs that address a probationer's vocational, educational, mental health, behavioral, or substance abuse treatment needs;

(15) Ensure that any risk or needs assessment instrument utilized by the system be periodically validated;

(16) Have the authority to enter into interlocal agreements in which probation resources or probation personnel may be utilized in conjunction with or as part of non-probation-based programs and services. Any such interlocal agreement shall comply with section 29-2255;

(17) Collaborate with the Community Corrections Division of the Nebraska Commission on Law Enforcement and Criminal Justice and the Office of Parole Administration to develop rules governing the participation of parolees in community corrections programs operated by the Office of Probation Administration; and

(18) Exercise all powers and perform all duties necessary and proper to carry out his or her responsibilities.

Each member of the Legislature shall receive a copy of the report required by subdivision (12) of this section by making a request for it to the administrator.

Source: Laws 1971, LB 680, § 7; Laws 1973, LB 126, § 2; Laws 1978, LB 625, § 9; Laws 1979, LB 322, § 9; Laws 1979, LB 536, § 6; Laws 1981, LB 545, § 6; Laws 1984, LB 13, § 65; Laws 1986, LB 529, § 37; Laws 1990, LB 663, § 16; Laws 1992, LB 447, § 5; Laws 2003, LB 46, § 5; Laws 2005, LB 538, § 7; Laws 2011, LB390, § 1.

Operative date July 1, 2011.

29-2255 Interlocal agreement; costs; requirements.

Any interlocal agreement authorized by subdivision (16) of section 29-2252 shall require the political subdivision party to the agreement to provide sufficient resources to cover all costs associated with the participation of probation personnel or use of probation resources other than costs covered by funds provided pursuant to section 29-2262.07 or substance abuse treatment costs covered by funds appropriated for such purpose.

Source: Laws 2005, LB 538, § 6; Laws 2011, LB390, § 2.

Operative date July 1, 2011.

29-2258 District probation officer; duties; powers.

A district probation officer shall:

(1) Conduct juvenile intake interviews and investigations in accordance with sections 43-253 and 43-260.01;

(2) Make presentence and other investigations, as may be required by law or directed by a court in which he or she is serving;

(3) Supervise probationers in accordance with the rules and regulations of the office and the directions of the sentencing court;

(4) Advise the sentencing court, in accordance with the Nebraska Probation Administration Act and such rules and regulations of the office, of violations of the conditions of probation by individual probationers;

(5) Advise the sentencing court, in accordance with the rules and regulations of the office and the direction of the court, when the situation of a probationer may require a modification of the conditions of probation or when a probationer's adjustment is such as to warrant termination of probation;

(6) Provide each probationer with a statement of the period and conditions of his or her probation;

(7) Whenever necessary, exercise the power of arrest or temporary custody as provided in section 29-2266 or 43-286.01;

(8) Establish procedures for the direction and guidance of deputy probation officers under his or her jurisdiction and advise such officers in regard to the most effective performance of their duties;

(9) Supervise and evaluate deputy probation officers under his or her jurisdiction;

(10) Delegate such duties and responsibilities to a deputy probation officer as he or she deems appropriate;

(11) Make such reports as required by the administrator, the judges of the probation district in which he or she serves, or the Supreme Court;

(12) Keep accurate and complete accounts of all money or property collected or received from probationers and give receipts therefor;

(13) Cooperate fully with and render all reasonable assistance to other probation officers;

(14) In counties with a population of less than twenty-five thousand people, participate in pretrial diversion programs established pursuant to sections 29-3601 to 29-3604 and juvenile pretrial diversion programs established pursuant to sections 43-260.02 to 43-260.07 as requested by judges of the probation district in which he or she serves, except that participation in such programs shall not require appointment of additional personnel and shall be consistent with the probation officer's current caseload;

(15) Participate, at the direction of the probation administrator pursuant to an interlocal agreement which meets the requirements of section 29-2255, in non-probation-based programs and services;

(16) Perform such other duties not inconsistent with the Nebraska Probation Administration Act or the rules and regulations of the office as a court may from time to time direct; and

(17) Exercise all powers and perform all duties necessary and proper to carry out his or her responsibilities.

Source: Laws 1971, LB 680, § 13; Laws 1979, LB 536, § 8; Laws 1986, LB 529, § 40; Laws 2001, LB 451, § 4; Laws 2003, LB 43, § 10; Laws 2005, LB 538, § 9; Laws 2010, LB800, § 6; Laws 2011, LB463, § 2.

Operative date May 12, 2011.

29-2259 Probation administrator; office; salaries; expenses; office space; prepare budget; interpreter services.

(1) The salaries, actual and necessary expenses, and expenses incident to the conduct and maintenance of the office shall be paid by the state. Actual and necessary expenses shall be paid as provided in sections 81-1174 to 81-1177.

(2) The salaries and actual and necessary travel expenses of the probation service shall be paid by the state. Actual and necessary expenses shall be paid as provided in sections 81-1174 to 81-1177.

(3) Except as provided in sections 29-2262 and 29-2262.04, the costs of drug testing and equipment incident to the electronic surveillance of individuals on probation shall be paid by the state.

(4) The expenses incident to the conduct and maintenance of the principal office within each probation district shall in the first instance be paid by the county in which it is located, but such county shall be reimbursed for such expenses by all other counties within the probation district to the extent and in the proportions determined by the Supreme Court based upon population, number of investigations, and probation cases handled or upon such other basis as the Supreme Court deems fair and equitable.

(5) Each county shall provide office space and necessary facilities for probation officers performing their official duties and shall bear the costs incident to maintenance of such offices other than salaries, travel expenses, and data processing and word processing hardware and software that is provided on the state computer network.

(6) The cost of interpreter services for deaf and hard of hearing persons and for persons unable to communicate the English language shall be paid by the state with money appropriated to the Supreme Court for that purpose or from other funds, including grant money, made available to the Supreme Court for such purpose. Interpreter services shall include auxiliary aids for deaf and hard of hearing persons as defined in section 20-151 and interpreters to assist persons unable to communicate the English language as defined in section 25-2402. Interpreter services shall be provided under this section for the purposes of conducting a presentence investigation and for ongoing supervision by a probation officer of such persons placed on probation.

(7) The probation administrator shall prepare a budget and request for appropriations for the office and shall submit such request to the Supreme Court and with its approval to the appropriate authority in accordance with law.

Source: Laws 1971, LB 680, § 14; Laws 1979, LB 536, § 9; Laws 1981, LB 204, § 43; Laws 1986, LB 529, § 41; Laws 1989, LB 2, § 1;

Laws 1990, LB 220, § 5; Laws 1992, LB 1059, § 24; Laws 1999, LB 54, § 4; Laws 2011, LB669, § 23.
Operative date August 27, 2011.

29-2259.01 Probation Cash Fund; created; use; investment.

(1) There is hereby created the Probation Cash Fund. All money collected pursuant to subdivisions (2)(m) and (2)(o) of section 29-2262 shall be remitted to the State Treasurer for credit to the fund.

(2) Expenditures from the money in the fund collected pursuant to subdivisions (2)(m) and (2)(o) of section 29-2262 shall include, but not be limited to, supplementing any state funds necessary to support the costs of the services for which the money was collected.

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

(4) The State Treasurer shall transfer any remaining money in the fund collected pursuant to subdivisions (4)(a) and (4)(b) of section 60-4,115 on January 1, 2012, to the Department of Motor Vehicles Ignition Interlock Fund.

Source: Laws 1990, LB 220, § 6; Laws 1992, LB 1059, § 25; Laws 1994, LB 1066, § 20; Laws 2001, Spec. Sess., LB 3, § 2; Laws 2003, LB 46, § 7; Laws 2009, LB497, § 1; Laws 2011, LB667, § 7.
Operative date January 1, 2012.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

29-2259.02 State Probation Contractual Services Cash Fund; created; use; investment.

The State Probation Contractual Services Cash Fund is created. The fund shall consist only of payments received by the state pursuant to contractual agreements with local political subdivisions for probation services provided by the Office of Probation Administration. Except as otherwise directed by the Supreme Court during the period from November 21, 2009, until June 30, 2013, the fund shall only be used to pay for probation services provided by the Office of Probation Administration to local political subdivisions which enter into contractual agreements with the Office of Probation Administration. The fund shall be administered by the probation administrator. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2000, LB 1216, § 29; Laws 2009, First Spec. Sess., LB3, § 14; Laws 2011, LB378, § 19.
Effective date May 18, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

29-2261 Presentence investigation, when; contents; psychiatric examination; persons having access to records; reports authorized.

(1) Unless it is impractical to do so, when an offender has been convicted of a felony other than murder in the first degree, the court shall not impose sentence without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation. When an offender has been convicted of murder in the first degree and (a) a jury renders a verdict finding the existence of one or more aggravating circumstances as provided in section 29-2520 or (b)(i) the information contains a notice of aggravation as provided in section 29-1603 and (ii) the offender waives his or her right to a jury determination of the alleged aggravating circumstances, the court shall not commence the sentencing determination proceeding as provided in section 29-2521 without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation.

(2) A court may order a presentence investigation in any case, except in cases in which an offender has been convicted of a Class IIIA misdemeanor, a Class IV misdemeanor, a Class V misdemeanor, a traffic infraction, or any corresponding city or village ordinance.

(3) The presentence investigation and report shall include, when available, an analysis of the circumstances attending the commission of the crime, the offender's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, and personal habits, and any other matters that the probation officer deems relevant or the court directs to be included. All local and state police agencies and Department of Correctional Services adult correctional facilities shall furnish to the probation officer copies of such criminal records, in any such case referred to the probation officer by the court of proper jurisdiction, as the probation officer shall require without cost to the court or the probation officer.

Such investigation shall also include:

(a) Any written statements submitted to the county attorney by a victim; and

(b) Any written statements submitted to the probation officer by a victim.

(4) If there are no written statements submitted to the probation officer, he or she shall certify to the court that:

(a) He or she has attempted to contact the victim; and

(b) If he or she has contacted the victim, such officer offered to accept the written statements of the victim or to reduce such victim's oral statements to writing.

For purposes of subsections (3) and (4) of this section, the term victim shall be as defined in section 29-119.

(5) Before imposing sentence, the court may order the offender to submit to psychiatric observation and examination for a period of not exceeding sixty days or such longer period as the court determines to be necessary for that purpose. The offender may be remanded for this purpose to any available clinic or mental hospital, or the court may appoint a qualified psychiatrist to make the examination. The report of the examination shall be submitted to the court.

(6) Any presentence report or psychiatric examination shall be privileged and shall not be disclosed directly or indirectly to anyone other than a judge, probation officers to whom an offender's file is duly transferred, the probation administrator or his or her designee, or others entitled by law to receive such information, including personnel and mental health professionals for the Ne-

Nebraska State Patrol specifically assigned to sex offender registration and community notification for the sole purpose of using such report or examination for assessing risk and for community notification of registered sex offenders. For purposes of this subsection, mental health professional means (a) a practicing physician licensed to practice medicine in this state under the Medicine and Surgery Practice Act, (b) a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111, or (c) a practicing mental health professional licensed or certified in this state as provided in the Mental Health Practice Act. The court may permit inspection of the report or examination of parts thereof by the offender or his or her attorney, or other person having a proper interest therein, whenever the court finds it is in the best interest of a particular offender. The court may allow fair opportunity for an offender to provide additional information for the court's consideration.

(7) If an offender is sentenced to imprisonment, a copy of the report of any presentence investigation or psychiatric examination shall be transmitted immediately to the Department of Correctional Services. Upon request, the Board of Parole or the Office of Parole Administration may receive a copy of the report from the department.

(8) Notwithstanding subsection (6) of this section, the Supreme Court or an agent of the Supreme Court acting under the direction and supervision of the Chief Justice shall have access to psychiatric examinations and presentence investigations and reports for research purposes. The Supreme Court and its agent shall treat such information as confidential, and nothing identifying any individual shall be released.

Source: Laws 1971, LB 680, § 16; Laws 1974, LB 723, § 1; Laws 1983, LB 78, § 4; Laws 2000, LB 1008, § 1; Laws 2002, LB 564, § 1; Laws 2002, Third Spec. Sess., LB 1, § 9; Laws 2003, LB 46, § 8; Laws 2004, LB 1207, § 17; Laws 2007, LB463, § 1129; Laws 2011, LB390, § 3.

Operative date July 1, 2011.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.

Mental Health Practice Act, see section 38-2101.

29-2262.07 Probation Program Cash Fund; created; use; investment.

The Probation Program Cash Fund is created. All funds collected pursuant to section 29-2262.06 shall be remitted to the State Treasurer for credit to the fund. Except as otherwise directed by the Supreme Court during the period from November 21, 2009, until June 30, 2013, the fund shall be utilized by the administrator for the purposes stated in subdivisions (14) and (17) of section 29-2252, except that the State Treasurer shall, on or before June 30, 2011, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services, transfer the amount set forth in Laws 2009, LB1, One Hundred First Legislature, First Special Session. 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.

On July 15, 2010, the State Treasurer shall transfer three hundred fifty thousand dollars from the Probation Program Cash Fund to the Violence

Prevention Cash Fund. The Office of Violence Prevention shall distribute such funds as soon as practicable after July 15, 2010, to organizations or governmental entities that have submitted violence prevention plans and that best meet the intent of reducing street and gang violence and reducing homicides and injuries caused by firearms.

Source: Laws 2003, LB 46, § 13; Laws 2009, First Spec. Sess., LB3, § 15; Laws 2010, LB800, § 8; Laws 2011, LB378, § 20; Laws 2011, LB390, § 4.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB378, section 20, with LB390, section 4, to reflect all amendments.

Note: Changes made by LB378 became effective May 18, 2011. Changes made by LB390 became operative July 1, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

29-2262.08 Transferred to section 43-286.01.

ARTICLE 25

SPECIAL PROCEDURE IN CASES OF HOMICIDE

Section

- 29-2520. Aggravation hearing; procedure.
 29-2521.02. Criminal homicide cases; review and analysis by Supreme Court; manner.
 29-2522. Sentence; considerations; determination; contents.
 29-2524. Sections; how construed.

29-2520 Aggravation hearing; procedure.

(1) Whenever any person is found guilty of a violation of section 28-303 and the information contains a notice of aggravation as provided in section 29-1603, the district court shall, as soon as practicable, fix a date for an aggravation hearing to determine the alleged aggravating circumstances. If no notice of aggravation has been filed, the district court shall enter a sentence of life imprisonment.

(2) Unless the defendant waives his or her right to a jury determination of the alleged aggravating circumstances, such determination shall be made by:

(a) The jury which determined the defendant's guilt; or

(b) A jury impaneled for purposes of the determination of the alleged aggravating circumstances if:

(i) The defendant waived his or her right to a jury at the trial of guilt and either was convicted before a judge or was convicted on a plea of guilty or nolo contendere; or

(ii) The jury which determined the defendant's guilt has been discharged.

A jury required by subdivision (2)(b) of this section shall be impaneled in the manner provided in sections 29-2004 to 29-2010.

(3) The defendant may waive his or her right to a jury determination of the alleged aggravating circumstances. The court shall accept the waiver after determining that it is made freely, voluntarily, and knowingly. If the defendant waives his or her right to a jury determination of the alleged aggravating circumstances, such determination shall be made by a panel of judges as a part of the sentencing determination proceeding as provided in section 29-2521.

(4)(a) At an aggravation hearing before a jury for the determination of the alleged aggravating circumstances, the state may present evidence as to the existence of the aggravating circumstances alleged in the information. The Nebraska Evidence Rules shall apply at the aggravation hearing.

(b) Alternate jurors who would otherwise be discharged upon final submission of the cause to the jury shall be retained during the deliberation of the defendant's guilt but shall not participate in such deliberations. Such alternate jurors shall serve during the aggravation hearing as provided in section 29-2004 but shall not participate in the jury's deliberations under this subsection.

(c) If the jury serving at the aggravation hearing is the jury which determined the defendant's guilt, the jury may consider evidence received at the trial of guilt for purposes of reaching its verdict as to the existence or nonexistence of aggravating circumstances in addition to the evidence received at the aggravation hearing.

(d) After the presentation and receipt of evidence at the aggravation hearing, the state and the defendant or his or her counsel may present arguments before the jury as to the existence or nonexistence of the alleged aggravating circumstances.

(e) The court shall instruct the members of the jury as to their duty as jurors, the definitions of the aggravating circumstances alleged in the information, and the state's burden to prove the existence of each aggravating circumstance alleged in the information beyond a reasonable doubt.

(f) The jury at the aggravation hearing shall deliberate and return a verdict as to the existence or nonexistence of each alleged aggravating circumstance. Each aggravating circumstance shall be proved beyond a reasonable doubt. Each verdict with respect to each alleged aggravating circumstance shall be unanimous. If the jury is unable to reach a unanimous verdict with respect to an aggravating circumstance, such aggravating circumstance shall not be weighed in the sentencing determination proceeding as provided in section 29-2521.

(g) Upon rendering its verdict as to the determination of the aggravating circumstances, the jury shall be discharged.

(h) If no aggravating circumstance is found to exist, the court shall enter a sentence of life imprisonment. If one or more aggravating circumstances are found to exist, the court shall convene a panel of three judges to hold a hearing to receive evidence of mitigation and sentence excessiveness or disproportionality as provided in subsection (3) of section 29-2521.

Source: Laws 1973, LB 268, § 5; Laws 1978, LB 748, § 22; Laws 2002, Third Spec. Sess., LB 1, § 11; Laws 2011, LB12, § 3.
Effective date August 27, 2011.

29-2521.02 Criminal homicide cases; review and analysis by Supreme Court; manner.

The Supreme Court shall within a reasonable time after July 22, 1978, review and analyze all cases involving criminal homicide committed on or after April 20, 1973. Such review and analysis shall examine (1) the facts including mitigating and aggravating circumstances, (2) the charges filed, (3) the crime

for which defendant was convicted, and (4) the sentence imposed. Such review shall be updated as new criminal homicide cases occur.

Source: Laws 1978, LB 711, § 2; Laws 2000, LB 1008, § 2; Laws 2011, LB390, § 5.

Operative date July 1, 2011.

29-2522 Sentence; considerations; determination; contents.

The panel of judges for the sentencing determination proceeding shall either unanimously fix the sentence at death or, if the sentence of death was not unanimously agreed upon by the panel, fix the sentence at life imprisonment. Such sentence determination shall be based upon the following considerations:

(1) Whether the aggravating circumstances as determined to exist justify imposition of a sentence of death;

(2) Whether sufficient mitigating circumstances exist which approach or exceed the weight given to the aggravating circumstances; or

(3) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

In each case, the determination of the panel of judges shall be in writing and refer to the aggravating and mitigating circumstances weighed in the determination of the panel.

If an order is entered sentencing the defendant to death, a date for execution shall not be fixed until after the conclusion of the appeal provided for by section 29-2525.

Source: Laws 1973, LB 268, § 7; Laws 1978, LB 711, § 5; Laws 1982, LB 722, § 10; Laws 2002, Third Spec. Sess., LB 1, § 14; Laws 2011, LB12, § 4.

Effective date August 27, 2011.

29-2524 Sections; how construed.

Nothing in sections 25-1140.09, 28-303, 28-313, and 29-2519 to 29-2546 shall be in any way deemed to repeal or limit existing procedures for automatic review of capital cases, nor shall they in any way limit the right of the Supreme Court to reduce a sentence of death to a sentence of life imprisonment in accordance with the provisions of section 29-2308, nor shall they limit the right of the Board of Pardons to commute any sentence of death to a sentence of life imprisonment.

Source: Laws 1973, LB 268, § 9; Laws 1978, LB 748, § 23; Laws 1978, LB 711, § 6; Laws 2002, Third Spec. Sess., LB 1, § 16; Laws 2011, LB12, § 5.

Effective date August 27, 2011.

Cross References

Constitutional provisions:

Board of Pardons, see Article IV, section 13, Constitution of Nebraska.

Board of Pardons, see section 83-1,126.

ARTICLE 30

POSTCONVICTION PROCEEDINGS

Section

29-3001. Postconviction relief; motion; limitation; procedure; costs.

29-3001 Postconviction relief; motion; limitation; procedure; costs.

(1) A prisoner in custody under sentence and claiming a right to be released on the ground that there was such a denial or infringement of the rights of the prisoner as to render the judgment void or voidable under the Constitution of this state or the Constitution of the United States, may file a verified motion, in the court which imposed such sentence, stating the grounds relied upon and asking the court to vacate or set aside the sentence.

(2) Unless the motion and the files and records of the case show to the satisfaction of the court that the prisoner is entitled to no relief, the court shall cause notice thereof to be served on the county attorney, grant a prompt hearing thereon, and determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that there was such a denial or infringement of the rights of the prisoner as to render the judgment void or voidable under the Constitution of this state or the Constitution of the United States, the court shall vacate and set aside the judgment and shall discharge the prisoner or resentence the prisoner or grant a new trial as may appear appropriate. Proceedings under the provisions of sections 29-3001 to 29-3004 shall be civil in nature. Costs shall be taxed as in habeas corpus cases.

(3) A court may entertain and determine such motion without requiring the production of the prisoner, whether or not a hearing is held. Testimony of the prisoner or other witnesses may be offered by deposition. The court need not entertain a second motion or successive motions for similar relief on behalf of the same prisoner.

(4) A one-year period of limitation shall apply to the filing of a verified motion for postconviction relief. The one-year limitation period shall run from the later of:

(a) The date the judgment of conviction became final by the conclusion of a direct appeal or the expiration of the time for filing a direct appeal;

(b) The date on which the factual predicate of the constitutional claim or claims alleged could have been discovered through the exercise of due diligence;

(c) The date on which an impediment created by state action, in violation of the Constitution of the United States or the Constitution of Nebraska or any law of this state, is removed, if the prisoner was prevented from filing a verified motion by such state action;

(d) The date on which a constitutional claim asserted was initially recognized by the Supreme Court of the United States or the Nebraska Supreme Court, if the newly recognized right has been made applicable retroactively to cases on postconviction collateral review; or

(e) August 27, 2011.

Source: Laws 1965, c. 145, § 1, p. 486; Laws 2011, LB137, § 1.
Effective date August 27, 2011.

ARTICLE 36
PRETRIAL DIVERSION

Section

29-3608. Minor traffic violations; pretrial diversion program; eligibility.

29-3608 Minor traffic violations; pretrial diversion program; eligibility.

Any driver holding a commercial driver's license issued pursuant to sections 60-462.01 and 60-4,138 to 60-4,172 shall not be eligible to participate in a program under sections 29-3605 to 29-3609 if such participation would be in noncompliance with federal law or regulation and subject the state to possible loss of federal funds.

Source: Laws 2002, LB 1303, § 8; Laws 2003, LB 562, § 1; Laws 2005, LB 76, § 1; Laws 2011, LB178, § 1.
Effective date August 27, 2011.

ARTICLE 39
PUBLIC DEFENDERS AND APPOINTED COUNSEL

(c) COUNTY REVENUE ASSISTANCE ACT

Section

29-3921. Commission on Public Advocacy Operations Cash Fund; created; use; investment; transfers; use.

(c) COUNTY REVENUE ASSISTANCE ACT

29-3921 Commission on Public Advocacy Operations Cash Fund; created; use; investment; transfers; use.

(1) The Commission on Public Advocacy Operations Cash Fund is created. The fund shall be used for the operations of the commission, except that transfers may be made from the fund to the General Fund at the direction of the Legislature through June 30, 2011. The Commission on Public Advocacy Operations Cash Fund shall consist of money remitted pursuant to section 33-156. It is the intent of the Legislature that the commission shall be funded solely from the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) On July 1, 2011, or as soon thereafter as administratively possible, the State Treasurer shall transfer one hundred thousand dollars from the Commission on Public Advocacy Operations Cash Fund to the Supreme Court Education Fund. The State Court Administrator shall use these funds to assist the juvenile justice system in providing prefiling and diversion programming designed to reduce excessive absenteeism and unnecessary involvement with the juvenile justice system.

(3) The State Treasurer shall transfer the following amounts from the Commission on Public Advocacy Operations Cash Fund to the Court Appointed Special Advocate Fund:

(a) On July 1, 2011, or as soon thereafter as administratively possible, one hundred thousand dollars; and

(b) On July 1, 2012, or as soon thereafter as administratively possible, two hundred thousand dollars.

Source: Laws 1995, LB 646, § 3; Laws 1997, LB 108, § 1; Laws 2001, LB 659, § 14; Laws 2002, LB 876, § 65; Laws 2003, LB 760, § 10;

Laws 2008, LB961, § 2; Laws 2009, First Spec. Sess., LB3, § 16;
Laws 2011, LB463, § 3.
Operative date May 12, 2011.

Cross References

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

ARTICLE 40

SEX OFFENDERS

(a) SEX OFFENDER REGISTRATION ACT

Section
29-4003. Applicability of act.

(a) SEX OFFENDER REGISTRATION ACT

29-4003 Applicability of act.

(1)(a) The Sex Offender Registration Act applies to any person who on or after January 1, 1997:

(i) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

(A) Kidnapping of a minor pursuant to section 28-313, except when the person is the parent of the minor and was not convicted of any other offense in this section;

(B) False imprisonment of a minor pursuant to section 28-314 or 28-315;

(C) Sexual assault pursuant to section 28-319 or 28-320;

(D) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

(E) Sexual assault of a child in the first degree pursuant to section 28-319.01;

(F) Sexual abuse of a vulnerable adult pursuant to subdivision (1)(c) of section 28-386;

(G) Incest of a minor pursuant to section 28-703;

(H) Pandering of a minor pursuant to section 28-802;

(I) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or 28-1463.05;

(J) Knowingly possessing any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers pursuant to section 28-813.01;

(K) Criminal child enticement pursuant to section 28-311;

(L) Child enticement by means of an electronic communication device pursuant to section 28-320.02;

(M) Debauching a minor pursuant to section 28-805; or

(N) Attempt, solicitation, aiding or abetting, being an accessory, or conspiring to commit an offense listed in subdivisions (1)(a)(i)(A) through (1)(a)(i)(M) of this section;

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under

subdivision (1)(a)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon;

(iii) Is incarcerated in a jail, a penal or correctional facility, or any other public or private institution or is under probation or parole as a result of pleading guilty to or being found guilty of a registrable offense under subdivision (1)(a)(i) or (ii) of this section prior to January 1, 1997; or

(iv) Enters the state and is required to register as a sex offender under the laws of another village, town, city, state, territory, commonwealth, or other jurisdiction of the United States.

(b) In addition to the registrable offenses under subdivision (1)(a) of this section, the Sex Offender Registration Act applies to any person who on or after January 1, 2010:

(i)(A) Except as provided in subdivision (1)(b)(i)(B) of this section, has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

- (I) Murder in the first degree pursuant to section 28-303;
- (II) Murder in the second degree pursuant to section 28-304;
- (III) Manslaughter pursuant to section 28-305;
- (IV) Assault in the first degree pursuant to section 28-308;
- (V) Assault in the second degree pursuant to section 28-309;
- (VI) Assault in the third degree pursuant to section 28-310;
- (VII) Stalking pursuant to section 28-311.03;
- (VIII) Unlawful intrusion pursuant to subsection (4) of section 28-311.08;
- (IX) Kidnapping pursuant to section 28-313;
- (X) False imprisonment pursuant to section 28-314 or 28-315;
- (XI) Sexual abuse of an inmate or parolee in the first degree pursuant to section 28-322.02;
- (XII) Sexual abuse of an inmate or parolee in the second degree pursuant to section 28-322.03;
- (XIII) Sexual abuse of a protected individual pursuant to section 28-322.04;
- (XIV) Incest pursuant to section 28-703;
- (XV) Child abuse pursuant to subdivision (1)(d) or (e) of section 28-707;
- (XVI) Enticement by electronic communication device pursuant to section 28-833; or
- (XVII) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(b)(i)(A)(I) through (1)(b)(i)(A)(XVI) of this section.

(B) In order for the Sex Offender Registration Act to apply to the offenses listed in subdivisions (1)(b)(i)(A)(I), (II), (III), (IV), (V), (VI), (VII), (IX), and (X) of this section, a court shall have found that evidence of sexual penetration or sexual contact, as those terms are defined in section 28-318, was present in the

record, which shall include consideration of the factual basis for a plea-based conviction and information contained in the presentence report;

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(b)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon; or

(iii) Enters the state and is required to register as a sex offender under the laws of another village, town, city, state, territory, commonwealth, or other jurisdiction of the United States.

(2) A person appealing a conviction of a registrable offense under this section shall be required to comply with the act during the appeals process.

Source: Laws 1996, LB 645, § 3; Laws 2002, LB 564, § 3; Laws 2004, LB 943, § 9; Laws 2005, LB 713, § 4; Laws 2006, LB 1199, § 18; Laws 2009, LB97, § 25; Laws 2009, LB285, § 4; Laws 2011, LB61, § 2.

Effective date August 27, 2011.

ARTICLE 43

SEXUAL ASSAULT AND DOMESTIC VIOLENCE

Section
29-4306. Collection of evidence; requirements.

29-4306 Collection of evidence; requirements.

Every health care professional as defined in section 44-5418 or any person in charge of any emergency room in this state:

(1) Shall utilize a standardized sexual assault evidence collection kit approved by the Attorney General; and

(2) Shall collect forensic evidence with the consent of the sexual assault or domestic violence victim without separate authorization by a law enforcement agency. If the sexual assault or domestic violence victim is eighteen years of age, the consent of or notification of the parent, parents, guardian, or any other person having custody of the sexual assault or domestic violence victim is not required.

Source: Laws 2005, LB 713, § 1; Laws 2011, LB479, § 1.
Effective date August 27, 2011.

CHAPTER 30

DECEDENTS' ESTATES; PROTECTION OF PERSONS AND PROPERTY

Article.

- 2. Wills. 30-241.
- 16. Appeals in Probate Matters. 30-1601.
- 22. Probate Jurisdiction.
 - Part 1— Short Title, Construction, General Provisions. 30-2201.
 - Part 2— Definitions. 30-2209.
 - Part 3— Scope, Jurisdiction, and Courts. 30-2210, 30-2211.
- 26. Protection of Persons under Disability and Their Property.
 - Part 1— General Provisions. 30-2601 to 30-2602.02.
 - Part 2— Guardians of Minors. 30-2613.
 - Part 3— Guardians of Incapacitated Persons. 30-2618 to 30-2629.
 - Part 4— Protection of Property of Persons under Disability and Minors. 30-2630.01 to 30-2655.
- 39. Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.
 - Part 1— General Provisions. 30-3901 to 30-3906.
 - Part 2— Jurisdiction. 30-3907 to 30-3915.
 - Part 3— Transfer of Guardianship or Conservatorship. 30-3916, 30-3917.
 - Part 4— Registration and Recognition of Orders From Other States. 30-3918 to 30-3920.
 - Part 5— Miscellaneous Provisions. 30-3921 to 30-3923.

ARTICLE 2

WILLS

Section

30-241. Devise to state; acceptance; Governor; when.

30-241 Devise to state; acceptance; Governor; when.

With the exception of lands, money, or other property devised or bequeathed to this state for educational purposes which are controlled by Article VII, section 9, of the Constitution of Nebraska, and except as provided in section 81-1108.33, the Governor, on behalf of the State of Nebraska, is authorized to accept devises of real estate or bequests of personal property, or both, made to the State of Nebraska, or any department or agency thereof, if in his or her judgment, under the terms on which such devise or bequest is made, it is for the best interests of the State of Nebraska to accept the same.

Source: Laws 1951, c. 89, § 1, p. 254; Laws 1996, LB 894, § 1; Laws 2011, LB264, § 2.
Effective date March 11, 2011.

ARTICLE 16

APPEALS IN PROBATE MATTERS

Section

30-1601. Appeal; procedure; operate as supersedeas; when; appellant; pay costs; when.

30-1601 Appeal; procedure; operate as supersedeas; when; appellant; pay costs; when.

(1) In all matters arising under the Nebraska Probate Code and in all matters in county court arising under the Nebraska Uniform Trust Code, appeals may be taken to the Court of Appeals in the same manner as an appeal from district court to the Court of Appeals.

(2) 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.

(3) When the appeal is by someone other than a personal representative, conservator, trustee, guardian, or guardian ad litem, the appealing party shall, within thirty days after the entry of the judgment or final order complained of, deposit with the clerk of the county court a supersedeas bond or undertaking in such sum as the court shall direct, with at least one good and sufficient surety approved by the court, conditioned that the appellant will satisfy any judgment and costs that may be adjudged against him or her, including costs under subsection (6) of this section, unless the court directs that no bond or undertaking need be deposited. If an appellant fails to comply with this subsection, the Court of Appeals on motion and notice may take such action, including dismissal of the appeal, as is just.

(4) The appeal shall be a supersedeas for the matter from which the appeal is specifically taken, but not for any other matter. In appeals pursuant to sections 30-2601 to 30-2661, upon motion of any party to the action, the county court may remove the supersedeas or require the appealing party to deposit with the clerk of the county court a bond or other security approved by the court in an amount and conditioned in accordance with sections 30-2640 and 30-2641. Once the appeal is perfected, the court having jurisdiction over the appeal may, upon motion of any party to the action, reimpose or remove the supersedeas or require the appealing party to deposit with the clerk of the court a bond or other security approved by the court in an amount and conditioned in accordance with sections 30-2640 and 30-2641. Upon motion of any interested person or upon the court's own motion, the county court may appoint a special guardian or conservator pending appeal despite any supersedeas order.

(5) The judgment of the Court of Appeals shall not vacate the judgment in 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.

(6) If it appears to the Court of Appeals that an appeal was taken vexatiously or for delay, the court shall adjudge that the appellant shall pay the cost thereof, including an attorney's fee, to the adverse party in an amount fixed by the Court of Appeals, and any bond required under subsection (3) of this section shall be liable for the costs.

Source: Laws 1881, c. 47, § 1, p. 227; R.S.1913, § 1526; C.S.1922, § 1471; C.S.1929, § 30-1601; R.S.1943, § 30-1601; Laws 1975, LB 481, § 14; Laws 1981, LB 42, § 17; Laws 1995, LB 538, § 7; Laws 1997, LB 466, § 1; Laws 1999, LB 43, § 18; Laws 2003, LB 130, § 119; Laws 2011, LB157, § 4.
Operative date January 1, 2012.

Cross References

Nebraska Probate Code, see section 30-2201.

Nebraska Uniform Trust Code, see section 30-3801.

ARTICLE 22
PROBATE JURISDICTION

PART 1—SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

Section

30-2201. Short title.

PART 2—DEFINITIONS

30-2209. General definitions.

PART 3—SCOPE, JURISDICTION, AND COURTS

30-2210. Territorial application.

30-2211. Subject matter jurisdiction.

PART 1—SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

30-2201 Short title.

Sections 30-2201 to 30-2902 and 30-3901 to 30-3923 shall be known and may be cited as the Nebraska Probate Code.

Source: Laws 1974, LB 354, § 1, UPC § 1-101; Laws 1985, LB 292, § 1; Laws 1993, LB 250, § 33; Laws 1993, LB 782, § 2; Laws 1997, LB 466, § 2; Laws 1999, LB 100, § 1; Laws 2010, LB758, § 1; Laws 2011, LB157, § 28.

Operative date January 1, 2012.

PART 2—DEFINITIONS

30-2209 General definitions.

Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, and unless the context otherwise requires, in the Nebraska Probate Code:

(1) Application means a written request to the registrar for an order of informal probate or appointment under part 3 of Article 24.

(2) Beneficiary, as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer, and as it relates to a charitable trust includes any person entitled to enforce the trust.

(3) Child includes any individual entitled to take as a child under the code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, or a grandchild or any more remote descendant.

(4) Claim, in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(5) Court means the court or branch having jurisdiction in matters relating to the affairs of decedents. This court in this state is known as county court or, for

purposes of guardianship of a juvenile over which a separate juvenile court already has jurisdiction, the county court or separate juvenile court.

(6) Conservator means a person who is appointed by a court to manage the estate of a protected person.

(7) Devise, when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

(8) Devisee means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(9) Disability means cause for a protective order as described by section 30-2630.

(10) Disinterested witness to a will means any individual who acts as a witness to a will and is not an interested witness to such will.

(11) Distributee means any person who has received property of a decedent from his or her personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his or her hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, testamentary trustee includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(12) Estate includes the property of the decedent, trust, or other person whose affairs are subject to the Nebraska Probate Code as originally constituted and as it exists from time to time during administration.

(13) Exempt property means that property of a decedent's estate which is described in section 30-2323.

(14) Fiduciary includes personal representative, guardian, conservator, and trustee.

(15) Foreign personal representative means a personal representative of another jurisdiction.

(16) Formal proceedings mean those conducted before a judge with notice to interested persons.

(17) Guardian means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

(18) Heirs mean those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(19) Incapacitated person is as defined in section 30-2601.

(20) Informal proceedings mean those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

(21) Except for purposes of article 26 of the Nebraska Probate Code, interested person includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The

meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(22) Interested witness to a will means any individual who acts as a witness to a will at the date of its execution and who is or would be entitled to receive any property thereunder if the testator then died under the circumstances existing at the date of its execution, but does not include any individual, merely because of such nomination, who acts as a witness to a will by which he or she is nominated as personal representative, conservator, guardian, or trustee.

(23) Issue of a person means all his or her lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in the Nebraska Probate Code.

(24) Lease includes an oil, gas, or other mineral lease.

(25) Letters include letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(26) Minor means an individual under nineteen years of age, but in case any person marries under the age of nineteen years his or her minority ends.

(27) Mortgage means any conveyance, agreement, or arrangement in which property is used as security.

(28) Nonresident decedent means a decedent who was domiciled in another jurisdiction at the time of his or her death.

(29) Notice means compliance with the requirements of notice pursuant to subdivisions (a)(1) and (a)(2) of section 30-2220.

(30) Organization includes a corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, or association, two or more persons having a joint or common interest, or any other legal entity.

(31) Parent includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under the Nebraska Probate Code, by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(32) Person means an individual, a corporation, an organization, a limited liability company, or other legal entity.

(33) Personal representative includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(34) Petition means a written request to the court for an order after notice.

(35) Proceeding includes action at law and suit in equity, but does not include a determination of inheritance tax under Chapter 77, article 20, or estate tax apportionment as provided in sections 77-2108 to 77-2112.

(36) Property includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(37) Protected person is as defined in section 30-2601.

(38) Protective proceeding is as defined in section 30-2601.

(39) Registrar refers to the official of the court designated to perform the functions of registrar as provided in section 30-2216.

(40) Relative or relation of a person means all persons who are related to him or her by blood or legal adoption.

(41) Security includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral-trust certificate, transferable share, voting-trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(42) Settlement, in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(43) Special administrator means a personal representative as described by sections 30-2457 to 30-2461.

(44) State includes 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.

(45) Successor personal representative means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(46) Successors mean those persons, other than creditors, who are entitled to property of a decedent under his or her will or the Nebraska Probate Code.

(47) Supervised administration refers to the proceedings described in Article 24, part 5.

(48) Testacy proceeding means a proceeding to establish a will or determine intestacy.

(49) Testator means the maker of a will.

(50) Trust includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. Trust excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Article 27, custodial arrangements pursuant to the Nebraska Uniform Transfers to Minors Act, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(51) Trustee includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(52) Ward is as defined in section 30-2601.

(53) Will means any instrument, including any codicil or other testamentary instrument complying with sections 30-2326 to 30-2338, which disposes of personal or real property, appoints a personal representative, conservator,

guardian, or trustee, revokes or revises an earlier executed testamentary instrument, or encompasses any one or more of such objects or purposes.

Source: Laws 1974, LB 354, § 9, UPC § 1-201; Laws 1978, LB 650, § 1; Laws 1992, LB 907, § 26; Laws 1993, LB 121, § 193; Laws 1998, LB 1041, § 3; Laws 2011, LB157, § 29.
Operative date January 1, 2012.

Cross References

Nebraska Uniform Transfers to Minors Act, see section 43-2701.

PART 3—SCOPE, JURISDICTION, AND COURTS

30-2210 Territorial application.

Except as otherwise provided in this code, this code applies to (1) the affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this state, (2) the property of nonresidents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state, (3) incapacitated persons and minors in this state, except as provided in the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, and (4) survivorship and related accounts in this state.

Source: Laws 1974, LB 354, § 10, UPC § 1-301; Laws 2003, LB 130, § 122; Laws 2011, LB157, § 30.
Operative date January 1, 2012.

Cross References

Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, see section 30-3901.

30-2211 Subject matter jurisdiction.

(a) To the full extent permitted by the Constitution of Nebraska, the court has jurisdiction over all subject matter relating to (1) estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons; and (2) protection of minors and incapacitated persons, except as provided in the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

(b) The court has full power to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

Source: Laws 1974, LB 354, § 11, UPC § 1-302; Laws 2003, LB 130, § 123; Laws 2011, LB157, § 31.
Operative date January 1, 2012.

Cross References

Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, see section 30-3901.

ARTICLE 26

**PROTECTION OF PERSONS UNDER DISABILITY
AND THEIR PROPERTY**

PART 1—GENERAL PROVISIONS

Section 30-2601. Definitions and use of terms.

§ 30-2601

DECEDENTS' ESTATES

Section

- 30-2602.01. Ex parte orders; authorized; violation; penalty.
- 30-2602.02. Guardian or conservator; national criminal history record check; report; waiver by court.

PART 2—GUARDIANS OF MINORS

- 30-2613. Powers and duties of guardian of minor.

PART 3—GUARDIANS OF INCAPACITATED PERSONS

- 30-2618. Venue.
- 30-2620. Findings; appointment of guardian; authority and responsibility of guardian.
- 30-2626. Temporary guardians; power of court.
- 30-2628. General powers, rights, and duties of guardian; inventory.
- 30-2629. Proceedings subsequent to appointment; venue.

PART 4—PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS

- 30-2630.01. Temporary conservator; power of court.
- 30-2632. Venue.
- 30-2640. Bond.
- 30-2647. Inventory and records.
- 30-2648. Accounts.
- 30-2655. Limitation of powers of conservator.

PART 1—GENERAL PROVISIONS

30-2601 Definitions and use of terms.

Unless otherwise apparent from the context, in the Nebraska Probate Code:

(1) Incapacitated person means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning himself or herself;

(2) A protective proceeding is a proceeding under the provisions of section 30-2630 to determine that a person cannot effectively manage or apply his or her estate to necessary ends, either because the person lacks the ability or is otherwise inconvenienced, or because the person is a minor, and to secure administration of the person's estate by a conservator or other appropriate relief;

(3) A protected person is a minor or other person for whom a conservator has been appointed or other protective order has been made;

(4) A ward is a person for whom a guardian has been appointed. A minor ward is a minor for whom a guardian has been appointed solely because of minority;

(5) Full guardianship means the guardian has been granted all powers which may be conferred upon a guardian by law;

(6) Limited guardianship means any guardianship which is not a full guardianship; and

(7) For purposes of article 26 of the Nebraska Probate Code, interested person means children, spouses, those persons who would be the heirs if the ward or person alleged to be incapacitated died without leaving a valid last will and testament who are adults and any trustee of any trust executed by the ward or person alleged to be incapacitated. The meaning of interested person as it

relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding. If there are no persons identified as interested persons above, then interested person shall also include any person or entity named as a devisee in the most recently executed last will and testament of the ward or person alleged to be incapacitated.

Source: Laws 1974, LB 354, § 219, UPC § 5-101; Laws 1997, LB 466, § 5; Laws 2011, LB157, § 32.
Operative date January 1, 2012.

30-2602.01 Ex parte orders; authorized; violation; penalty.

During the pendency of any proceeding under sections 30-2601 to 30-2661 after a guardian or conservator is appointed, upon application by any interested person and if the accompanying affidavit of such person or his or her agent shows to the court that the ward's or protected person's safety, health, or financial welfare is at issue, the court may issue ex parte orders to address the situation. Ex parte orders issued under this section shall remain in full force and effect for no more than ten days or until a hearing is held thereon, whichever is earlier. Anyone who violates such order after service shall be guilty of a Class II misdemeanor. Any interested person that submits an affidavit under this section in bad faith, or submits an affidavit under this section that lacks a factual basis as determined by the court, shall be ordered to pay the opposing party reasonable attorney's fees and costs.

Source: Laws 2011, LB157, § 33.
Operative date January 1, 2012.

30-2602.02 Guardian or conservator; national criminal history record check; report; waiver by court.

(1) A person, except for a financial institution as that term is defined in subdivision (12) of section 8-101 or its officers, directors, employees, or agents or a trust company, who has been nominated for appointment as a guardian or conservator shall obtain a national criminal history record check through a process approved by the State Court Administrator and a report of the results and file such report with the court at least ten days prior to the appointment hearing date, unless waived or modified by the court (a) for good cause shown by affidavit filed simultaneously with the petition for appointment or (b) in the event the protected person requests an expedited hearing under section 30-2630.01.

(2) An order appointing a guardian or conservator shall not be signed by the judge until such report has been filed with the court and reviewed by the judge. Such report, or the lack thereof, shall be certified either by affidavit or by obtaining a certified copy of the report. No report or national criminal history record check shall be required by the court upon the application of a petitioner for an emergency temporary guardianship or emergency temporary conservatorship. The court may waive the requirements of this section for good cause shown.

Source: Laws 2011, LB157, § 34.
Operative date January 1, 2012.

PART 2—GUARDIANS OF MINORS

30-2613 Powers and duties of guardian of minor.

(1) A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his or her minor and unemancipated child, except that a guardian is not legally obligated to provide from his or her own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

(a) He or she must take reasonable care of his or her ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(b) He or she may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. He or she also may receive money or property of the ward paid or delivered by virtue of section 30-2603. Any sums so received shall be applied to the ward's current needs for support, care and education, except as provided in subsections (2) and (3) of this section. He or she must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case such excess shall be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for his or her services except as approved by order of court. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(c) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of his or her ward.

(d) A guardian must report the condition of his or her ward and of the ward's estate which has been subject to his or her possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule, and upon termination of the guardianship settle his or her accounts with the ward or his or her legal representatives and pay over and deliver all of the estate and effects remaining in his or her hands or due from him or her on settlement to the person or persons who shall be lawfully entitled thereto.

(2) The appointment of a guardian for a minor shall not relieve his or her parent or parents, liable for the support of such minor, from their obligation to provide for such minor. For the purposes of guardianship of minors, the application of guardianship income and principal after payment of debts and charges of managing the estate, in relationship to the respective obligations owed by fathers, mothers, and others, for the support, maintenance and education of the minor shall be:

(a) The income and property of the father and mother of the minor in such manner as they can reasonably afford, regard being had to the situation of the family and to all the circumstances of the case;

(b) The guardianship income, in whole or in part, as shall be judged reasonable considering the extent of the guardianship income and the parents' financial ability;

(c) The income and property of any other person having a legal obligation to support the minor, in such manner as the person can reasonably afford, regard being had to the situation of the person's family and to all the circumstances of the case; and

(d) The guardianship principal, either personal or real estate, in whole or in part, as shall be judged for the best interest of the minor, considering all the circumstances of the minor and those liable for his or her support.

(3) Notwithstanding the provisions of subsection (2) of this section, the court may from time to time authorize the guardian to use so much of the guardianship income or principal, whether personal or real estate, as it may deem proper, considering all the circumstances of the minor and those liable for his or her support, if it is shown that (a) an emergency exists which justifies an expenditure, or (b) a fund has been given to the minor for a special purpose and the court can, with reasonable certainty, ascertain such purpose.

(4) The court may require a guardian to furnish a bond in an amount and conditioned in accordance with the provisions of section 30-2640.

(5) A guardian shall not change a ward's place of abode to a location outside of the State of Nebraska without court permission.

Source: Laws 1974, LB 354, § 231, UPC § 5-209; Laws 2011, LB157, § 35.

Operative date January 1, 2012.

PART 3—GUARDIANS OF INCAPACITATED PERSONS

30-2618 Venue.

Unless otherwise provided in the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, the venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present, or where property is located if he or she is a nonresident. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits.

Source: Laws 1974, LB 354, § 236, UPC § 5-302; Laws 2011, LB157, § 36.

Operative date January 1, 2012.

Cross References

Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, see section 30-3901.

30-2620 Findings; appointment of guardian; authority and responsibility of guardian.

(a) The court may appoint a guardian if it is satisfied by clear and convincing evidence that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as the least restrictive alternative available for providing continuing care or supervision of the person of the person alleged to be incapacitated. If the court finds that a guardianship should be created, the guardianship shall be a limited guardianship unless the court

finds by clear and convincing evidence that a full guardianship is necessary. If a limited guardianship is created, the court shall, at the time of appointment or later, specify the authorities and responsibilities which the guardian and ward, acting together or singly, shall have with regard to:

(1) Selecting the ward's place of abode within this state or, with court permission, outside of this state;

(2) Arranging for medical care for the ward;

(3) Protecting the personal effects of the ward;

(4) Giving necessary consent, approval, or releases on behalf of the ward;

(5) Arranging for training, education, or other habilitating services appropriate for the ward;

(6) Applying for private or governmental benefits to which the ward may be entitled;

(7) Instituting proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform such duty, if no conservator has been appointed;

(8) Entering into contractual arrangements on behalf of the ward, if no conservator has been appointed; and

(9) Receiving money and tangible property deliverable to the ward and applying such money and property to the ward's expenses for room and board, medical care, personal effects, training, education, and habilitating services, if no conservator has been appointed, or requesting the conservator to expend the ward's estate by payment to third persons to meet such expenses.

(b) In a limited guardianship, the powers shall be endorsed upon the letters of appointment of the guardian and shall be treated as specific limitations upon the general powers, rights, and duties accorded by law to the guardian. In a full guardianship, the letters of appointment shall specify that the guardian is granted all powers conferred upon guardians by law. After appointment, the ward may retain an attorney for the sole purpose of challenging the guardianship, the terms of the guardianship, or the actions of the guardian on behalf of the ward.

(c) A guardian shall not change a ward's place of abode to a location outside of the State of Nebraska without court permission.

Source: Laws 1974, LB 354, § 238, UPC § 5-304; Laws 1982, LB 428, § 6; Laws 1993, LB 782, § 6; Laws 1997, LB 466, § 7; Laws 2011, LB157, § 37.

Operative date January 1, 2012.

30-2626 Temporary guardians; power of court.

(a) If a person alleged to be incapacitated has no guardian and an emergency exists, the court may, pending notice and hearing, exercise the power of a guardian or enter an ex parte order appointing a temporary guardian to address the emergency. The order and letters of temporary guardianship shall specify the powers and duties of the temporary guardian limiting the powers and duties to those necessary to address the emergency.

(b) When the court takes action to exercise the powers of a guardian or to appoint a temporary guardian under subsection (a) of this section, an expedited hearing shall be held if requested by the person alleged to be incapacitated, or by any interested person, if the request is filed more than ten business days

prior to the date set for the hearing on the petition for appointment of the guardian. If an expedited hearing is to be held, the hearing shall be held within ten business days after the request is received. At the hearing on the temporary appointment, the petitioner shall have the burden of showing by a preponderance of the evidence that temporary guardianship continues to be necessary to address the emergency situation. Unless the person alleged to be incapacitated has counsel of his or her own choice, the court may appoint an attorney to represent the person alleged to be incapacitated at the hearing as provided in section 30-2619.

(c) If an expedited hearing is requested, notice shall be served as provided in section 30-2625. The notice shall specify that a temporary guardian has been appointed and shall be given at least twenty-four hours prior to the expedited hearing.

(d) At the expedited hearing, the court may render a judgment authorizing the temporary guardianship to continue beyond the original ten-day period. The judgment shall prescribe the specific powers and duties of the temporary guardian in the letters of temporary guardianship and shall be effective for a single ninety-day period. For good cause shown, the court may extend the temporary guardianship for successive ninety-day periods.

(e) The temporary guardianship shall terminate at the end of the ninety-day period in which the temporary guardianship is valid or at any time prior thereto if the court deems the circumstances leading to the order for temporary guardianship no longer exist or if an order has been entered as a result of a hearing pursuant to section 30-2619 which has been held during the ninety-day period.

(f) If the court denies the request for the ex parte order, the court may, in its discretion, enter an order for an expedited hearing pursuant to subsections (b) through (e) of this section.

(g) If the petitioner requests the entry of an order of temporary guardianship pursuant to subsection (a) of this section without requesting an ex parte order, the court may hold an expedited hearing pursuant to subsections (b) through (e) of this section.

(h) If an appointed guardian is not effectively performing his or her duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may, pending notice and hearing in accordance with section 30-2220, appoint a temporary guardian for the incapacitated person for a specified period not to exceed ninety days. For good cause shown, the court may extend the temporary guardianship for successive ninety-day periods. A temporary guardian appointed pursuant to this subsection has only the powers and duties specified in the previously appointed guardian's letters of guardianship, and the authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority.

(i) A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires, except that a temporary guardian shall not be required to provide the check or report under section 30-2602.02. In other respects the provisions of the Nebraska Probate Code concerning guardians apply to temporary guardians.

Source: Laws 1974, LB 354, § 244, UPC § 5-310; Laws 1978, LB 650, § 22; Laws 1993, LB 782, § 9; Laws 1997, LB 466, § 9; Laws 2011, LB157, § 38.

Operative date January 1, 2012.

30-2628 General powers, rights, and duties of guardian; inventory.

(a) Except as limited by section 30-2620, a guardian of an incapacitated person has the same powers, rights, and duties respecting the guardian's ward that a parent has respecting the parent's unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as may be specified by order of the court:

(1) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, a guardian is entitled to custody of the person of his or her ward and may establish the ward's place of abode within this state or, with court permission, outside of this state. When establishing the ward's place of abode, a guardian shall make every reasonable effort to ensure that the placement is the least restrictive alternative. A guardian shall authorize a placement to a more restrictive environment only after careful evaluation of the need for such placement. The guardian may obtain a professional evaluation or assessment that such placement is in the best interest of the ward.

(2) If entitled to custody of his or her ward, a guardian shall make provision for the care, comfort, and maintenance of his or her ward and, whenever appropriate, arrange for the ward's training and education. Without regard to custodial rights of the ward's person, a guardian shall take reasonable care of his or her ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of his or her ward is in need of protection.

(3) A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical, psychiatric, psychological, or other professional care, counsel, treatment, or service. When making such medical or psychiatric decisions, the guardian shall consider and carry out the intent of the ward expressed prior to incompetency to the extent allowable by law. Notwithstanding this provision or any other provision of the Nebraska Probate Code, the ward may authorize the release of financial, medical, and other confidential records pursuant to sections 20-161 to 20-166.

(4) If no conservator for the estate of the ward has been appointed, a guardian shall, within thirty days after appointment, prepare and file with the appointing court a complete inventory of the ward's estate together with the guardian's oath or affirmation that the inventory is complete and accurate so far as the guardian is informed. The guardian shall mail a copy thereof by first-class mail to the ward, if the ward can be located and has attained the age of fourteen years, and to all other interested persons as defined in section 30-2601. The guardian shall keep suitable records of the guardian's administration and exhibit the same on request of any interested person. To the extent a guardian, who has not been named a conservator, has possession or control of the ward's estate, the guardian shall file with the court an updated inventory every year along with an affidavit of mailing showing that copies were sent to all interested persons and, if a bond has been required, to the bonding company by first-class mail along with a form to send back to the court that indicates if such person wants to continue receiving notifications about the proceedings.

(5) If no conservator for the estate of the ward has been appointed, a guardian may:

(i) Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform such person's duty;

(ii) Receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but a guardian may not use funds from his or her ward's estate for room and board which the guardian or the guardian's spouse, parent, or child has furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. A guardian must exercise care to conserve any excess for the ward's needs; and

(iii) Exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property when authorized by a court acting under the authority of subsection (f) of section 30-3854. In acting under the authority of subsection (f) of section 30-3854, the court shall proceed in the same manner as provided under subdivision (3) of section 30-2637.

(6) A guardian is required to report the condition of his or her ward and of the estate which has been subject to the guardian's possession or control, at least every year and as required by the court or court rule. The court shall receive from any interested person, for a period of thirty days after the filing of the guardian's report, any comments with regard to the need for continued guardianship or amendment of the guardianship order. If the court has reason to believe that additional rights should be returned to the ward or assigned to the guardian, the court shall set a date for a hearing and may provide all protections as set forth for the original finding of incapacity and appointment of a guardian.

(7) If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in the Nebraska Probate Code, and the guardian must account to the conservator for funds expended.

(b) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon between the guardian and the conservator if the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(c) Nothing in subdivision (a)(3) of this section or in any other part of this section shall be construed to alter the decisionmaking authority of an attorney in fact designated and authorized under sections 30-3401 to 30-3432 to make health care decisions pursuant to a power of attorney for health care.

Source: Laws 1974, LB 354, § 246, UPC § 5-312; Laws 1982, LB 428, § 11; Laws 1993, LB 782, § 11; Laws 1997, LB 466, § 11; Laws 2003, LB 130, § 130; Laws 2011, LB157, § 39.
Operative date January 1, 2012.

30-2629 Proceedings subsequent to appointment; venue.

(a) Unless otherwise provided in the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, the court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in

which acceptance of a testamentary appointment was filed, over resignation, removal, accounting, and other proceedings relating to the guardianship.

(b) Unless otherwise provided in the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, if the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

(c) Any action or proposed action by a guardian may be challenged at any time by any interested person.

Source: Laws 1974, LB 354, § 247, UPC § 5-313; Laws 1997, LB 466, § 12; Laws 2011, LB157, § 40.
Operative date January 1, 2012.

Cross References

Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, see section 30-3901.

**PART 4—PROTECTION OF PROPERTY OF PERSONS
UNDER DISABILITY AND MINORS**

30-2630.01 Temporary conservator; power of court.

(a) If a person alleged to be in need of protection under section 30-2630 has no conservator and an emergency exists, the court may, pending notice and hearing, exercise the power of a conservator or enter an emergency protective order appointing a temporary conservator to address the emergency.

(b) When the court takes action to exercise the powers of a conservator or to appoint a temporary conservator under subsection (a) of this section, an expedited hearing shall be held if requested by the person alleged to be in need of protection, or by any interested person, if the request is filed more than ten business days prior to the date set for the hearing on the petition for appointment of the conservator. If an expedited hearing is to be held, the hearing shall be held within ten business days after the request is received. At the hearing on the temporary appointment, the petitioner shall have the burden of showing by a preponderance of the evidence that temporary conservatorship continues to be necessary to address the emergency situation. Unless the person alleged to be in need of protection has counsel of his or her own choice, the court may appoint an attorney to represent the person at the hearing as provided in section 30-2636.

(c) If an expedited hearing is requested, notice shall be served as provided in section 30-2634. The notice shall specify that a temporary conservator has been appointed and shall be given at least twenty-four hours prior to the expedited hearing.

(d) At the expedited hearing, the court may render a judgment authorizing the temporary conservatorship to continue beyond the original ten-day period. The judgment shall prescribe the specific powers and duties of the temporary conservator in the letters of temporary conservatorship and shall be effective

for a ninety-day period. For good cause shown, the court may extend the temporary conservatorship for successive ninety-day periods.

(e) The temporary conservatorship shall terminate at the end of the ninety-day period in which the temporary conservatorship is valid or at any time prior thereto if the court deems the circumstances leading to the order for temporary conservatorship no longer exist or if an order has been entered as a result of a hearing pursuant to section 30-2636 which has been held during the ninety-day period.

(f) If the court denies the request for the ex parte order, the court may, in its discretion, enter an order for an expedited hearing pursuant to subsections (b) through (e) of this section.

(g) If the petitioner requests the entry of an order of temporary conservatorship pursuant to subsection (a) of this section without requesting an ex parte order, the court may hold an expedited hearing pursuant to subsections (b) through (e) of this section.

(h) A temporary conservator may be removed at any time. A temporary conservator shall make any report the court requires, except that a temporary conservator shall not be required to provide the national criminal history record check and report under section 30-2602.02. In other respects the provisions of the Nebraska Probate Code concerning conservators apply to temporary conservators.

Source: Laws 1993, LB 782, § 13; Laws 1997, LB 466, § 13; Laws 2011, LB157, § 41.

Operative date January 1, 2012.

30-2632 Venue.

Unless otherwise provided in the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, venue for proceedings under this part is:

(1) In the place in this state where the person to be protected resides whether or not a guardian has been appointed in another place; or

(2) If the person to be protected does not reside in this state, in any place where he or she has property.

Source: Laws 1974, LB 354, § 250, UPC § 5-403; Laws 2011, LB157, § 42.

Operative date January 1, 2012.

Cross References

Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, see section 30-3901.

30-2640 Bond.

For estates with a net value of more than ten thousand dollars, the bond for a conservator shall be in the amount of the aggregate capital value of the personal property of the estate in the conservator's control plus one year's estimated income from all sources minus the value of securities and other assets deposited under arrangements requiring an order of the court for their removal. The bond of the conservator shall be conditioned upon the faithful discharge of all duties of the trust according to law, with sureties as the court shall specify. The court, in lieu of sureties on a bond, may accept other security

for the performance of the bond, including a pledge of securities or a mortgage of land owned by the conservator. For good cause shown, the court may eliminate the requirement of a bond or decrease or increase the required amount of any such bond previously furnished. The court shall not require a bond if the protected person executed a written, valid power of attorney that specifically nominates a guardian or conservator and specifically does not require a bond. The court shall consider as one of the factors of good cause, when determining whether a bond should be required and the amount thereof, the protected person's choice of any attorney in fact or alternative attorney in fact. No bond shall be required of any financial institution, as that term is defined in subdivision (12) of section 8-101, or any officer, director, employee, or agent of the financial institution serving as a conservator, or any trust company serving as a conservator.

Source: Laws 1974, LB 354, § 258, UPC § 5-411; Laws 1985, LB 292, § 4; Laws 2011, LB157, § 43.
Operative date January 1, 2012.

30-2647 Inventory and records.

Within thirty days after appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with the conservator's oath or affirmation that the inventory is complete and accurate so far as he or she is informed. The conservator shall mail a copy thereof by first-class mail to the protected person, if the protected person can be located and has attained the age of fourteen years, and to all other interested persons as defined in section 30-2601. Every conservator shall file an updated inventory with the annual accounting required under section 30-2648. The conservator shall keep suitable records of his or her administration and exhibit the same on request of any interested person.

Source: Laws 1974, LB 354, § 265, UPC § 5-418; Laws 2011, LB157, § 44.
Operative date January 1, 2012.

30-2648 Accounts.

Every conservator must account to the court for his or her administration of the trust annually, upon his or her resignation or removal, and at such other times as the court may direct. On termination of the protected person's minority or disability, a conservator may account to the court, or the conservator may account to the former protected person or the former protected person's personal representative. Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to the conservator's liabilities concerning the matters considered in connection therewith; and an order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or the protected person's successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in his or her control, to be made in any manner the court may specify.

Source: Laws 1974, LB 354, § 266, UPC § 5-419; Laws 2011, LB157, § 45.
Operative date January 1, 2012.

30-2655 Limitation of powers of conservator.

(a) The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by sections 30-2653 and 30-2654, or previously conferred by the court, and may at any time relieve the conservator of any limitation. If the court limits any power conferred on the conservator by section 30-2653 or 30-2654, the limitation shall be endorsed upon the conservator’s letters of appointment.

(b) A conservator shall not change a protected person’s place of abode to a location outside of the State of Nebraska without court permission.

Source: Laws 1974, LB 354, § 273, UPC § 5-426; Laws 2011, LB157, § 46.

Operative date January 1, 2012.

ARTICLE 39

NEBRASKA UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

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PART 1—GENERAL PROVISIONS

30-3901 Act, how cited.

Sections 30-3901 to 30-3923 shall be known and may be cited as the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Source: Laws 2011, LB157, § 5.
Operative date January 1, 2012.

30-3902 Definitions.

In the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act:

- (1) Adult means an individual who has attained nineteen years of age;
- (2) Conservator means a person appointed by the court to administer the property of an adult, including a person appointed under the Nebraska Probate Code for an adult;
- (3) Guardian means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under the Nebraska Probate Code for an adult;
- (4) Guardianship order means an order appointing a guardian;
- (5) Guardianship proceeding means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued;
- (6) Incapacitated person means an adult for whom a guardian has been appointed;
- (7) Party means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding;
- (8) Person, except in the term incapacitated person or protected person, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;
- (9) Protected person means an adult for whom a protective order has been issued;
- (10) Protective order means an order appointing a conservator or other order related to management of an adult's property;
- (11) Protective proceeding means a judicial proceeding in which a protective order is sought or has been issued;
- (12) 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;
- (13) Respondent means an adult for whom a protective order or the appointment of a guardian is sought; and
- (14) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

Source: Laws 2011, LB157, § 6.
Operative date January 1, 2012.

30-3903 International application of act.

A court of this state may treat a foreign country as if it were a state for the purpose of applying sections 30-3901 to 30-3917 and 30-3921 to 30-3923.

Source: Laws 2011, LB157, § 7.

Operative date January 1, 2012.

30-3904 Communication between courts.

(1) A court of this state may communicate with a court in another state concerning a proceeding arising under the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (2) of this section, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(2) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

Source: Laws 2011, LB157, § 8.

Operative date January 1, 2012.

30-3905 Cooperation between courts.

(1) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

- (a) Hold an evidentiary hearing;
- (b) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;
- (c) Order that an evaluation or assessment be made of the respondent;
- (d) Order any appropriate investigation of a person involved in a proceeding;
- (e) Forward to the court of this state a certified copy of the transcript or other record of a hearing under subdivision (a) of this subsection or any other proceeding, any evidence otherwise produced under subdivision (b) of this subsection, and any evaluation or assessment prepared in compliance with an order under subdivision (c) or (d) of this subsection;
- (f) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person; or
- (g) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. 160.103, as such regulation existed on January 1, 2011.

(2) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (1) of this section, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

Source: Laws 2011, LB157, § 9.

Operative date January 1, 2012.

30-3906 Taking testimony in another state.

(1) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered 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 witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(2) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(3) 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 best evidence rule.

Source: Laws 2011, LB157, § 10.

Operative date January 1, 2012.

PART 2—JURISDICTION

30-3907 Definitions; significant connection factors.

(1) For purposes of sections 30-3907 to 30-3915:

(a) Emergency means a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf;

(b) Home state means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian or, if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition; and

(c) Significant-connection state means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(2) In determining under section 30-3909 and subsection (5) of section 30-3916 whether a respondent has a significant connection with a particular state, the court shall consider:

(a) The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(b) The length of time the respondent at any time was physically present in the state and the duration of any absence;

(c) The location of the respondent's property; and

(d) The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

Source: Laws 2011, LB157, § 11.

Operative date January 1, 2012.

30-3908 Exclusive basis.

Sections 30-3907 to 30-3915 provide the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

Source: Laws 2011, LB157, § 12.

Operative date January 1, 2012.

30-3909 Jurisdiction.

A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) This state is the respondent's home state;

(2) On the date the petition is filed, this state is a significant-connection state and:

(a) The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(b) The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:

(i) A petition for an appointment or order is not filed in the respondent's home state;

(ii) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(iii) The court in this state concludes that it is an appropriate forum under the factors set forth in section 30-3912;

(3) This state does not have jurisdiction under either subdivision (1) or (2) of this section, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(4) The requirements for special jurisdiction under section 30-3910 are met.

Source: Laws 2011, LB157, § 13.

Operative date January 1, 2012.

30-3910 Special jurisdiction.

(1) A court of this state lacking jurisdiction under section 30-3909 has special jurisdiction to do any of the following:

(a) Appoint a guardian in an emergency for a term not exceeding ninety days for a respondent who is physically present in this state;

(b) Issue a protective order with respect to real or tangible personal property located in this state; or

(c) Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to section 30-3916.

(2) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the

court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

Source: Laws 2011, LB157, § 14.
Operative date January 1, 2012.

30-3911 Exclusive and continuing jurisdiction.

Except as otherwise provided in section 30-3910, a court that has appointed a guardian or issued a protective order consistent with the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

Source: Laws 2011, LB157, § 15.
Operative date January 1, 2012.

30-3912 Appropriate forum.

(1) A court of this state having jurisdiction under section 30-3909 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(2) If a court of this state declines to exercise its jurisdiction under subsection (1) of this section, it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(3) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

- (a) Any expressed preference of the respondent;
- (b) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;
- (c) The length of time the respondent was physically present in or was a legal resident of this or another state;
- (d) The distance of the respondent from the court in each state;
- (e) The financial circumstances of the respondent's estate;
- (f) The nature and location of the evidence;
- (g) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
- (h) The familiarity of the court of each state with the facts and issues in the proceeding; and
- (i) If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

Source: Laws 2011, LB157, § 16.
Operative date January 1, 2012.

30-3913 Jurisdiction declined by reason of conduct.

(1) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(a) Decline to exercise jurisdiction;

(b) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(c) Continue to exercise jurisdiction after considering:

(i) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(ii) Whether it is a more appropriate forum than the court of any other state under the factors set forth in subsection (3) of section 30-3912; and

(iii) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 30-3909.

(2) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issued a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Source: Laws 2011, LB157, § 17.

Operative date January 1, 2012.

30-3914 Notice of proceeding.

If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.

Source: Laws 2011, LB157, § 18.

Operative date January 1, 2012.

30-3915 Proceedings in more than one state.

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under subdivision (1)(a) or (b) of section 30-3910, if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under section 30-3909, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section 30-3909 before the appointment or issuance of the order; and

(2) If the court in this state does not have jurisdiction under section 30-3909, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

Source: Laws 2011, LB157, § 19.

Operative date January 1, 2012.

PART 3—TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

30-3916 Transfer of guardianship or conservatorship to another state.

(1) A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.

(2) Notice of a petition under subsection (1) of this section must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

(3) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (1) of this section.

(4) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(a) The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(c) Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(5) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(a) The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in subsection (2) of section 30-3907;

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(c) Adequate arrangements will be made for management of the protected person's property.

(6) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(a) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to section 30-3917; and

(b) The documents required to terminate a guardianship or conservatorship in this state.

Source: Laws 2011, LB157, § 20.

Operative date January 1, 2012.

30-3917 Accepting guardianship or conservatorship transferred from another state.

(1) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to section 30-3916, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(2) Notice of a petition under subsection (1) of this section must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(3) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (1) of this section.

(4) The court shall issue an order provisionally granting a petition filed under subsection (1) of this section unless:

(a) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(b) The guardian or conservator is ineligible for appointment in this state.

(5) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 30-3916 transferring the proceeding to this state.

(6) Not later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

(7) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(8) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under the Nebraska Probate Code if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

Source: Laws 2011, LB157, § 21.
Operative date January 1, 2012.

PART 4—REGISTRATION AND RECOGNITION
OF ORDERS FROM OTHER STATES

30-3918 Registration of guardianship orders; filing required.

If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office. If the incapacitated person does not have a conservator and has real property or an interest in real property in Nebraska, the guardian shall file in every county where such property is located as required by section 25-2708.

Source: Laws 2011, LB157, § 22.
Operative date January 1, 2012.

30-3919 Registration of protective orders.

If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in every county in which property belonging to the protected person is located as required by section 25-2708, certified copies of the order and letters of office and of any bond.

Source: Laws 2011, LB157, § 23.
Operative date January 1, 2012.

30-3920 Effect of registration.

(1) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(2) A court of this state may grant any relief available under the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act and other law of this state to enforce a registered order.

Source: Laws 2011, LB157, § 24.
Operative date January 1, 2012.

PART 5—MISCELLANEOUS PROVISIONS

30-3921 Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2011, LB157, § 25.
Operative date January 1, 2012.

30-3922 Relation to Electronic Signatures in Global and National Commerce Act.

The Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, as the act existed on January 1, 2011, but does not modify, limit, or supersede section 101(c) of the act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of the act, 15 U.S.C. 7003(b).

Source: Laws 2011, LB157, § 26.
Operative date January 1, 2012.

30-3923 Transitional provision.

(1) The Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act applies to guardianship and protective proceedings begun on or after January 1, 2012.

(2) Sections 30-3901 to 30-3906 and 30-3916 to 30-3923 apply to proceedings begun before January 1, 2012, regardless of whether a guardianship or protective order has been issued.

Source: Laws 2011, LB157, § 27.
Operative date January 1, 2012.



CHAPTER 31 DRAINAGE

Article.

4. Drainage Districts Organized by Vote of Landowners. 31-409, 31-409.02.

ARTICLE 4

DRAINAGE DISTRICTS ORGANIZED BY VOTE OF LANDOWNERS

Section

- 31-409. Directors; qualification; officers; annual election; vacancies; term.
31-409.02. Annual election; notice; contents.

31-409 Directors; qualification; officers; annual election; vacancies; term.

A majority of the directors shall be residents of the county or counties in which the district is located. Except as provided in section 31-409.03, any person or the officer or representative of any corporation owning or controlling any land assessed for benefits may be a director. The person elected a director receiving the least number of votes shall hold office for one year, the next higher for two years, and so on, and the term of each shall be adjusted so as to make the term of one director expire each year. The officers, consisting of a president, a treasurer, and a secretary, shall be chosen by the directors from their own number and for a term of one year. Unless the directors choose by February fifteenth of a given year to use the procedures provided in section 31-409.01, annual elections of directors shall be held on the second Tuesday of April each year, at the county courthouse or at such other place designated by the board pursuant to section 31-409.03. The annual election shall be omitted if such date occurs less than nine months after the first election. Vacancies in the office of directors may be filled by the remaining directors until the next election. All directors and officers shall hold office until their successors are elected and qualified.

Source: Laws 1907, c. 153, § 9, p. 478; R.S.1913, § 1874; Laws 1921, c. 275, § 1, p. 905; C.S.1922, § 1821; C.S.1929, § 31-509; R.S.1943, § 31-409; Laws 1951, c. 96, § 2, p. 265; Laws 1983, LB 191, § 1; Laws 1988, LB 1078, § 1; Laws 2011, LB342, § 1.
Effective date August 27, 2011.

31-409.02 Annual election; notice; contents.

Notice of an annual election held pursuant to section 31-409, 31-409.01, or 31-409.03 shall be published once each week for two consecutive weeks in a newspaper of general circulation in the district, or the precinct if the district has been divided into voting precincts as provided in section 31-409.03, designated by the district. The last publication shall not be less than thirty days prior to the election. The notice shall include the date and location or locations of the election and the hours for voting, the number of directors to be elected,

the names of those whose terms will expire, and the procedure for filing as a candidate.

Source: Laws 1983, LB 191, § 3; Laws 1988, LB 1078, § 2; Laws 2011, LB342, § 2.
Effective date August 27, 2011.

CHAPTER 32 ELECTIONS

Article.

2. Election Officials.
 - (b) County Election Officials. 32-208.
3. Registration of Voters. 32-305, 32-312.
5. Officers and Issues.
 - (a) Offices and Officeholders. 32-504 to 32-524.
6. Filing and Nomination Procedures. 32-602 to 32-632.
7. Political Parties. 32-710.
8. Notice, Publication, and Printing of Ballots. 32-811.
9. Voting and Election Procedures. 32-903 to 32-948.
12. Election Costs. 32-1203.
13. Recall. 32-1303, 32-1306.
16. Campaign Finance Limitations. 32-1608.

ARTICLE 2 ELECTION OFFICIALS

(b) COUNTY ELECTION OFFICIALS

Section

32-208. Election commissioner; qualifications; appointment to elective office; effect.

(b) COUNTY ELECTION OFFICIALS

32-208 Election commissioner; qualifications; appointment to elective office; effect.

The election commissioner in counties having a population of more than one hundred thousand inhabitants shall be a registered voter, a resident of such county for at least one year, and of good moral character and integrity and capacity. No person who is a candidate for any elective office or is a deputy, clerk, or employee of any person who is a candidate for any elective office shall be eligible for the office of election commissioner. The election commissioner shall not hold any other elective office or become a candidate for an elective office during his or her term of office or within six months after leaving office. An election commissioner may be appointed to an elective office during his or her term of office as election commissioner, and acceptance of such appointment shall be deemed to be his or her resignation from the office of election commissioner.

Source: Laws 1994, LB 76, § 28; Laws 1997, LB 764, § 14; Laws 2001, LB 226, § 1; Laws 2003, LB 707, § 1; Laws 2011, LB449, § 1. Effective date August 27, 2011.

ARTICLE 3 REGISTRATION OF VOTERS

Section

- 32-305. Deputy registrar; application; training; when; oath; violation; effect.
- 32-312. Registration application; contents.

32-305 Deputy registrar; application; training; when; oath; violation; effect.

(1) Any registered voter may apply to the election commissioner or county clerk to be appointed as a deputy registrar for the purpose of registering voters. The application form shall be prescribed by the election commissioner, county clerk, or Secretary of State. The election commissioner or county clerk shall make training available for deputy registrars in the county he or she serves. The deputy registrar shall notify the election commissioner or county clerk of the location and time of proposed voter registration and the names and party affiliations of the deputy registrars. The election commissioner or county clerk, at his or her discretion, may approve or disapprove the deputy registrar's plans for voter registration and shall notify the deputy registrar of such decision.

(2) Any person appointed as a deputy registrar shall attend a training session conducted by an election commissioner or county clerk. A person who attends and successfully completes a training session after January 1, 1995, shall be qualified as a deputy registrar for any county in the state and shall receive a certificate verifying successful completion of the training and indicating his or her qualification as a deputy registrar to conduct registration in any county in the state.

(3) Before entering upon his or her duties, the deputy registrar shall take and subscribe to the following oath:

You do solemnly swear that you will support the Constitution of the United States and the Constitution of Nebraska and will faithfully and impartially perform the duties of the office of deputy registrar according to law and to the best of your ability.

(4) In order to remain qualified to conduct voter registration as a deputy registrar in any county in this state, a deputy registrar shall complete a training session at least once every three years unless the Secretary of State determines that substantial changes have occurred in the voter registration process requiring additional training. The training session may vary in length but shall not exceed four hours. The Secretary of State shall inspect and review all training programs, procedures, and practices to assure that they relate to the position of a deputy registrar and his or her duties.

(5) Any deputy registrar who violates any registration procedure, rule, regulation, or guideline may have his or her status as a deputy registrar revoked by the election commissioner, county clerk, or Secretary of State.

Source: Laws 1994, LB 76, § 67; Laws 1997, LB 764, § 30; Laws 2011, LB449, § 2.

Effective date August 27, 2011.

32-312 Registration application; contents.

The registration application prescribed by the Secretary of State pursuant to section 32-311.01 shall provide the instructional statements and request the information from the applicant as provided in this section.

CITIZENSHIP—"Are you a citizen of the United States of America?" with boxes to check to indicate whether the applicant is or is not a citizen of the United States.

AGE—"Are you at least eighteen years of age or will you be eighteen years of age on or before the first Tuesday following the first Monday of November of

this year?" with boxes to check to indicate whether or not the applicant will be eighteen years of age or older on election day.

WARNING—"If you checked 'no' in response to either of these questions, do not complete this application."

NAME—the name of the applicant giving the first and last name in full, the middle name in full or the middle initial, and the maiden name of the applicant, if applicable.

RESIDENCE—the name and number of the street, avenue, or other location of the dwelling where the applicant resides if there is a number. If the registrant resides in a hotel, apartment, tenement house, or institution, such additional information shall be included as will give the exact location of such registrant's place of residence. If the registrant lives in an incorporated or unincorporated area not identified by the use of roads, road names, or house numbers, the registrant shall state the section, township, and range of his or her residence and the corporate name of the school district as described in section 79-405 in which he or she is located.

POSTAL ADDRESS—the address at which the applicant receives mail if different from the residence address.

ADDRESS OF LAST REGISTRATION—the name and number of the street, avenue, or other location of the dwelling from which the applicant last registered.

TELEPHONE NUMBERS—the telephone number of the applicant at work and at home. At the request of the applicant, a designation shall be made that the telephone number is an unlisted number, and such designation shall preclude the listing of the applicant's telephone number on any list of voter registrations.

EMAIL ADDRESS—an email address of the applicant. At the request of the applicant, a designation shall be made that the email address is private, and such designation shall preclude the listing of the applicant's email address on any list of voter registrations.

DRIVER'S LICENSE NUMBER OR LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER—if the applicant has a Nebraska driver's license, the license number, and if the applicant does not have a Nebraska driver's license, the last four digits of the applicant's social security number.

DATE OF APPLICATION FOR REGISTRATION—the month, day, and year when the applicant presented himself or herself for registration or when the applicant completed and signed the registration application if the application was submitted by mail or delivered to the election official by the applicant's personal messenger or personal agent.

PLACE OF BIRTH—show the state, country, kingdom, empire, or dominion where the applicant was born.

DATE OF BIRTH—show the date of the applicant's birth. The applicant shall be at least eighteen years of age or attain eighteen years of age on or before the first Tuesday after the first Monday in November to have the right to register and vote in any election in the present calendar year.

REGISTRATION TAKEN BY—show the signature of the authorized official or staff member accepting the application pursuant to section 32-309 or 32-310 or at least one of the deputy registrars taking the application pursuant to section 32-306, if applicable.

PARTY AFFILIATION—show the party affiliation of the applicant as Democrat, Republican, or Other or show no party affiliation as Nonpartisan. (Note: If you wish to vote in both partisan and nonpartisan primary elections for state and local offices, you must indicate a political party affiliation on the registration application. If you register without a political party affiliation (nonpartisan), you will receive only the nonpartisan ballots for state and local offices at primary elections. If you register without a political party affiliation, you may vote in partisan primary elections for congressional offices.)

OTHER—information the Secretary of State determines will assist in the proper and accurate registration of the voter.

Immediately following the spaces for inserting information as provided in this section, the following statement shall be printed:

To the best of my knowledge and belief, I declare under penalty of election falsification that:

- (1) I live in the State of Nebraska at the address provided in this application;
- (2) I have not been convicted of a felony or, if convicted, it has been at least two years since I completed my sentence for the felony, including any parole term;
- (3) I have not been officially found to be non compos mentis (mentally incompetent); and
- (4) I am a citizen of the United States.

Any registrant who signs this application knowing that any of the information in the application is false shall be guilty of a Class IV felony under section 32-1502 of the statutes of Nebraska. The penalty for a Class IV felony is up to five years imprisonment, a fine of up to ten thousand dollars, or both.

APPLICANT’S SIGNATURE—require the applicant to affix his or her signature to the application.

Source: Laws 1994, LB 76, § 74; Laws 1996, LB 900, § 1037; Laws 1997, LB 764, § 34; Laws 2003, LB 357, § 7; Laws 2003, LB 359, § 2; Laws 2005, LB 53, § 4; Laws 2005, LB 566, § 11; Laws 2011, LB449, § 3.
Effective date August 27, 2011.

**ARTICLE 5
OFFICERS AND ISSUES**

(a) OFFICES AND OFFICEHOLDERS

- Section
- 32-504. Congressional districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.
 - 32-505. Congressional districts; population figures and maps; basis.
 - 32-508. Members of the Legislature; districts; terms; qualifications; nonpartisan ballot.
 - 32-524. Clerk of the district court; election; when required; terms; partisan ballot.

(a) OFFICES AND OFFICEHOLDERS

32-504 Congressional districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.

(1) Based on the 2010 Census of Population by the United States Department of Commerce, Bureau of the Census, the State of Nebraska is hereby divided

into three districts for electing Representatives in the Congress of the United States, and each district shall be entitled to elect one representative.

(2) The numbers and boundaries of the districts are designated and established by maps identified and labeled as maps CON11-30001-1, CON11-30001A, CON11-30001-2, CON11-30001-3, CON11-30001-3A, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2011, LB704.

(3)(a) The Clerk of the Legislature shall transfer possession of the maps referred to in subsection (2) of this section to the Secretary of State on May 27, 2011.

(b) When questions of interpretation of district boundaries arise, the maps referred to in subsection (2) of this section in possession of the Secretary of State shall serve as the indication of the legislative intent in drawing the district boundaries.

(c) Each election commissioner or county clerk shall obtain copies of the maps referred to in subsection (2) of this section for the election commissioner's or clerk's county from the Secretary of State.

(d) The Secretary of State shall also have available for viewing on his or her web site the maps referred to in subsection (2) of this section identifying the boundaries for the districts.

Source: Laws 1994, LB 76, § 100; Laws 2001, LB 851, § 1; Laws 2011, LB704, § 1.
Effective date May 27, 2011.

32-505 Congressional districts; population figures and maps; basis.

For purposes of section 32-504, the Legislature adopts the official population figures and maps from the 2010 Census Redistricting (Public Law 94-171) TIGER/Line Shapefiles published by the United States Department of Commerce, Bureau of the Census.

Source: Laws 1994, LB 76, § 101; Laws 2001, LB 851, § 2; Laws 2011, LB704, § 2.
Effective date May 27, 2011.

32-508 Members of the Legislature; districts; terms; qualifications; nonpartisan ballot.

The State of Nebraska is divided into forty-nine legislative districts as provided and described in sections 50-1153 and 50-1154. The members of the Legislature from the even-numbered districts shall be elected for terms of four years at the statewide general election in 1994 and each four years thereafter. The members of the Legislature from the odd-numbered districts shall be elected for terms of four years at the statewide general election in 1996 and each four years thereafter. Candidates for the Legislature shall meet the qualifications found in Article III, sections 8 and 9, of the Constitution of Nebraska. The members of the Legislature shall be elected on the nonpartisan ballot.

Source: Laws 1994, LB 76, § 104; Laws 2011, LB703, § 1.
Effective date May 27, 2011.

32-524 Clerk of the district court; election; when required; terms; partisan ballot.

(1) Except as provided in section 22-417:

(a) In counties having a population of seven thousand inhabitants or more, there shall be elected one clerk of the district court at the statewide general election in 1962 and every four years thereafter; and

(b) In counties having a population of less than seven thousand inhabitants, there shall be elected a clerk of the district court at the first statewide general election following a determination by the county board and the district judge for the county that such officer should be elected and each four years thereafter. When such a determination is not made in such a county, the county clerk shall be ex officio clerk of the district court and perform the duties by law devolving upon that officer, unless there is an agreement between the State Court Administrator and the county board that the clerk of the county court for such county shall be the ex officio clerk of the district court and perform such duties.

(2) In any county upon presentation of a petition to the county board (a) not less than sixty days before the statewide general election in 1976 or every four years thereafter, (b) signed by registered voters of the county equal in numbers to at least fifteen percent of the total vote cast for Governor at the most recent gubernatorial election in the county, secured in not less than two-fifths of the townships or precincts of the county, and (c) asking that the question of not electing a clerk of the district court in the county be submitted to the registered voters therein, the county board, at the next statewide general election, shall order the submission of the question to the registered voters of the county. The form of submission upon the ballot shall be as follows:

For election of a clerk of the district court;

Against election of a clerk of the district court.

(3) If a majority of the votes cast on the question are against the election of a clerk of the district court in such county, the duties of the clerk of the district court shall be performed by the county clerk, unless there is an agreement between the State Court Administrator and the county board that the clerk of the county court for such county shall be the ex officio clerk of the district court and perform such duties, and the office of clerk of the district court shall either cease with the expiration of the term of the incumbent or continue to be abolished if no such office exists at such time.

(4) If a majority of the votes cast on the question are in favor of the election of a clerk of the district court, the office shall continue or a clerk of the district court shall be elected at the next statewide general election as provided in subsection (1) of this section.

(5) The term of the clerk of the district court shall be four years or until his or her successor is elected and qualified. The clerk of the district court shall meet the qualifications found in section 24-337.04. The clerk of the district court shall be elected on the partisan ballot.

Source: Laws 1994, LB 76, § 120; Laws 1996, LB 1085, § 47; Laws 2009, LB7, § 2; Laws 2011, LB669, § 24.
Operative date August 27, 2011.

ARTICLE 6
FILING AND NOMINATION PROCEDURES

Section

- 32-602. Candidate; general requirements; limitation on filing for office.
32-606. Candidate filing form; filing period.
32-615. Write-in candidate; requirements.
32-616. Nomination for general election; other methods.
32-617. Nomination by petition; requirements; procedure.
32-618. Nomination by petition; number of signatures required.
32-632. Petition; removal of name; procedure.

32-602 Candidate; general requirements; limitation on filing for office.

(1) Any person seeking an elective office shall be a registered voter at the time of filing for the office pursuant to section 32-606 or 32-611.

(2) Any person filing for office shall meet the constitutional and statutory requirements of the office for which he or she is filing. If a person is filing for a partisan office, he or she shall be a registered voter affiliated with the appropriate political party if required pursuant to section 32-702. If the person is required to sign a contract or comply with a bonding or equivalent commercial insurance policy requirement prior to holding such office, he or she shall be at least nineteen years of age at the time of filing for the office.

(3) A person shall not be eligible to file for an office if he or she holds the office and his or her term of office expires after the beginning of the term of office for which he or she would be filing. This subsection does not apply to filing for an office to represent a different district, ward, subdistrict, or subdivision of the same governmental entity as the office held at the time of filing.

(4) The governing body of the political subdivision swearing in the officer shall determine whether the person meets all requirements prior to swearing in the officer.

Source: Laws 1994, LB 76, § 170; Laws 2004, LB 884, § 17; Laws 2011, LB499, § 1.
Effective date August 27, 2011.

32-606 Candidate filing form; filing period.

(1) Any candidate may place his or her name on the primary election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in section 32-607. If a candidate for an elective office is an incumbent of any elective office, the filing period for filing the candidate filing form shall be between December 1 and February 15 prior to the date of the primary election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after February 15 of that election year. All other candidates shall file for office between December 1 and March 1 prior to the date of the primary election. A candidate filing form may be transmitted by facsimile for the offices listed in subdivision (1) of section 32-607 if (a) the transmission is received in the office of the filing officer by the filing deadline and (b) the original filing form is mailed to the filing officer with a legible postmark bearing a date on or prior to the filing deadline and is in the office of the filing officer no later than seven days after the filing deadline.

(2) Any candidate for a township office in a county under township organization, the board of trustees of a village, the board of directors of a reclamation district, the county weed district board, the board of directors of a public power district receiving annual gross revenue of less than forty million dollars, the school board of a Class II school district, or the board of an educational service unit may place his or her name on the general election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in section 32-607. If a candidate for an elective office is an incumbent of any elective office, the filing period for filing the candidate filing form shall be between December 1 and July 15 prior to the date of the general election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after July 15 of that election year. All other candidates shall file for office between December 1 and August 1 prior to the date of the general election. A candidate filing form may be transmitted by facsimile for the offices listed in subdivision (1) of section 32-607 if (a) the transmission is received in the office of the filing officer by the filing deadline and (b) the original filing form is mailed to the filing officer with a legible postmark bearing a date on or prior to the filing deadline and is in the office of the filing officer no later than seven days after the filing deadline.

(3) Any city having a home rule charter may provide for filing deadlines for any person desiring to be a candidate for the office of council member or mayor.

Source: Laws 1994, LB 76, § 174; Laws 1996, LB 967, § 2; Laws 1997, LB 764, § 54; Laws 1999, LB 802, § 12; Laws 2007, LB641, § 3; Laws 2009, LB392, § 7; Laws 2011, LB449, § 4; Laws 2011, LB550, § 1.
Effective date August 27, 2011.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB449, section 4, with LB550, section 1, to reflect all amendments.

32-615 Write-in candidate; requirements.

Any candidate engaged in or pursuing a write-in campaign shall file a notarized affidavit of his or her intent together with the receipt for any filing fee with the filing officer as provided in section 32-608 no earlier than December 1 and no later than ten days prior to the election. A candidate who has been defeated as a candidate in the primary election or defeated as a write-in candidate in the primary election shall not be eligible as a write-in candidate for the same office in the general election unless a vacancy on the ballot exists pursuant to section 32-625. A candidate who files a notarized affidavit shall be entitled to all write-in votes for the candidate even if only the last name of the candidate has been written if such last name is reasonably close to the proper spelling.

Source: Laws 1994, LB 76, § 183; Laws 2002, LB 251, § 4; Laws 2003, LB 537, § 2; Laws 2011, LB449, § 5.
Effective date August 27, 2011.

32-616 Nomination for general election; other methods.

(1) Any registered voter who was not a candidate in the primary election and who was not registered to vote with a party affiliation on or before March 1 in the calendar year of the general election may have his or her name placed on the general election ballot for a partisan office by filing petitions as prescribed

in sections 32-617 to 32-621 or by nomination by political party convention or committee pursuant to section 32-627 or 32-710.

(2) Any candidate who was defeated in the primary election and any registered voter who was not a candidate in the primary election may have his or her name placed on the general election ballot if a vacancy exists on the ballot under subsection (2) of section 32-625 and the candidate files for the office by petition as prescribed in sections 32-617 and 32-618, files as a write-in candidate as prescribed in section 32-615, or is nominated by political party convention or committee pursuant to section 32-627 or 32-710.

Source: Laws 1994, LB 76, § 184; Laws 1997, LB 764, § 61; Laws 2002, LB 251, § 5; Laws 2011, LB368, § 1; Laws 2011, LB449, § 6.
Effective date August 27, 2011.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB368, section 1, with LB449, section 6, to reflect all amendments.

32-617 Nomination by petition; requirements; procedure.

(1) Petitions for nomination for partisan and nonpartisan offices shall conform to the requirements of section 32-628. Petitions shall state the office to be filled and the name and address of the candidate. Petitions for partisan office shall also indicate the party affiliation of the candidate. A sample copy of the petition shall be filed with the filing officer prior to circulation. Petitions shall be signed by registered voters residing in the district or political subdivision in which the officer is to be elected and shall be filed with the filing officer in the same manner as provided for candidate filing forms in section 32-607. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. No petition for nomination shall be filed unless there is attached thereto a receipt showing the payment of the filing fee required pursuant to section 32-608. Such petitions shall be filed by September 1 in the year of the general election.

(2) The filing officer shall verify the signatures according to section 32-631. Within three days after the signatures on a petition for nomination have been verified pursuant to such section and the filing officer has determined that pursuant to section 32-618 a sufficient number of registered voters signed the petitions, the filing officer shall notify the candidate so nominated by registered or certified mail, and the candidate shall, within five days after the date of receiving such notification, file with such officer his or her acceptance of the nomination or his or her name will not be printed on the ballot.

(3) A candidate placed on the ballot by petition shall be termed a candidate by petition. The words BY PETITION shall be printed upon the ballot after the name of each candidate by petition.

Source: Laws 1994, LB 76, § 185; Laws 2003, LB 537, § 3; Laws 2011, LB499, § 2.
Effective date August 27, 2011.

32-618 Nomination by petition; number of signatures required.

(1) The number of signatures of registered voters needed to place the name of a candidate upon the nonpartisan ballot for the general election shall be as follows:

(a) For each nonpartisan office other than members of the Board of Regents of the University of Nebraska and board members of a Class III school district,

at least ten percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the district or political subdivision in which the officer is to be elected, not to exceed two thousand;

(b) For members of the Board of Regents of the University of Nebraska, at least ten percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the regent district in which the officer is to be elected, not to exceed one thousand; and

(c) For board members of a Class III school district, at least twenty percent of the total number of votes cast for the board member receiving the highest number of votes at the immediately preceding general election in the school district.

(2) The number of signatures of registered voters needed to place the name of a candidate upon the partisan ballot for the general election shall be as follows:

(a) For each partisan office to be filled by the registered voters of the entire state, at least four thousand, and at least seven hundred fifty signatures shall be obtained in each congressional district in the state; and

(b) For each partisan office to be filled by the registered voters of a county or political subdivision, at least twenty percent of the total vote for Governor or President of the United States at the immediately preceding general election within the county or political subdivision, not to exceed two thousand.

The number of signatures shall not be required to exceed one-fourth of the total number of registered voters voting for the office at the immediately preceding general election when the nomination is for a partisan office to be filled by the registered voters of a county.

Source: Laws 1994, LB 76, § 186; Laws 1997, LB 764, § 62; Laws 2003, LB 181, § 5; Laws 2003, LB 461, § 3; Laws 2007, LB298, § 1; Laws 2011, LB399, § 1.
Effective date March 17, 2011.

32-632 Petition; removal of name; procedure.

Any person may remove his or her name from a petition by an affidavit signed and sworn to by such person before the election commissioner, the county clerk, or a notary public. The affidavit shall be presented to the Secretary of State, election commissioner, or county clerk prior to or on the day the petition is filed for verification with the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 200; Laws 1997, LB 764, § 67; Laws 2011, LB499, § 3.
Effective date August 27, 2011.

ARTICLE 7 POLITICAL PARTIES

Section

32-710. State postprimary conventions; when held; organization; platform; selection of presidential electors.

32-710 State postprimary conventions; when held; organization; platform; selection of presidential electors.

Each political party shall hold a state postprimary convention biennially on a date to be fixed by the state central committee but not later than September 1. Candidates for elective offices may be nominated at such conventions pursuant to section 32-627 or 32-721. Such nominations shall be certified to the Secretary of State by the chairperson and secretary of the convention. The certificates shall have the same force and effect as nominations in primary elections. A political party may not nominate a candidate at the convention for an office for which the party did not nominate a candidate at the primary election except as provided for new political parties in section 32-621. The convention shall formulate and promulgate a state platform, select a state central committee, select electors for President and Vice President of the United States, and transact the business which is properly before it. One presidential elector shall be chosen from each congressional district, and two presidential electors shall be chosen at large. The officers of the convention shall certify the names of the electors to the Governor and Secretary of State.

Source: Laws 1994, LB 76, § 210; Laws 1997, LB 764, § 70; Laws 2011, LB368, § 2.
Effective date August 27, 2011.

ARTICLE 8

NOTICE, PUBLICATION, AND PRINTING OF BALLOTS

Section

32-811. Political subdivisions; political party convention delegates; names not on ballot; when.

32-811 Political subdivisions; political party convention delegates; names not on ballot; when.

(1) If the names of candidates properly filed for nomination at the primary election for directors of natural resources districts, directors of public power districts, directors of reclamation districts, members of the boards of governors of community college areas, members of the boards of Class III or Class V school districts which nominate candidates at a primary election, and officers of cities of the first or second class and cities having a city manager plan of government do not exceed two candidates for each position to be filled, any such candidates shall be declared nominated and their names shall not appear on any primary election ballots. The official abstract of votes kept by the county or state shall show the names of such candidates with the statement Nominated Without Opposition. The election commissioner or county clerk shall place the names of such automatically nominated candidates on the general election ballot as provided in section 32-814.

(2) Candidates shall not appear on the ballot in the primary election for the board of directors in public power districts receiving annual gross revenue of less than forty million dollars, for county weed district boards, and for the board of trustees in villages.

(3) If the number of candidates for delegates to a county or national political party convention are the same in number or less than the number of candidates to be elected, the names shall not appear on the primary election ballot and those so filed shall receive a certificate of election.

Source: Laws 1994, LB 76, § 232; Laws 1995, LB 194, § 8; Laws 1997, LB 764, § 76; Laws 2003, LB 15, § 1; Laws 2011, LB449, § 7.
Effective date August 27, 2011.

ARTICLE 9

VOTING AND ELECTION PROCEDURES

Section

- 32-903. Precincts; creation; requirements; election commissioner or county clerk; powers and duties.
- 32-939. Nebraska resident residing outside the state or country; registration to vote; application for ballot; when; elector and citizen outside the country; register to vote or voting; form.
- 32-941. Early voting; written request for ballot; procedure.
- 32-942. Registered voter anticipating absence on election day; right to vote; method; voter present in county; voting place.
- 32-947. Ballot to vote early; delivery; procedure; identification envelope; instructions.
- 32-948. Ballots to vote early; election commissioner or county clerk; duties; public inspection; when.

32-903 Precincts; creation; requirements; election commissioner or county clerk; powers and duties.

(1) The election commissioner or county clerk shall create precincts composed of compact and contiguous territory within the boundary lines of legislative districts. The precincts shall contain not less than seventy-five nor more than one thousand seven hundred fifty registered voters based on the number of voters voting at the last statewide general election, except that a precinct may contain less than seventy-five registered voters if in the judgment of the election commissioner or county clerk it is necessary to avoid creating an undue hardship on the registered voters in the precinct. The election commissioner or county clerk shall create precincts based on the number of votes cast at the immediately preceding presidential election or the current list of registered voters for the precinct. The election commissioner or county clerk shall revise and rearrange the precincts and increase or decrease them at such times as may be necessary to make the precincts contain as nearly as practicable not less than seventy-five nor more than one thousand seven hundred fifty registered voters voting at the last statewide general election. The election commissioner or county clerk shall, when necessary and possible, readjust precinct boundaries to coincide with the boundaries of cities, villages, and school districts which are divided into districts or wards for election purposes. The election commissioner or county clerk shall not make any precinct changes in precinct boundaries or divide precincts into two or more parts between the statewide primary and general elections unless he or she has been authorized to do so by the Secretary of State. If changes are authorized, the election commissioner or county clerk shall notify each state and local candidate affected by the change.

(2) The election commissioner or county clerk may alter and divide the existing precincts, except that when any city of the first class by ordinance divides any ward of such city into two or more voting districts or polling places, the election commissioner or county clerk shall establish precincts or polling places in conformity with such ordinance. No such alteration or division shall take place between the statewide primary and general elections except as provided in subsection (1) of this section.

(3) All precincts and polling places may be consolidated for the use of electronic voting systems into fewer and larger precincts as deemed necessary and advisable by the election commissioner or county clerk. Such precincts, consolidated for electronic voting systems only, may have as many registered

voters therein as deemed advisable in the interest of economy and efficiency. At least one electronic voting device shall be provided for every five hundred registered voters voting in the consolidated precinct or polling place at the immediately preceding general election.

Source: Laws 1994, LB 76, § 246; Laws 1997, LB 764, § 80; Laws 2003, LB 358, § 18; Laws 2005, LB 401, § 3; Laws 2011, LB449, § 8. Effective date August 27, 2011.

32-939 Nebraska resident residing outside the state or country; registration to vote; application for ballot; when; elector and citizen outside the country; register to vote or voting; form.

(1) As provided in section 32-939.02, the persons listed in this subsection who are residents of Nebraska but who reside outside of Nebraska or the United States shall be allowed to simultaneously register to vote and make application for ballots for all elections in a calendar year through the use of the Federal Post Card Application or a personal letter which includes the same information as appears on the Federal Post Card Application:

(a) Members of the armed forces of the United States or the United States Merchant Marine, and their spouses and dependents residing with them who are absent from the state;

(b) Citizens temporarily residing outside of the United States and the District of Columbia; and

(c) Overseas citizens.

(2)(a) As provided in section 32-939.02, a person who is the age of an elector and a citizen of the United States residing outside the United States, who has never resided in the United States, who has not registered to vote in any other state of the United States, and who has a parent registered to vote within this state shall be eligible to register to vote and vote in one county in which either one of his or her parents is a registered voter.

(b) A person registering to vote or voting pursuant to this subsection shall sign and enclose with the registration application and with the ballot being voted a form provided by the election commissioner or county clerk substantially as follows: I am the age of an elector and a citizen of the United States residing outside the United States, I have never resided in the United States, I have not registered to vote in any other state of the United States, and I have a parent registered to vote in County, Nebraska. I hereby declare, under penalty of election falsification, a Class IV felony, that the statements above are true to the best of my knowledge.

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO FIVE YEARS OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

.....
(Signature of Voter)

Source: Laws 1994, LB 76, § 282; Laws 2004, LB 727, § 1; Laws 2005, LB 98, § 11; Laws 2005, LB 401, § 7; Laws 2005, LB 566, § 41; Laws 2010, LB951, § 5; Laws 2011, LB499, § 4. Effective date August 27, 2011.

32-941 Early voting; written request for ballot; procedure.

Any registered voter permitted to vote early pursuant to section 32-938 may, not more than one hundred twenty days before any election and not later than 4 p.m. on the Wednesday preceding the election, request a ballot for the election to be mailed to a specific address. A registered voter shall request a ballot in writing to the election commissioner or county clerk in the county where the registered voter has established his or her home and shall indicate his or her residence address, the address to which the ballot is to be mailed if different, and his or her political party, telephone number if available, and precinct if known. The registered voter may use the form published by the election commissioner or county clerk pursuant to section 32-808. The registered voter shall sign the request. A registered voter may use a facsimile machine for the submission of a request for a ballot. The election commissioner or county clerk shall include a registration application with the ballots if the person is not registered. Registration applications shall not be mailed after the third Friday preceding the election. If the person is not registered to vote, the registration application shall be returned not later than the closing of the polls on the day of the election. No ballot issued under this section shall be counted unless such registration application is properly completed and processed.

Source: Laws 1994, LB 76, § 284; Laws 1997, LB 764, § 93; Laws 2002, LB 935, § 9; Laws 2005, LB 98, § 13; Laws 2005, LB 566, § 43; Laws 2011, LB499, § 5.

Effective date August 27, 2011.

32-942 Registered voter anticipating absence on election day; right to vote; method; voter present in county; voting place.

Any registered voter of this state who anticipates being absent from the county of his or her residence on the day of any election but who is present in the county after ballots are available may appear in person before the election commissioner or county clerk and obtain his or her ballot. The registered voter shall vote in the office of the election commissioner or county clerk or shall return the ballot to the office not later than the closing of the polls on the day of the election. A registered voter who is present in the county on the day of the election and who chooses to vote on the day of the election shall vote at the polling place assigned to the precinct in which he or she resides unless he or she is returning a ballot for early voting or voting pursuant to section 32-943.

Source: Laws 1994, LB 76, § 285; Laws 2002, LB 935, § 10; Laws 2005, LB 98, § 14; Laws 2005, LB 566, § 44; Laws 2011, LB499, § 6.
Effective date August 27, 2011.

32-947 Ballot to vote early; delivery; procedure; identification envelope; instructions.

(1) Upon receipt of an application or other request for a ballot to vote early, the election commissioner or county clerk shall determine whether the applicant is a registered voter and is entitled to vote as requested. If the election commissioner or county clerk determines that the applicant is a registered voter entitled to vote early and the application was received at or before 4 p.m. on the Wednesday preceding the election, the election commissioner or county clerk shall deliver a ballot to the applicant in person or by mail, postage paid. The election commissioner or county clerk or any employee of the election

commissioner or county clerk shall write or cause to be affixed his or her customary signature or initials on the ballot.

(2) An unsealed identification envelope shall be delivered with the ballot, and upon the back of the envelope shall be printed a form substantially as follows:

VOTER'S OATH

I, the undersigned voter, declare that the enclosed ballot or ballots contained no voting marks of any kind when I received them, and I caused the ballot or ballots to be marked, enclosed in the identification envelope, and sealed in such envelope.

To the best of my knowledge and belief, I declare under penalty of election falsification that:

- (a) I,, am a registered voter in County;
- (b) I reside in the State of Nebraska at
- (c) I have voted the enclosed ballot and am returning it in compliance with Nebraska law; and
- (d) I have not voted and will not vote in this election except by this ballot.

ANY PERSON WHO SIGNS THIS FORM KNOWING THAT ANY OF THE INFORMATION IN THE FORM IS FALSE SHALL BE GUILTY OF ELECTION FALSIFICATION, A CLASS IV FELONY UNDER SECTION 32-1502 OF THE STATUTES OF NEBRASKA. THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO FIVE YEARS OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

I also understand that failure to sign below will invalidate my ballot.

Signature

The primary election ballot, if any, within this envelope is a primary election ballot of the party.

Ballots contained in this envelope are for the (primary, general, or special) election to be held on the day of 20....

(3) If the ballot and identification envelope will be returned by mail or by someone other than the voter, the election commissioner or county clerk shall include with the ballot an identification envelope upon the face of which shall be printed the official title and post office address of the election commissioner or county clerk.

(4) The election commissioner or county clerk shall also enclose with the ballot materials:

(a) A registration application, if the election commissioner or county clerk has determined that the applicant is not a registered voter pursuant to section 32-945, with instructions that failure to return the completed and signed application indicating the residence address as it appears on the voter's request for a ballot to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted;

(b) A registration application and the oath pursuant to section 32-946, if the voter is without a residence address, with instructions that the residence address of the voter shall be deemed that of the office of the election commissioner or county clerk of the county of the voter's prior residence and that failure to return the completed and signed application and oath to the election

commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted; or

(c) Written instructions directing the voter to submit a copy of an identification document pursuant to section 32-318.01 if the voter is required to present identification under such section and advising the voter that failure to submit identification to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted.

(5) The election commissioner or county clerk may enclose with the ballot materials a separate return envelope for the voter's use in returning his or her identification envelope containing the voted ballot, registration application, and other materials that may be required.

Source: Laws 1994, LB 76, § 290; Laws 1995, LB 514, § 5; Laws 1999, LB 571, § 8; Laws 1999, LB 802, § 16; Laws 2002, LB 1054, § 22; Laws 2003, LB 359, § 7; Laws 2005, LB 98, § 19; Laws 2005, LB 566, § 48; Laws 2008, LB838, § 2; Laws 2011, LB449, § 9.

Effective date August 27, 2011.

Cross References

Forgery or false placement of initials or signatures on ballot pursuant to section, penalty, see section 32-1516.

32-948 Ballots to vote early; election commissioner or county clerk; duties; public inspection; when.

(1) Upon receipt of an application or request for a ballot to vote early, the election commissioner or county clerk shall enter in the record of early voters the applicant's name, residence address, precinct, and subdivision of the precinct, if any, the mailing address to which the ballots are to be sent if different from the residence address, and the date on which the application was received. The election commissioner or county clerk shall also record other information in the record of early voters as may be necessary to aid in the processing or verification of ballots, including such information as the date ballots and related materials were sent to the voter or picked up in person, the date on which the ballots were voted in person or returned or received by mail, or information as to the reason why a ballot could not be issued or sent.

(2) The record of early voters and applications for such ballots shall be open to public inspection prior to the election. The election commissioner or county clerk shall make an entry in the voter's registration record indicating that the voter has voted early in the election.

Source: Laws 1994, LB 76, § 291; Laws 2005, LB 98, § 20; Laws 2005, LB 566, § 49; Laws 2011, LB449, § 10.

Effective date August 27, 2011.

ARTICLE 12

ELECTION COSTS

Section

32-1203. Political subdivisions; election expenses; duties; determination of charge.

32-1203 Political subdivisions; election expenses; duties; determination of charge.

(1) Each city, village, school district, public power district, sanitary and improvement district, metropolitan utilities district, fire district, natural re-

sources district, community college area, learning community coordinating council, educational service unit, hospital district, reclamation district, and library board shall pay for the costs of nominating and electing its officers as provided in subsection (2), (3), or (4) of this section. If a special issue is placed on the ballot at the time of the statewide primary or general election by any political subdivision, the political subdivision shall pay for the costs of the election as provided in subsection (2), (3), or (4) of this section. The districts listed in this subsection shall furnish to the Secretary of State and election commissioner or county clerk any maps and additional information which the election commissioner or county clerk may require in the proper performance of their duties in the conduct of elections and certification of results.

(2) The charge for each primary and general election shall be determined by (a) ascertaining the total cost of all chargeable costs as described in section 32-1202, (b) dividing the total cost by the number of precincts participating in the election to fix the cost per precinct, (c) prorating the cost per precinct by the inked ballot inch in each precinct for each political subdivision, and (d) totaling the cost for each precinct for each political subdivision, except that the minimum charge for each primary and general election for each political subdivision shall be fifty dollars.

(3) In lieu of the charge determined pursuant to subsection (2) of this section, the election commissioner or county clerk may charge public power districts the fee for election costs set by section 70-610.

(4) In lieu of the charge determined pursuant to subsection (2) of this section, the election commissioner or county clerk may bill school districts directly for the costs of an election held under section 10-703.01.

Source: Laws 1994, LB 76, § 368; Laws 1997, LB 764, § 104; Laws 2008, LB1067, § 1; Laws 2011, LB449, § 11.
Effective date August 27, 2011.

ARTICLE 13

RECALL

Section

- 32-1303. Recall petition; signers and circulators; requirements; notification.
- 32-1306. Filing clerk; notification required; recall election; when held; failure to order; effect.

32-1303 Recall petition; signers and circulators; requirements; notification.

(1) A petition demanding that the question of removing an elected official or member of a governing body listed in section 32-1302 be submitted to the registered voters shall be signed by registered voters equal in number to at least thirty-five percent of the total vote cast for that office in the last general election, except that (a) for an office for which more than one candidate is chosen, the petition shall be signed by registered voters equal in number to at least thirty-five percent of the number of votes cast for the person receiving the most votes for such office in the last general election, (b) for a member of a board of a Class I school district, the petition shall be signed by registered voters of the school district equal in number to at least twenty-five percent of the total number of registered voters residing in the district on the date that the recall petitions are first checked out from the filing clerk by the principal circulator, and (c) for a member of a governing body of a village, the petition

shall be signed by registered voters equal in number to at least forty-five percent of the total vote cast for the person receiving the most votes for that office in the last general election. The signatures shall be affixed to petition papers and shall be considered part of the petition.

(2) Petition circulators shall conform to the requirements of sections 32-629 and 32-630.

(3) The petition papers shall be procured from the filing clerk. Prior to the issuance of such petition papers, an affidavit shall be signed and filed with the filing clerk by at least one registered voter. Such voter or voters shall be deemed to be the principal circulator or circulators of the recall petition. The affidavit shall state the name and office of the official sought to be removed, shall include in typewritten form in concise language of sixty words or less the reason or reasons for which recall is sought, and shall request that the filing clerk issue initial petition papers to the principal circulator for circulation. The filing clerk shall notify the official sought to be removed by any method specified in section 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in section 25-505.01, by leaving a copy of the affidavit at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address. If the official chooses, he or she may submit a defense statement in typewritten form in concise language of sixty words or less for inclusion on the petition. Any such defense statement shall be submitted to the filing clerk within twenty days after the official receives the copy of the affidavit. The principal circulator or circulators shall gather the petition papers within twenty days after the receipt of the official's defense statement. The filing clerk shall notify the principal circulator or circulators that the necessary signatures must be gathered within thirty days from the date of issuing the petitions.

(4) The filing clerk, upon issuing the initial petition papers or any subsequent petition papers, shall enter in a record, to be kept in his or her office, the name of the principal circulator or circulators to whom the papers were issued, the date of issuance, and the number of papers issued. The filing clerk shall certify on the papers the name of the principal circulator or circulators to whom the papers were issued and the date they were issued. No petition paper shall be accepted as part of the petition unless it bears such certificate. The principal circulator or circulators who check out petitions from the filing clerk may distribute such petitions to persons who may act as circulators of such petitions.

(5) Petition signers shall conform to the requirements of sections 32-629 and 32-630. Each signer of a recall petition shall be a registered voter and qualified by his or her place of residence to vote for the office in question.

Source: Laws 1994, LB 76, § 376; Laws 1997, LB 764, § 106; Laws 2002, LB 1054, § 25; Laws 2003, LB 444, § 10; Laws 2004, LB 820, § 1; Laws 2008, LB39, § 4; Laws 2011, LB449, § 12.

Effective date August 27, 2011.

32-1306 Filing clerk; notification required; recall election; when held; failure to order; effect.

(1) If the recall petition is found to be sufficient, the filing clerk shall notify the official whose removal is sought and the governing body of the affected political subdivision that sufficient signatures have been gathered. Notification

of the official sought to be removed may be by any method specified in section 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in section 25-505.01, by leaving such notice at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address.

(2) The governing body of the political subdivision shall order an election to be held not less than thirty nor more than seventy-five days after the notification of the official whose removal is sought under subsection (1) of this section, except that if any other election is to be held in that political subdivision within ninety days after such notification, the governing body of the political subdivision shall provide for the holding of the recall election on the same day. All resignations shall be tendered as provided in section 32-562. If the official whose removal is sought resigns before the recall election is held, the governing body may cancel the recall election if the governing body notifies the election commissioner or county clerk of the cancellation at least sixteen days prior to the election, otherwise the recall election shall be held as scheduled.

(3) If the governing body of the political subdivision fails or refuses to order a recall election within the time required, the election may be ordered by the district court having jurisdiction over a county in which the elected official serves. If a filing clerk is subject to a recall election, the Secretary of State shall conduct the recall election.

Source: Laws 1994, LB 76, § 379; Laws 2004, LB 820, § 2; Laws 2008, LB312, § 4; Laws 2011, LB449, § 13.
Effective date August 27, 2011.

ARTICLE 16

CAMPAIGN FINANCE LIMITATIONS

Section
32-1608. Covered elective office; contributions; limitations.

32-1608 Covered elective office; contributions; limitations.

During the election period, no candidate for a covered elective office shall accept contributions from independent committees, businesses, including corporations, unions, industry, trade, or professional associations, and political parties which, when aggregated, are in excess of seventy-five percent of the spending limitation for the office set pursuant to section 32-1604. The commission shall calculate the limitation on contributions under this section at the time it calculates the adjustments on the campaign spending limitations under section 32-1604. The commission shall publish the new contribution limits on its web site and shall notify any candidate who files for an office which is subject to the spending limitation of the contribution limits applicable at the time of filing.

Source: Laws 1992, LB 556, § 8; Laws 1993, LB 587, § 6; Laws 1997, LB 420, § 9; Laws 2001, LB 768, § 9; Laws 2006, LB 188, § 9; Laws 2011, LB142, § 1.
Effective date August 27, 2011.



CHAPTER 33

FEES AND SALARIES

Section

33-106. Clerk of the district court; fees; enumerated.

33-106 Clerk of the district court; fees; enumerated.

(1) In addition to the judges retirement fund fee provided in section 24-703 and the fee provided in section 33-106.03 and except as otherwise provided by law, the fees of the clerk of the district court shall be as follows: There shall be a docket fee of forty-two dollars for each civil and criminal case except (a) a case commenced by filing a transcript of judgment as hereinafter provided, (b) proceedings under the Nebraska Workers' Compensation Act and the Employment Security Law, when provision is made for the fees that may be charged, and (c) a criminal case appealed to the district court from any court inferior thereto as hereinafter provided. There shall be a docket fee of twenty-five dollars for each case commenced by filing a transcript of judgment from another court in this state for the purpose of obtaining a lien. There shall be a docket fee of twenty-seven dollars for each criminal case appealed to the district court from any court inferior thereto.

(2) In all cases, other than those appealed from an inferior court or original filings which are within jurisdictional limits of an inferior court and when a jury is demanded in district court, the docket fee shall cover all fees of the clerk, except that the clerk shall be paid for each copy or transcript ordered of any pleading, record, or other paper and that the clerk shall be entitled to a fee of fifteen dollars for making a complete record of a case.

(3) The fee for making a complete record of a case shall be taxed as a part of the costs of the case. In all civil cases, except habeas corpus cases in which a poverty affidavit is filed and approved by the court, and for all other services, the docket fee or other fee shall be paid by the party filing the case or requesting the service at the time the case is filed or the service requested.

(4) For any other service which may be rendered or performed by the clerk but which is not required in the discharge of his or her official duties, the fee shall be the same as that of a notary public but in no case less than one dollar.

Source: R.S.1866, c. 19, § 3, p. 157; Laws 1877, § 5, p. 217; Laws 1899, c. 31, § 1, p. 164; Laws 1905, c. 68, § 1, p. 363; Laws 1909, c. 55, § 1, p. 280; R.S.1913, §§ 2421, 2429; Laws 1917, c. 40, § 1, p. 119; Laws 1919, c. 82, § 1, p. 204; C.S.1922, §§ 2362, 2369; Laws 1925, c. 81, § 1, p. 255; Laws 1927, c. 118, § 1, p. 328; C.S.1929, §§ 33-101, 33-108; R.S.1943, § 33-106; Laws 1947, c. 120, § 1, p. 353; Laws 1949, c. 94, § 1(1), p. 252; Laws 1951, c. 106, § 2, p. 512; Laws 1959, c. 140, § 4, p. 546; Laws 1961, c. 157, § 1, p. 480; Laws 1965, c. 125, § 3, p. 463; Laws 1977, LB 126, § 2; Laws 1981, LB 84, § 1; Laws 1983, LB 617, § 4; Laws 1986, LB 811, § 14; Laws 1986, LB 333, § 8; Laws 2003, LB 760, § 13; Laws 2005, LB 348, § 7; Laws 2011, LB17, § 5.

Operative date January 1, 2012.

Cross References

Employment Security Law, see section 48-601.

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

CHAPTER 34

FENCES, BOUNDARIES, AND LANDMARKS

Article.

1. Division Fences. 34-103.

ARTICLE 1

DIVISION FENCES

Section

34-103. Maintenance; private nuisance.

34-103 Maintenance; private nuisance.

Every person liable to contribute to the construction and maintenance of a division fence or any portion thereof shall maintain his or her portion in good repair, including the necessary removal or trimming of trees and woody growth within or encroaching upon the fenceline to repair or avoid damage to, or dislocation of, the division fence. The occurrence of trees and woody growth within or encroaching upon a division fence that causes damage to, or dislocation of, the fence shall constitute a private nuisance to the adjacent landowner's possessory interests in his or her land.

Source: Laws 2011, LB108, § 1.
Effective date August 27, 2011.



CHAPTER 35

FIRE COMPANIES AND FIREFIGHTERS

Article.

13. Volunteer Emergency Responders Recruitment and Retention Act. 35-1309 to 35-1321.

ARTICLE 13

VOLUNTEER EMERGENCY RESPONDERS RECRUITMENT AND RETENTION ACT

Section

35-1309. Service award benefit program; authorized.

35-1311.01. Repealed. Laws 2011, LB 121, § 3.

35-1321. Repealed. Laws 2011, LB 121, § 3.

35-1309 Service award benefit program; authorized.

(1) After March 1, 2000, any city of the first class, city of the second class, village, rural fire protection district, or suburban fire protection district which relies in whole or in part upon a volunteer department for emergency response services may adopt a service award benefit program as provided in the Volunteer Emergency Responders Recruitment and Retention Act.

(2) No city, village, or fire protection district shall be required to adopt a service award benefit program. Nothing in the act shall be construed to mandate the creation of a service award benefit program in any city, village, or fire protection district. The act shall not be construed to prohibit any city, village, or fire protection district from ending or eliminating any service award benefit program after its adoption, except that a city, village, or fire protection district may not end its program or its responsibility under its program with regard to any year of service completed prior to such elimination.

(3) Each service award benefit program shall include provisions governing the procedures to be followed in the tallying, recording, verifying, and auditing of points earned by volunteers and provisions which provide for the collection of such other information regarding participants as may be needed to facilitate administration of the program.

Source: Laws 1999, LB 849, § 9; Laws 2001, LB 808, § 7; Laws 2002, LB 1110, § 2; Laws 2011, LB121, § 1.
Effective date August 27, 2011.

35-1311.01 Repealed. Laws 2011, LB 121, § 3.

35-1321 Repealed. Laws 2011, LB 121, § 3.



CHAPTER 37

GAME AND PARKS

Article.

2. Game Law General Provisions. 37-238.
3. Commission Powers and Duties.
 - (b) Funds. 37-327.
 - (g) Property Conveyed by Commission. 37-354.
4. Permits and Licenses.
 - (a) General Permits. 37-405 to 37-440.
 - (b) Special Permits and Licenses. 37-450 to 37-4,103.
5. Regulations and Prohibited Acts.
 - (a) General Provisions. 37-503, 37-512.
 - (e) Damage by Wildlife. 37-562.
6. Enforcement. 37-615, 37-618.
9. Federal Acts. 37-914 to 37-921.
12. State Boat Act. 37-1201 to 37-1295.

ARTICLE 2

GAME LAW GENERAL PROVISIONS

Section

37-238. Raptor, defined.

37-238 Raptor, defined.

Raptor means any bird of the Accipitriformes, Falconiformes, or Strigiformes, including, but not limited to, caracaras, eagles, falcons, harriers, hawks, kites, osprey, owls, and vultures.

Source: Laws 1998, LB 922, § 48; Laws 2011, LB41, § 1.
Effective date August 27, 2011.

ARTICLE 3

COMMISSION POWERS AND DUTIES

(b) FUNDS

Section

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

(g) PROPERTY CONVEYED BY COMMISSION

37-354. Operation and maintenance; requirements; compliance and enforcement.

(b) FUNDS

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 as provided in the Game Law and State Boat Act. The commission shall not increase any fee more than six percent per year, except that if a fee has not been increased by such percentage in the immediately preceding year, the difference between a six percent increase and the actual percentage increase in

such preceding year may be added to the percentage increase in the following year. Such fees shall be collected and disposed of as provided in the Game Law and State Boat Act. The commission shall, as provided in the Game Law and State Boat Act, establish issuance fees to be retained by authorized agents issuing such licenses, permits, stamps, bands, registrations, and certificates. 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.

(3) The commission may adopt and promulgate rules and regulations to establish fees for expired licenses, permits, stamps, bands, registrations, and certificates issued under the Game Law and the State Boat Act. The commission shall collect the fees and remit them to the State Treasurer for credit to the State Game Fund.

Source: Laws 1993, LB 235, § 1; R.S.1943, (1996), § 81-814.02; Laws 1998, LB 922, § 85; Laws 1999, LB 176, § 16; Laws 2009, LB105, § 4; Laws 2011, LB41, § 2.
Effective date August 27, 2011.

Cross References

State Boat Act, see section 37-1201.

(g) PROPERTY CONVEYED BY COMMISSION

37-354 Operation and maintenance; requirements; compliance and enforcement.

Property conveyed by the commission pursuant to sections 90-272 to 90-275 shall be operated and maintained as follows:

(1) The property shall be maintained so as to appear attractive and inviting to the public;

(2) Sanitation and sanitary facilities shall be maintained in accordance with applicable health standards;

(3) Properties shall be kept reasonably open, accessible, and safe for public use. Fire prevention and similar activities shall be maintained for proper public safety;

(4) Buildings, roads, trails, and other structures and improvements shall be kept in reasonable repair throughout their estimated lifetime to prevent undue deterioration and to encourage public use; and

(5) The facility shall be kept open for public use at reasonable hours and times of the year, according to the type of area or facility.

The commission shall be responsible for compliance and enforcement of the requirements set forth in this section.

Source: Laws 2010, LB743, § 4; Laws 2011, LB207, § 2; Laws 2011, LB563, § 2.

Effective date April 15, 2011.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB207, section 2, with LB563, section 2, to reflect all amendments.

ARTICLE 4

PERMITS AND LICENSES

(a) GENERAL PERMITS

Section

- 37-405. Hunting, fishing, or fur-harvesting permit; expiration; duties of holder.
- 37-407. Hunting, fishing, and fur-harvesting permits; fees.
- 37-411. Hunting, fishing, or fur harvesting without permit; unlawful; exceptions; violations; penalties.
- 37-420. Hunting and fishing permit; veterans; exempt from payment of fees, when; special permits; limitations.
- 37-421. Combination hunting and fishing permits; stamps; persons eligible; special permits, limitation.
- 37-421.01. Military deployment; permits; stamps; conditions; fee.
- 37-426. Taking birds, animals, and aquatic organisms; stamps; when required; exhibit on request; fees.
- 37-427. Stamps; nontransferable; expiration.
- 37-431. Nebraska Habitat Fund; Nebraska Aquatic Habitat Fund; created; use; investment; stamps; fees; disposition; duties of officials; violation; penalty.
- 37-438. Annual and temporary permits; fees.
- 37-440. Display and issuance of permits; where procured; clerical fee.

(b) SPECIAL PERMITS AND LICENSES

- 37-450. Permit to hunt elk; regulation and limitation by commission; issuance; fee; violation; penalty.
- 37-460. Repealed. Laws 2011, LB 41, § 31.
- 37-461. Muskrats or beavers; permit to destroy; violation; penalty.
- 37-464. Possession of fur, pelt, or carcass; prohibited acts.
- 37-483. Recall pen; captive wildlife permit required; permit.
- 37-484. Game breeding and controlled shooting area; license; application; fee.
- 37-485. License requirements; inspection; issuance.
- 37-487. Posting of areas.
- 37-488. Privileges conferred by license; game birds, requirements; marking and transport.
- 37-489. Game birds released, propagated, and taken; record; reports.
- 37-490. Closed season.
- 37-492. Commission; rules and regulations; limitations upon game breeding and controlled shooting areas.
- 37-497. Raptors; protection; management; falconry permit; captive propagation permit; raptor collecting permit; fees.
- 37-498. Raptors; take or maintain; permit required.
- 37-499. Repealed. Laws 2011, LB 41, § 31.
- 37-4,100. Repealed. Laws 2011, LB 41, § 31.
- 37-4,101. Repealed. Laws 2011, LB 41, § 31.
- 37-4,102. Repealed. Laws 2011, LB 41, § 31.
- 37-4,103. Raptors; violations; penalty.

(a) GENERAL PERMITS

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

(b) The commission may issue multiple-year permits to hunt, fish, or harvest fur. The permits shall expire at midnight on December 31 in the last year for which the permit is valid.

(c) A multiple-year permit issued to a resident of Nebraska shall not be made invalid by reason of the holder subsequently residing outside of Nebraska.

(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; Laws 2011, LB41, § 3.

Effective date August 27, 2011.

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

(1) 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 annual hunting permits, annual fishing permits, three-day fishing permits, one-day fishing permits, combination hunting and fishing permits, fur-harvesting permits, and nonresident two-day hunting permits issued for periods of two consecutive days, as provided in this section.

(2) The fee for a multiple-year permit shall be established by the commission pursuant to section 37-327 and shall not be more than the number of years the permit will be valid times the fee required for an annual permit as provided in subsection (3) or (4) of this section. Payment for a multiple-year permit shall be made in a lump sum at the time of application. A replacement multiple-year permit may be issued under section 37-409 if the original is lost or destroyed.

(3) Resident fees shall be (a) not more than thirteen dollars for an annual hunting permit, (b) not more than seventeen dollars and fifty cents for an annual fishing permit, (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 an annual fishing and hunting permit, and (f) not more than twenty dollars for an annual fur harvesting permit.

(4) 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 an annual hunting permit and (ii) for persons under sixteen years of age, not less than the fee required pursuant to subdivision (3)(a) of this section for an annual hunting permit, (c) not more than fifty-five dollars for a 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, (f) not more than forty-nine dollars and fifty cents for an annual fishing permit, and (g)(i) for persons sixteen years of age and older, not more than one hundred fifty dollars for an annual fishing and hunting permit and (ii) for persons under sixteen years of age, not less than the fee required pursuant to subdivision (3)(e) of this section for an annual fishing and hunting 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; Laws 2009, LB105, § 5; Laws 2011, LB41, § 4.

Effective date August 27, 2011.

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. 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)(a) Any person violating this section shall be guilty of a Class II misdemeanor and, upon conviction, shall be fined at least fifty dollars for failure to hold the appropriate stamp under subdivision (1)(c) of this section, at least one hundred dollars for failure to hold a fishing permit, at least one hundred fifty dollars for failure to hold a small game, fur-harvesting, paddlefish, or deer permit, at least two hundred fifty dollars for failure to hold an antelope permit, at least five hundred dollars for failure to hold an elk permit, and at least one thousand dollars for failure to hold a mountain sheep permit.

(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. 149, § 2, p. 565; Laws 1959, c. 150, § 4, p. 571; Laws 1959, c. 154, § 1, p. 580; Laws 1961, c. 169, § 2, p. 502; Laws 1961, c. 171, § 1, p. 511; Laws 1965, c. 194, § 2, p. 592; Laws 1965, c. 197, § 1, p. 598; 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 435, § 1; Laws 1979, LB 553, § 2; Laws 1981, LB 72, § 9; Laws 1987, LB 105, § 4; Laws 1987, LB 171, § 1; 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; Laws 2009, LB105, § 7; Laws 2011, LB41, § 5.

Effective date August 27, 2011.

Cross References

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

37-420 Hunting and 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 shall, upon application and without payment of any fee, be issued a combination fishing and hunting permit, habitat stamp, aquatic habitat stamp, and Nebraska migratory waterfowl stamp if the veteran:

(a) Was discharged or separated with a characterization of honorable or general (under honorable conditions); and

(b)(i) 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

(ii) 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) 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.

(3) 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.

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

(5) 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; Laws 2011, LB41, § 6.
Effective date August 27, 2011.

37-421 Combination hunting and fishing permits; stamps; persons eligible; special permits, limitation.

(1) The commission may issue an annual combination fishing and hunting permit, habitat stamp, aquatic habitat stamp, and Nebraska migratory waterfowl stamp 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.

(2) A permit issued as provided in this section shall expire as provided in subdivision (3)(a) of 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; Laws 2011, LB41, § 7.
Effective date August 27, 2011.

37-421.01 Military deployment; permits; stamps; conditions; fee.

(1) Notwithstanding any provision of section 37-407 to the contrary, a Nebraska resident who is deployed out of state with a branch of the United States military or has been so deployed within the last twelve months at the time of application shall be entitled to receive an annual combination fishing and hunting permit, habitat stamp, aquatic habitat stamp, and Nebraska migratory waterfowl stamp on a one-time basis upon returning to the state if the resident:

(a) Submits an application to the commission with a fee of five dollars; and

(b) Provides to the commission evidence of the resident's deployment out of state.

(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 evidence of 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.

(c) The commission shall establish a fee of five dollars for the discounted permits authorized in this subsection.

(3) The commission may authorize electronic issuance of the discounted permits authorized under this section.

(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, including what constitutes evidence of deployment to qualify for the permits.

Source: Laws 2005, LB 121, § 1; Laws 2011, LB41, § 8.
Effective date August 27, 2011.

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 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 more than five dollars, as established by the commission.

(c) 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 two hundred 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 replacement lifetime aquatic habitat stamp may be issued if the original is lost or destroyed. The fee for a replacement shall be not more than five dollars, as established by the commission.

(3)(a) The commission may issue a multiple-year habitat stamp upon application and payment of the appropriate fee. The fee for a multiple-year habitat stamp shall be established by the commission pursuant to section 37-327 and shall not be more than the number of years the stamp is valid 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 multiple-year habitat stamp may be issued if the original is lost or destroyed.

(b) The commission may issue a multiple-year Nebraska migratory waterfowl stamp upon application and payment of the appropriate fee. The fee for a multiple-year Nebraska migratory waterfowl stamp shall be established by the commission pursuant to section 37-327 and shall not be more than the number of years the stamp is valid 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 multiple-year migratory waterfowl stamp may be issued if the original is lost or destroyed.

(c) The commission may issue a multiple-year aquatic habitat stamp upon application and payment of the appropriate fee. The fee for a multiple-year aquatic habitat stamp shall be established by the commission pursuant to section 37-327 and shall not be more than the number of years the stamp is valid times the fee required in subsection (5) of this section for an annual aquatic habitat stamp. Payment of such fee shall be made in a lump sum at the time of application. A replacement multiple-year aquatic habitat stamp may be issued if the original is lost or destroyed.

(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)(a) 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.

(b) An annual habitat stamp shall be issued upon the payment of a fee of twenty dollars per stamp. A multiple-year habitat stamp shall be issued in conjunction with a multiple-year hunting permit or a multiple-year combination hunting and fishing permit at a fee of not more than twenty dollars times the number of years the multiple-year permit is valid.

(c) An aquatic habitat stamp shall be issued in conjunction with each fishing permit for a fee of ten dollars per stamp for annual fishing permits, three-day fishing permits, or combination hunting and fishing permits, a fee of not more than ten dollars times the number of years the multiple-year fishing permit or a multiple-year combination hunting and fishing permit is valid, and a fee of not more than two 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.

(d) An annual Nebraska migratory waterfowl stamp shall be issued upon the payment of a fee of not more than sixteen dollars per stamp. A multiple-year Nebraska migratory waterfowl stamp may only be issued in conjunction with a multiple-year hunting permit or a multiple-year combination hunting and fishing permit at a fee of not more than twenty dollars times the number of years the multiple-year permit is valid.

(e) 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; Laws 2009, LB105, § 10; Laws 2011, LB41, § 9.

Effective date August 27, 2011.

37-427 Stamps; nontransferable; expiration.

The habitat stamp, aquatic habitat stamp, or Nebraska migratory waterfowl stamp required by section 37-426 is not transferable. The lifetime habitat stamp, the lifetime aquatic habitat stamp, and the lifetime Nebraska migratory waterfowl stamp do not expire. A multiple-year stamp expires at midnight on December 31 in the last year for which the multiple-year stamp is valid. A habitat stamp purchased for a permit which is valid into the next calendar year expires when the permit expires. Any other stamp 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; Laws 2011, LB41, § 10.
Effective date August 27, 2011.

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 annual and multiple-year habitat stamps and annual and multiple-year 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. Up to twenty-five percent of the annual receipts of the fund may be spent by the commission to provide access to private wildlife lands and habitat areas, and the remainder of the fund shall not be spent 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 under the Game Law shall be credited to the Nebraska Habitat Fund. Twenty-five percent of the fees for such stamps 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 annual and multiple-year 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. Up to thirty percent of the annual receipts of the fund may be spent by the commission to provide public waters angler access enhancements and to provide funding for the administration of programs related to aquatic habitat and public waters angler access enhancements, and the remainder of the fund shall not be spent until the commission has presented a habitat plan to the Committee on Appropriations 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 with-

held. 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; Laws 2009, LB105, § 11; Laws 2011, LB41, § 11. Effective date August 27, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

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-five dollars per permit. The fee for the annual permit for a nonresident motor vehicle shall not be more than thirty 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 five dollars. The fee for the temporary permit for a nonresident motor vehicle shall not be more than six 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; Laws 2011, LB421, § 1.

Operative date January 1, 2012.

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 for displaying permits on the driver's side of the windshield of 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. The commission and 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 more than one dollar, 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; Laws 2009, LB105, § 14; Laws 2011, LB421, § 2.
Operative date January 1, 2012.

(b) SPECIAL PERMITS AND LICENSES

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

(1) The commission may issue permits for hunting elk and may adopt and promulgate separate and, when necessary, different rules and regulations therefor within the limitations prescribed in sections 37-447 and 37-452 for hunting deer.

(2) The commission shall, pursuant to section 37-327, establish and charge (a) a nonrefundable application fee of not more than eight dollars and fifty cents for a resident elk permit and not to exceed three times such amount for a nonresident elk permit and (b) a fee of not more than one hundred forty-nine dollars and fifty cents for each resident elk permit issued and not to exceed three times such amount for each nonresident elk permit issued.

(3) 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 and an auction or lottery permit pursuant to section 37-455.01.

(4) 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.

(5) Any person violating the rules and regulations adopted and promulgated pursuant to this section shall be guilty of a Class III misdemeanor and shall be fined at least two hundred dollars upon conviction.

Source: Laws 1998, LB 922, § 160; Laws 2003, LB 306, § 6; Laws 2005, LB 162, § 16; Laws 2007, LB299, § 9; Laws 2009, LB105, § 17; Laws 2011, LB41, § 12.
Effective date August 27, 2011.

37-460 Repealed. Laws 2011, LB 41, § 31.

37-461 Muskrats or beavers; 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 or beavers, the commission may issue a permit to the person who owns or controls the property allowing the person or his or her designee to take or destroy such muskrats or beavers. The muskrats, beavers, or parts thereof taken under the authority of such permit shall not be sold or used unless the permitholder also possesses a fur-harvesting

permit that is current or valid at the time of the sale or use. The commission may adopt and promulgate rules and regulations in connection with the issuance of such permits. 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; Laws 2011, LB41, § 13.
Effective date August 27, 2011.

37-464 Possession of fur, pelt, or carcass; prohibited acts.

Except as otherwise provided in the Game Law, it shall be unlawful for any person, other than a person holding a fur-harvesting permit, a captive wildlife permit, a fur buyer's permit, or a permit issued pursuant to section 37-461, with regard to beaver or muskrat taken pursuant to such permit, and officers and employees of the commission, to possess the raw fur, pelt, or carcass of any fur-bearing animal protected by the Game Law.

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; Laws 2011, LB41, § 14.
Effective date August 27, 2011.

37-483 Recall pen; captive wildlife permit required; permit.

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, holds a captive wildlife permit and complies with section 37-479. 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; Laws 2011, LB41, § 15.
Effective date August 27, 2011.

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 tract or tracts of land having an area of not less than eighty acres and not more than two thousand five hundred sixty 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; Laws 2011, LB41, § 16.
Effective date August 27, 2011.

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 comprised of one or more tracts and each tract is a distance of no more than two miles from at least one other tract in the proposed area, (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; Laws 2011, LB41, § 17.
Effective date August 27, 2011.

37-487 Posting of areas.

Upon receipt of a license under sections 37-484 to 37-496, the licensee shall promptly post such licensed areas according to the requirements prescribed by the commission.

Source: Laws 1957, c. 152, § 4, p. 493; R.S.1943, (1993), § 37-904; Laws 1998, LB 922, § 197; Laws 2011, LB41, § 18.
Effective date August 27, 2011.

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

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. The commission shall

prescribe requirements, in rules and regulations, for the marking and transport of the game birds released.

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; Laws 2011, LB41, § 19.
Effective date August 27, 2011.

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

For the purpose of sections 37-484 to 37-496, game birds shall be released upon licensed game breeding and controlled shooting areas in numbers regulated by the commission. The licensee shall keep such records and make such reports as to game birds released, propagated, and taken, at such times and in such manner as may be required by the commission.

Source: Laws 1957, c. 152, § 6, p. 494; R.S.1943, (1993), § 37-906; Laws 1998, LB 922, § 199; Laws 2011, LB41, § 20.
Effective date August 27, 2011.

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, except that turkeys may be hunted throughout the open season and dog training or dog trial activities may be permitted as prescribed by rules and regulations of the commission.

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; Laws 2011, LB41, § 21.
Effective date August 27, 2011.

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 two 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 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; Laws 2011, LB41, § 22.
Effective date August 27, 2011.

37-497 Raptors; protection; management; falconry permit; captive propagation permit; raptor collecting permit; 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 permits for the taking and possession of raptors for the purpose of practicing falconry. A falconry permit may be issued only to a resident of the state who 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 permit of not more than seventeen dollars for persons twelve 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 the examination, he or she shall not be entitled to reapply for a falconry permit for a period of six months after the date of the examination. A person less than twelve years of age shall not be issued a falconry permit. A person from twelve to seventeen years of age may be issued a permit only if he or she is sponsored by an adult who has a valid falconry permit and appropriate experience. All falconry permits 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 permit has expired, his or her permit may be renewed without requiring further examination subject to terms and conditions imposed by the commission. The commission shall adopt and promulgate rules and regulations outlining species of raptors which may be taken, captured, or held in possession.

(3) The commission may issue captive propagation permits to allow the captive propagation of raptors. A permit may be issued to a resident of the state who has paid the fee required in this subsection. The fee for each permit shall be not more than two hundred thirty dollars, as established by the commission pursuant to section 37-327. The permit 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 permits.

(4) The commission may issue raptor collecting permits to nonresidents as prescribed by the rules and regulations of the commission. The fee for a permit shall be not more than two hundred dollars, as established by the commission pursuant to section 37-327. A raptor collecting permit shall be nontransferable. The commission shall adopt and promulgate rules and regulations governing the issuance and conditions of raptor collecting permits.

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; Laws 2011, LB41, § 23.
Effective date August 27, 2011.

37-498 Raptors; take or maintain; permit required.

(1) It shall be unlawful for any person to take or attempt to take or maintain a raptor in captivity, except as otherwise provided by law or by rule or regulation of the commission, unless he or she possesses a falconry permit, a

captive propagation permit, or a raptor collecting permit 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 permit 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.

Source: Laws 1971, LB 733, § 2; Laws 1987, LB 154, § 3; R.S.1943, (1993), § 37-721; Laws 1998, LB 922, § 208; Laws 2011, LB41, § 24.

Effective date August 27, 2011.

37-499 Repealed. Laws 2011, LB 41, § 31.

37-4,100 Repealed. Laws 2011, LB 41, § 31.

37-4,101 Repealed. Laws 2011, LB 41, § 31.

37-4,102 Repealed. Laws 2011, LB 41, § 31.

37-4,103 Raptors; violations; penalty.

Any person violating any provision of section 37-497 or 37-498 shall be guilty of a Class IV misdemeanor. In addition, the court shall order the revocation of the permit of the offender.

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; Laws 2011, LB41, § 25.

Effective date August 27, 2011.

ARTICLE 5

REGULATIONS AND PROHIBITED ACTS

(a) GENERAL PROVISIONS

Section

37-503. Game; illegal possession; exception.

37-512. Transfer of raw fur by carriers; document required; penalty.

(e) DAMAGE BY WILDLIFE

37-562. Repealed. Laws 2011, LB 41, § 31.

(a) GENERAL PROVISIONS

37-503 Game; illegal possession; exception.

It shall be unlawful for anyone to have in his or her possession, except during the open season thereon, any unmounted game except as allowed by the Game Law or the rules and regulations of the commission.

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; Laws 2011, LB41, § 26.

Effective date August 27, 2011.

37-512 Transfer of raw fur by carriers; document 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. Any express company, railroad, common carrier, or postmaster may receive raw furs protected by the Game Law for transportation from one point to another by express, baggage, or mail when such raw fur is accompanied by a document placed upon the package giving the name of the consignee, the number of his or her fur-harvesting permit, the date of expiration of the permit which must be on or after the date of shipment, and a description of the kind and number of each kind of raw fur in the shipment.

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; Laws 2011, LB41, § 27.
Effective date August 27, 2011.

(e) DAMAGE BY WILDLIFE

37-562 Repealed. Laws 2011, LB 41, § 31.

**ARTICLE 6
ENFORCEMENT**

Section

37-615. Revoked or suspended permit; unlawful acts; violation; penalty.

37-618. Suspension or revocation in other jurisdiction; effect; violation; penalty.

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.

Source: Laws 1998, LB 922, § 305; Laws 2011, LB41, § 28.
Effective date August 27, 2011.

37-618 Suspension or revocation in other jurisdiction; effect; violation; penalty.

(1) Except as otherwise provided in subsection (3) of this section, any person whose privilege or permit 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 or permit is suspended or revoked is an offense under the Game Law or would constitute grounds for suspension or revocation under sections 37-614 to 37-617.

(2) If such person has previously obtained a permit under the Game Law 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 except as otherwise provided in subsection (3) of this section.

(3) The commission may adopt and promulgate rules and regulations to create a process to (a) review the suspension or revocation of a privilege or permit to hunt, fish, or harvest fur imposed by any jurisdiction other than Nebraska to determine if the offense for which the privilege or permit is suspended or revoked is an offense under the Game Law or would constitute grounds for suspension or revocation under sections 37-614 to 37-617 and (b) provide for a hearing, if necessary, to confirm the suspension or revocation in Nebraska or reinstate the privilege or affirm the eligibility of the person to purchase a permit in Nebraska. The process may include an application for the review and a procedure for screening applications to determine if the hearing before the commission is necessary or appropriate.

(4) Any person who violates the provisions of this section shall be guilty of a Class I misdemeanor.

Source: Laws 1998, LB 922, § 308; Laws 2011, LB41, § 29.
Effective date August 27, 2011.

ARTICLE 9

FEDERAL ACTS

Section

- 37-914. National Trails System Act; commission; railroad right-of-way; acquisition; uses; conditions.
37-915. Nebraska Youth Conservation Program; legislative findings and intent.
37-916. Nebraska Youth Conservation Program; terms, defined.
37-917. Nebraska Youth Conservation Program; created; purpose; participants; qualification; payment; status; coordination with federal, state, and local programs.
37-918. Nebraska Youth Conservation Program; rules and regulations.
37-919. Nebraska Youth Conservation Program; report; contents.
37-920. Nebraska Youth Conservation Program Fund; created; use; investment.
37-921. Transfer by State Treasurer.

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 federal Surface Transportation Board, 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; Laws 2011, LB259, § 1.
Effective date August 27, 2011.

37-915 Nebraska Youth Conservation Program; legislative findings and intent.

(1) The Legislature finds that:

(a) Every Nebraska youth should be encouraged to reach his or her full potential, but that many youth require guidance and support to reach their goals and make positive changes in their lives;

(b) Conserving and developing natural resources and enhancing and maintaining environmentally important land and water through the employment of Nebraska's at-risk youth is beneficial not only to the youth by providing them with education and employment opportunities but also to the state's economy and environment; and

(c) The Nebraska Youth Conservation Program will offer Nebraska a unique opportunity to meet the goals of increasing understanding and appreciation of the environment and helping at-risk youth become productive adults.

(2) It is the intent of the Legislature:

(a) That Nebraska Youth Conservation Program participants complete their participation in the program having learned good work habits, positive attitudes, and broadened professional horizons;

(b) That the program combine academic, environmental, and job skills training with personal growth opportunities in order to develop productive youth who can make substantial contributions as Nebraska workers and citizens; and

(c) To ensure that the Game and Parks Commission coordinate and collaborate with partners from other state and federal government agencies, political subdivisions, postsecondary educational institutions, and community organizations and enter into agreements with such partners for the benefit of the program, as appropriate.

Source: Laws 2011, LB549, § 1.

Effective date May 18, 2011.

37-916 Nebraska Youth Conservation Program; terms, defined.

For purposes of sections 37-915 to 37-921:

(1) At-risk youth means a youth who has a barrier to successful employment, demonstrates low income by living in a household with income that falls below the federal poverty guidelines or by receiving public assistance, has been impacted directly by substance abuse or physical abuse, has had negative contact with law enforcement, or is not experiencing success in school and is in jeopardy of dropping out; and

(2) Commission means the Game and Parks Commission.

Source: Laws 2011, LB549, § 2.

Effective date May 18, 2011.

37-917 Nebraska Youth Conservation Program; created; purpose; participants; qualification; payment; status; coordination with federal, state, and local programs.

(1) The Nebraska Youth Conservation Program is created. The purpose of the program is to employ Nebraska's at-risk youth on projects which contribute to conserving or developing natural resources and enhancing and maintaining environmentally important land and water under the jurisdiction of the commission. The program shall combine academic, environmental, and job skills training with personal growth opportunities for the participants. The commission may administer and maintain the program, directly or by means of contractual arrangement with an experienced service provider or the Department of Labor.

(2) Participants shall be at-risk youth who are at least sixteen years of age and not older than twenty-one years of age, unemployed, and residents of Nebraska. Special effort shall be made to select applicants residing in rural and urban high-poverty areas, as determined by the most recent federal census data.

(3) Participants shall be paid not less than the minimum wage described in section 48-1203. Participation in the program shall be for a period of six weeks for each participant. Participants and program supervisory personnel may be provided meals during the six-week work period. Protective clothing items shall

be provided to participants and supervisory personnel as work conditions warrant.

(4) Participants in the Nebraska Youth Conservation Program may be considered temporary employees. This subsection does not apply to crew chiefs and other administrative and supervisory personnel of the program, all of whom may be employees of the commission or employees of an entity hired by or under contract with the commission or the Department of Labor to administer the program. The program shall not result in displacement of current employees or cause a reduction in current employees' hours or wages and shall be in compliance with applicable federal and state labor and education laws.

(5) The commission may coordinate with federal, state, and local programs that provide job training and placement services and education opportunities for participants after completing the program.

Source: Laws 2011, LB549, § 3.
Effective date May 18, 2011.

37-918 Nebraska Youth Conservation Program; rules and regulations.

The commission may adopt and promulgate rules and regulations to carry out the Nebraska Youth Conservation Program, which rules and regulations may include, but need not be limited to, the application process, the selection process, projects to which participants in the program shall be assigned, and any other matters the commission deems necessary.

Source: Laws 2011, LB549, § 4.
Effective date May 18, 2011.

37-919 Nebraska Youth Conservation Program; report; contents.

On or before December 1, 2012, the commission shall report to the Legislature on the Nebraska Youth Conservation Program. The report shall include, at a minimum, the number and ages of the participants, the areas in which they reside, the rate of compensation of participants, the number and type of projects in which participants engaged, the significance of those projects to the environment and the economy of the state, and any other matters the commission deems significant for inclusion in the report.

Source: Laws 2011, LB549, § 5.
Effective date May 18, 2011.

37-920 Nebraska Youth Conservation Program Fund; created; use; investment.

The Nebraska Youth Conservation Program Fund is created. The fund shall consist of appropriations by the Legislature and any gifts, grants, bequests, and other contributions to the fund for purposes of the Nebraska Youth Conservation Program. The fund shall be used by the commission to carry out the program. 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 2011, LB549, § 6.
Effective date May 18, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

37-921 Transfer by State Treasurer.

Within five days after May 18, 2011, the State Treasurer shall transfer \$994,400 from the State Settlement Cash Fund to the Nebraska Youth Conservation Program Fund.

Source: Laws 2011, LB549, § 7.

Effective date May 18, 2011.

ARTICLE 12**STATE BOAT ACT**

Section

- 37-1201. Act, how cited; declaration of policy.
- 37-1238.01. Vessel equipped with red or blue light; limitation on operation.
- 37-1241.06. Motorboat or personal watercraft; age restrictions; boating safety course; fee.
- 37-1241.08. Sections; applicability.
- 37-1254.01. Boating under influence of alcoholic liquor or drug; city or village ordinances; violation; penalty.
- 37-1254.02. Boating under influence of alcoholic liquor or drug; implied consent to submit to chemical test; preliminary test; refusal; advisement; effect; violation; penalty.
- 37-1254.03. Boating under influence of alcoholic liquor or drug; choice of test; privileges of person tested.
- 37-1254.05. Boating under influence of alcoholic liquor or drug; chemical test; violation of statute or ordinance; results; competent evidence; permit; fee; evidence existing or obtained outside state; effect.
- 37-1254.07. Boating under influence of alcoholic liquor or drug; violation of city or village ordinance; fee for test; court costs.
- 37-1254.08. Boating under influence of alcoholic liquor or drug; test without preliminary breath test; when; qualified personnel.
- 37-1254.09. Boating under influence of alcoholic liquor or drug; peace officer; preliminary breath test; refusal; violation; penalty.
- 37-1254.10. Boating during court-ordered prohibition; violation; penalty.
- 37-1254.11. Boating under influence of alcoholic liquor or drug; violation; sentencing; terms, defined; prior convictions; use; prosecutor; present evidence; convicted person; rights.
- 37-1254.12. Boating under influence of alcoholic liquor or drug; penalties; probation or sentence suspension; court orders.
- 37-1287. Fees; disposition.
- 37-1295. Certificate of title; disclosures required.

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; Laws 2009, LB49, § 3; Laws 2009, LB202, § 1; Laws 2011, LB667, § 8.
Operative date January 1, 2012.

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

peace 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; Laws 2011, LB667, § 9.
Operative date January 1, 2012.

37-1241.06 Motorboat or 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 January 1, 2012, no person born after December 31, 1985, shall 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) 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; Laws 2011, LB105, § 1.
Operative date January 1, 2012.

37-1241.08 Sections; applicability.

Sections 37-1241.01 to 37-1241.07 shall not apply to a person operating a motorboat or personal watercraft and 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 to a person who is otherwise exempt from the State Boat Act.

Source: Laws 1999, LB 176, § 109; Laws 2009, LB105, § 37; Laws 2011, LB105, § 2.
Operative date January 1, 2012.

37-1254.01 Boating under influence of alcoholic liquor or drug; city or village ordinances; violation; penalty.

(1) No person shall be in the actual physical control of any motorboat or personal watercraft under propulsion upon the waters of this state:

(a) While under the influence of alcoholic liquor or of any drug;

(b) When such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood; or

(c) When such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.

(2) Any city or village may enact ordinances in conformance with this section and section 37-1254.02. Upon conviction of any person of a violation of such a city or village ordinance, the provisions of sections 37-1254.11 and 37-1254.12 shall be applicable the same as though it were a violation of this section or section 37-1254.02.

(3) Any person who is in the actual physical control of any motorboat or personal watercraft under propulsion upon the waters of this state while in a condition described in subsection (1) of this section shall be guilty of a crime and upon conviction punished as provided in section 37-1254.12.

Source: Laws 1989, LB 195, § 3; Laws 2001, LB 166, § 1; Laws 2001, LB 773, § 7; Laws 2011, LB667, § 10.
Operative date January 1, 2012.

37-1254.02 Boating under influence of alcoholic liquor or drug; implied consent to submit to chemical test; preliminary test; refusal; advisement; effect; violation; penalty.

(1) Any person who has in his or her actual physical control a motorboat or personal watercraft under propulsion upon the waters of this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine.

(2) Any peace officer who has been duly authorized to make arrests for violations of 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 or personal watercraft under propulsion upon the waters of this state under the influence of alcohol or drugs to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine when the officer has reasonable grounds to believe that the person was in the actual physical control of a motorboat or personal watercraft under propulsion upon the waters of this state while under the influence of alcohol or drugs in violation of section 37-1254.01. It shall be unlawful for a person to refuse to provide a sample of his or her blood, breath, or urine after being directed by a peace officer to submit to a chemical test or tests of his or her blood or breath pursuant to this section.

(3) Any person arrested as described in subsection (2) of this section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his or her blood, breath, or urine for a determination of the concentration of alcohol or the presence of drugs.

(4) Any person involved in a motorboat or personal watercraft accident in this state may be required to submit to a chemical test or tests of his or her blood, breath, or urine by any peace officer if the officer has reasonable grounds to believe that the person was in the actual physical control of a motorboat or personal watercraft under propulsion upon the waters of this state while under the influence of alcoholic liquor or drugs at the time of the accident.

(5) Any person who is required to submit to a chemical blood, breath, or urine test or tests pursuant to this section shall be advised that if he or she refuses to submit to such test or tests, he or she could be charged with a separate crime. Failure to provide such advisement shall not affect the admissibility of the chemical test result in any legal proceedings. However, failure to provide such advisement shall negate the state's ability to bring any criminal charges against a refusing party pursuant to this section.

(6) Any person convicted of a violation of this section shall be punished as provided in section 37-1254.12.

(7) Refusal to submit to a chemical blood, breath, or urine test or tests pursuant to this section shall be admissible evidence in any action for a violation of section 37-1254.01 or a city or village ordinance enacted in conformance with such section.

Source: Laws 1989, LB 195, § 4; Laws 1999, LB 176, § 121; Laws 2001, LB 166, § 2; Laws 2001, LB 773, § 8; Laws 2011, LB667, § 11.
Operative date January 1, 2012.

37-1254.03 Boating under influence of alcoholic liquor or drug; choice of test; privileges of person tested.

The peace officer who requires a chemical blood, breath, or urine test or tests pursuant to section 37-1254.02 may direct whether the test or tests shall be of blood, breath, or urine. When the officer directs that the test or tests 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 or tests administered at the direction of the peace officer. If the officer refuses to permit such additional test or tests to be taken, then the original test or tests shall not be competent as evidence. Upon request the results of the test or tests taken at the direction of the peace officer shall be made available to the person being tested.

Source: Laws 1989, LB 195, § 5; Laws 2001, LB 773, § 9; Laws 2011, LB667, § 12.
Operative date January 1, 2012.

37-1254.05 Boating under influence of alcoholic liquor or drug; chemical test; violation of statute or ordinance; results; competent evidence; permit; fee; evidence existing or obtained outside state; effect.

(1) Except as provided in section 37-1254.03, any test or tests 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 or personal watercraft under propulsion upon the waters of this state while under the influence of alcohol or drugs or regarding the actual physical control of any motorboat or personal watercraft 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.

(2) 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.

(3) 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

permitholder. The fees shall be used to defray the cost of processing and issuing the permits and other expenses incurred by the department in carrying out this section. The fee shall be deposited in the state treasury and credited to the Health and Human Services Cash Fund as a laboratory service fee.

(4) Relevant evidence shall not be excluded in any prosecution under a state statute or city or village ordinance involving being in the actual physical control of a motorboat or personal watercraft under propulsion upon the waters of this state while under the influence of alcoholic liquor or drugs or involving being in the actual physical control of a motorboat or personal watercraft under propulsion upon the waters of this state when the concentration of alcohol in the blood or breath is in excess of allowable levels on the ground that the evidence existed or was obtained outside of this state.

Source: Laws 1989, LB 195, § 7; Laws 1996, LB 1044, § 95; Laws 2001, LB 773, § 10; Laws 2007, LB296, § 53; Laws 2011, LB667, § 13.
Operative date January 1, 2012.

37-1254.07 Boating under influence of alcoholic liquor or drug; violation of city or village ordinance; fee for test; court costs.

Upon the conviction of any person for violation of section 37-1254.01 or for being in the actual physical control of a motorboat or personal watercraft under propulsion upon the waters of this state while under the influence of alcohol or of any drug in violation of any city or village ordinance, there shall be assessed as part of the court costs the fee charged by any physician or any agency administering tests, pursuant to a permit issued in accordance with section 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; Laws 2011, LB667, § 14.
Operative date January 1, 2012.

37-1254.08 Boating under influence of alcoholic liquor or drug; test without preliminary breath test; when; qualified personnel.

Any person arrested for any offense involving the actual physical control of a motorboat or personal watercraft under propulsion upon the waters of this state while under the influence of alcohol or drugs shall be required to submit to a chemical test or tests of his or her blood, breath, or urine as provided in section 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 peace officer may withdraw blood for the purpose of determining the concentration of alcohol or the presence of drugs, but such limitation shall not apply to the taking of a breath or urine specimen.

Source: Laws 1989, LB 195, § 10; Laws 2001, LB 773, § 11; Laws 2011, LB667, § 15.
Operative date January 1, 2012.

37-1254.09 Boating under influence of alcoholic liquor or drug; peace officer; preliminary breath test; refusal; violation; penalty.

Any peace 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 or personal watercraft under propulsion upon the waters of this state to submit to a preliminary test of his or her breath for alcohol concentration if the officer has reasonable grounds to believe that such person is under the influence of alcohol or of any drug or has committed a violation of section 37-1254.01 or 37-1254.02. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol concentration in violation of section 37-1254.01 shall be placed under arrest. Any person who refuses to submit to such preliminary breath test shall be guilty of a Class III misdemeanor.

Source: Laws 2011, LB667, § 16.

Operative date January 1, 2012.

37-1254.10 Boating during court-ordered prohibition; violation; penalty.

(1) It shall be unlawful for any person to be in the actual physical control of a motorboat or personal watercraft under propulsion upon the waters of this state during a period of court-ordered prohibition resulting from a conviction based upon a violation of section 37-1254.01 or 37-1254.02 or a city or village ordinance enacted in conformance with either section.

(2) Any person who has been convicted of a violation of this section is guilty of a Class I misdemeanor.

Source: Laws 2011, LB667, § 17.

Operative date January 1, 2012.

37-1254.11 Boating under influence of alcoholic liquor or drug; violation; sentencing; terms, defined; prior convictions; use; prosecutor; present evidence; convicted person; rights.

(1) For purposes of sentencing under section 37-1254.12:

(a) Prior conviction means a conviction for which a final judgment has been entered prior to the offense for which the sentence is being imposed as follows:

(i) For a violation of section 37-1254.01:

(A) Any conviction for a violation of section 37-1254.01;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 37-1254.01; or

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of section 37-1254.01; or

(ii) For a violation of section 37-1254.02:

(A) Any conviction for a violation of section 37-1254.02;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 37-1254.02; or

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of section 37-1254.02; and

(b) Prior conviction includes any conviction under section 37-1254.01 or 37-1254.02, or any city or village ordinance enacted in conformance with either of such sections, as such sections or city or village ordinances existed at the

time of such conviction regardless of subsequent amendments to any of such sections or city or village ordinances.

(2) The prosecutor shall present as evidence for purposes of sentence enhancement a court-certified copy or an authenticated copy of a prior conviction in another state. The court-certified or authenticated copy shall be prima facie evidence of such prior conviction.

(3) For each conviction for a violation of section 37-1254.01 or 37-1254.02, the court shall, as part of the judgment of conviction, make a finding on the record whether the convicted person has a usable prior conviction. The convicted person shall be given the opportunity to review the record of his or her prior convictions, bring mitigating facts to the attention of the court prior to sentencing, and make objections on the record regarding the validity of such prior convictions.

(4) A person arrested for a violation of section 37-1254.01 or 37-1254.02 before January 1, 2012, but sentenced for such violation on or after January 1, 2012, shall be sentenced according to the provisions of section 37-1254.01 or 37-1254.02 in effect on the date of arrest.

Source: Laws 2011, LB667, § 18.

Operative date January 1, 2012.

37-1254.12 Boating under influence of alcoholic liquor or drug; penalties; probation or sentence suspension; court orders.

Any person convicted of a violation of section 37-1254.01 or 37-1254.02 shall be punished as follows:

(1) If such person has not had a prior conviction, such person 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 actual physical control of any motorboat or personal watercraft under propulsion upon the waters of this state for any purpose for a period of six months from the date of such conviction. Such order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order such person not to be in the actual physical control of any motorboat or personal watercraft under propulsion upon the waters of this state for any purpose for a period of sixty days from the date of the order; and

(2) If such person has had one or more prior convictions, such person shall be guilty of a Class I misdemeanor. Upon conviction the court shall, as part of the judgment of conviction, order such person not to be in the actual physical control of any motorboat or personal watercraft under propulsion upon the waters of this state for any purpose for a period of two years from the date of such conviction. Such order shall be administered upon sentencing or upon final judgment of any appeal or review. The two-year court-ordered prohibition shall apply even if probation is granted or the sentence suspended.

Source: Laws 2011, LB667, § 19.

Operative date January 1, 2012.

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. 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, 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 fifteenth 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; Laws 2009, LB202, § 8; Laws 2011, LB135, § 1.
Effective date August 27, 2011.

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 peace 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, unbuildable, parts only, scrap, junk, non-repairable, 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; Laws 2011, LB667, § 20.
Operative date January 1, 2012.

CHAPTER 38

HEALTH OCCUPATIONS AND PROFESSIONS

Article.

1. Uniform Credentialing Act. 38-129 to 38-1,127.
20. Medicine and Surgery Practice Act. 38-2001 to 38-2026.01.
26. Optometry Practice Act. 38-2620, 38-2622.
28. Pharmacy Practice Act. 38-2801 to 38-2854.
33. Veterinary Medicine and Surgery Practice Act. 38-3301, 38-3335.

ARTICLE 1

UNIFORM CREDENTIALING ACT

Section

- 38-129. Issuance of credential; qualifications.
- 38-131. Criminal background check; when required.
- 38-178. Disciplinary actions; grounds.
- 38-182. Disciplinary actions; credential to operate business; grounds.
- 38-1,126. Report; confidential; immunity; use of documents.
- 38-1,127. Health care facility, peer review organization, or professional association; violations; duty to report; confidentiality; immunity; civil penalty.

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 lawfully present in the United States who is eligible for a credential under the Uniform Credentialing Act.

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; Laws 2011, LB225, § 1. Effective date March 11, 2011.

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, to a physician or osteopathic physician who is an applicant for a physician locum tenens under section 38-2036, or to a veterinarian who is an applicant for a veterinarian locum tenens under section 38-3335.

(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; Laws 2011, LB687, § 1.
Effective date May 19, 2011.

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, 38-1,125, or 71-552;

(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; Laws 2011, LB591, § 2.

Effective date August 27, 2011.

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.

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;

(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; or

(6) Failure to file a report required by section 71-552.

Source: Laws 2007, LB463, § 82; Laws 2011, LB591, § 3.

Effective date August 27, 2011.

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 Health Care Quality Improvement Act, the Patient Safety Improvement Act, or section 25-12,123 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; Laws 2011, LB431, § 12.

Effective date April 27, 2011.

Cross References

Health Care Quality Improvement Act, see section 71-7904.

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 the Health Care Quality Improvement Act or section 25-12,123 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in either of such acts or such section.

(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, LB463, § 127; Laws 2011, LB431, § 13. Effective date April 27, 2011.

Cross References

Health Care Facility Licensure Act, see section 71-401.

Health Care Quality Improvement Act, see section 71-7904.

Nebraska Hospital-Medical Liability Act, see section 44-2855.

Patient Safety Improvement Act, see section 71-8701.

ARTICLE 20

MEDICINE AND SURGERY PRACTICE ACT

Section

- 38-2001. Act, how cited.
 38-2021. Unprofessional conduct, defined.
 38-2026. Medicine and surgery; license; qualifications; foreign medical graduates; requirements.
 38-2026.01. Reentry license; issuance; qualifications; department; powers; supervision; conversion of license; period valid; renewal.

38-2001 Act, how cited.

Sections 38-2001 to 38-2062 shall be known and may be cited as the Medicine and Surgery Practice Act.

Source: Laws 2007, LB463, § 659; Laws 2009, LB394, § 1; Laws 2011, LB406, § 1.
 Effective date August 27, 2011.

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 requirements of sections 71-6901 to 71-6911;
- (3) The intentional and knowing performance of a partial-birth abortion as defined in subdivision (7) 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; and
- (4) Performance by a physician of an abortion in violation of the Pain-Capable Unborn Child Protection Act.

Source: Laws 2007, LB463, § 679; Laws 2010, LB594, § 16; Laws 2010, LB1103, § 12; Laws 2011, LB690, § 1.
 Effective date August 27, 2011.

Cross References

Pain-Capable Unborn Child Protection Act, see section 28-3,102.

38-2026 Medicine and surgery; license; qualifications; foreign medical graduates; requirements.

Except as otherwise provided in sections 38-2026.01 and 38-2027, 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; Laws 2011, LB406, § 2.

Effective date August 27, 2011.

38-2026.01 Reentry license; issuance; qualifications; department; powers; supervision; conversion of license; period valid; renewal.

(1) The department, with the recommendation of the board, may issue a reentry license to a physician who has not actively practiced medicine for the two-year period immediately preceding the filing of an application for a reentry license or who has not otherwise maintained continued competency during such period as determined by the board.

(2) To qualify for a reentry license, the physician shall meet the same requirements for licensure as a regular licensee and submit to evaluations, assessments, and an educational program as required by the board.

(3) If the board conducts an assessment and determines that the applicant requires a period of supervised practice, the department, with the recommendation of the board, may issue a reentry license allowing the applicant to practice medicine under supervision as specified by the board. After satisfactory completion of the period of supervised practice as determined by the board, the reentry licensee may apply to the department to convert the reentry license to a license issued under section 38-2026.

(4) After an assessment and the completion of any educational program that has been prescribed, if the board determines that the applicant is competent and qualified to practice medicine without supervision, the department, with the recommendation of the board, may convert the reentry license to a license issued under section 38-2026.

(5) A reentry license shall be valid for one year and may be renewed for up to two additional years if approved by the department, with the recommendation of the board.

(6) The issuance of a reentry license shall not constitute a disciplinary action.

Source: Laws 2011, LB406, § 3.

Effective date August 27, 2011.

ARTICLE 26

OPTOMETRY PRACTICE ACT

Section

38-2620. Nebraska Optometry Education Assistance Contract Program; purpose.

38-2622. Program; financial assistance; number of students.

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. Eligibility for the program shall be limited as provided in sections 38-2622 and 38-2623.

Source: Laws 1974, LB 911, § 1; R.S.1943, (2003), § 71-1,136.05; Laws 2007, LB463, § 893; Laws 2011, LB334, § 3.

Effective date March 11, 2011.

38-2622 Program; financial assistance; number of students.

Annual financial payments made under sections 38-2620 to 38-2623 shall be limited to students who participated in or were accepted into the program in the academic year 2010-11 and shall continue for the remaining academic year or years that any such student is enrolled in an accredited school or college of optometry subject to the limitation provided in section 38-2623.

Source: Laws 1974, LB 911, § 3; R.S.1943, (2003), § 71-1,136.07; Laws 2007, LB463, § 895; Laws 2011, LB334, § 4; Laws 2011, LB637, § 23.

Note: Changes made by LB334 became effective March 11, 2011. Changes made by LB637 became effective May 5, 2011.

ARTICLE 28
PHARMACY PRACTICE ACT

Section

- 38-2801. Act, how cited.
38-2802. Definitions, where found.
38-2818.01. Drug sample or sample medication; defined.
38-2851. Pharmacist; license; requirements.
38-2854. Pharmacist intern; qualifications; registration; powers.

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; Laws 2009, LB195, § 47; Laws 2009, LB604, § 1; Laws 2011, LB179, § 2.
Effective date August 27, 2011.

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; Laws 2009, LB195, § 48; Laws 2009, LB604, § 2; Laws 2011, LB179, § 3.
Effective date August 27, 2011.

38-2818.01 Drug sample or sample medication; defined.

Drug sample or sample medication means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug. Each sample unit shall bear a label that clearly denotes its status as a drug sample, which may include, but need not be limited to, the words sample, not for sale, or professional courtesy package.

Source: Laws 2011, LB179, § 4.
Effective date August 27, 2011.

38-2851 Pharmacist; license; requirements.

(1) To be eligible to take the pharmacist licensure examination, every applicant must present proof of graduation from an accredited pharmacy program. 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 for licensure as a pharmacist shall (a) pass a pharmacist licensure examination approved by the board, (b) have graduated from a pharmacy program pursuant to subsection (1) of this section, and (c) present proof satisfactory to the department, with the recommendation of the board, that he or she has met one of the following requirements to demonstrate his or her current competency: (i) Within the last three years, has passed a pharmacist licensure examination approved by the board; (ii) has been in the active

practice of the profession of pharmacy in another state, territory, or the District of Columbia for at least 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 Pharmacy Specialties or its successor within the seven years immediately preceding the application for licensure; (iv) is duly licensed as a pharmacist in some other state, territory, or the District of Columbia in which, under like conditions, licensure as a pharmacist is granted in this state; or (v) 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. Graduation from 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.

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; Laws 2011, LB179, § 5.
Effective date August 27, 2011.

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.

(3) Performance as a pharmacist intern under the supervision of a licensed pharmacist 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.

Source: Laws 2004, LB 1005, § 14; R.S.Supp.,2006, § 71-1,144; Laws 2007, LB463, § 950; Laws 2011, LB179, § 6.
Effective date August 27, 2011.

ARTICLE 33

VETERINARY MEDICINE AND SURGERY PRACTICE ACT

Section

38-3301. Act, how cited.

38-3335. Veterinarian locum tenens; issuance; requirements; term.

38-3301 Act, how cited.

Sections 38-3301 to 38-3335 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; Laws 2009, LB463, § 2; Laws 2011, LB687, § 2.
Effective date May 19, 2011.

38-3335 Veterinarian locum tenens; issuance; requirements; term.

When circumstances indicate a need for the issuance of a veterinarian locum tenens in the State of Nebraska, the department, with the recommendation of the board, may issue a veterinarian locum tenens to an individual who holds an active license to practice veterinary medicine and surgery 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 veterinarian locum tenens may be issued for a period not to exceed ninety days in any twelve-month period.

Source: Laws 2011, LB687, § 3.
Effective date May 19, 2011.



CHAPTER 39 HIGHWAYS AND BRIDGES

Article.

- 13. State Highways.
 - (b) Intergovernmental Relations. 39-1307.
 - (j) Miscellaneous. 39-1359.
- 22. Nebraska Highway Bonds. 39-2204 to 39-2216.
- 27. Build Nebraska Act. 39-2701 to 39-2705.

ARTICLE 13

STATE HIGHWAYS

(b) INTERGOVERNMENTAL RELATIONS

Section

- 39-1307. Department of Roads; political subdivisions; highways, roads, streets; constructing, maintaining, improving, financing; agreements.
 - (j) MISCELLANEOUS
- 39-1359. Rights-of-way; inviolate for state and Department of Roads purposes; temporary use for special events; conditions; notice; Political Subdivisions Tort Claims Act; applicable.

(b) INTERGOVERNMENTAL RELATIONS

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.

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 whereby the department purchases from any such entity the federal-aid transportation funds made available to such entity. Such funds may be purchased at a discount rate determined by the department to be in its best interest. Such agreements shall provide that the funds obtained from such sale by the political or governmental subdivision or public corporation be expended for cost of construction, reconstruction, maintenance, and repair of public highways, streets, roads, or bridges and facilities, appurtenances, and structures deemed necessary in connection therewith. All entities which sell federal-aid transportation funds to the department shall provide

proof to the department that the proceeds of the sale were expended for the described purposes. The manner in which the proof shall be provided and the time at which proof shall be made shall be in the discretion of the department and shall be set forth in the agreement.

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; Laws 2011, LB98, § 1.
Effective date August 27, 2011.

(j) MISCELLANEOUS

39-1359 Rights-of-way; inviolate for state and Department of Roads purposes; temporary use for special events; conditions; notice; Political Subdivisions Tort Claims Act; applicable.

(1) 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 or as otherwise provided in subsections (2) and (3) of this section.

(2) A temporary use of the state highway system, other than a freeway, by a county, city, or village, including full and partial lane closures, shall be allowed for special events, as designated by a county, city, or village, under the following conditions:

(a) The roadway is located within the official corporate limits or zoning jurisdiction of the county, city, or village;

(b) A county, city, or village making use of the state highway system for a special event shall have the legal duty to protect the highway property from any damage that may occur arising out of the special event and the state shall not have any such duty during the time the county, city, or village is in control of the property as specified in the notice provided pursuant to subsection (3) of this section;

(c) Any existing statutory or common law duty of the state to protect the public from damage, injury, or death shall become the duty of the county, city, or village making use of the state highway system for the special event, and the state shall not have such statutory or common law duty during the time the county, city, or village is in control of the property as specified in the notice provided pursuant to subsection (3) of this section; and

(d) The county, city, or village using the state highway system for a special event shall formally, by official governing body action, acknowledge that it accepts the duties set out in this subsection and, if a claim is made against the state, shall indemnify, defend, and hold harmless the state from all claims,

demands, actions, damages, and liability, including reasonable attorney's fees, that may arise as a result of the special event.

(3) If a county, city, or village has met the requirements of subsection (2) of this section for holding a special event and has provided thirty days' advance written notice of the special event to the department, the county, city, or village may proceed with its temporary use of the state highway system. The notice shall specify the date and time the county, city, or village will assume control of the state highway property and relinquish control of such state highway property to the state.

(4) The Political Subdivisions Tort Claims Act shall apply to any claim arising during the time specified in a notice provided by a political subdivision pursuant to subsection (3) of this section.

Source: Laws 1955, c. 148, § 59, p. 442; Laws 2011, LB589, § 4.
Effective date May 25, 2011.

Cross References

Political Subdivisions Tort Claims Act, see section 13-901.

ARTICLE 22

NEBRASKA HIGHWAY BONDS

Section

- | | |
|-------------|---|
| 39-2204. | Attorney General; legal advisor to commission; Auditor of Public Accounts; books; audit annually. |
| 39-2215. | Highway Trust Fund; created; allocation; investment; State Treasurer; transfer; disbursements. |
| 39-2215.01. | Highway Restoration and Improvement Bond Fund; created; use; investment. |
| 39-2216. | Legislature; holders of bonds; pledges not to repeal, diminish, or apply funds for other uses. |

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 or her in the performance of his or her 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 at such time as he or she determines necessary.

Source: Laws 1969, c. 309, § 4, p. 1108; Laws 2011, LB337, § 2.
Effective date April 27, 2011.

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 fees 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 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, (b) 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 (c) 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; Laws 2011, LB170, § 1; Laws 2011, LB289, § 3.

Operative date January 1, 2012.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB170, section 1, with LB289, section 3, to reflect all amendments.

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 fees 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; Laws 2011, LB289, § 4.

Operative date January 1, 2012.

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 fees 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; Laws 2011, LB289, § 5.

Operative date January 1, 2012.

ARTICLE 27

BUILD NEBRASKA ACT

Section

39-2701. Act, how cited.

39-2702. Terms, defined.

39-2703. State Highway Capital Improvement Fund; created; use; investment.

39-2704. Fund; uses enumerated.

39-2705. Rules and regulations.

39-2701 Act, how cited.

Sections 39-2701 to 39-2705 shall be known and may be cited as the Build Nebraska Act.

Source: Laws 2011, LB84, § 1.

Effective date August 27, 2011.

39-2702 Terms, defined.

For purposes of the Build Nebraska Act:

(1) Department means the Department of Roads;

(2) Fund means the State Highway Capital Improvement Fund; and

(3) Surface transportation project means (a) expansion or reconstruction of a road or highway which is part of the state highway system, (b) expansion or reconstruction of a bridge which is part of the state highway system, or (c) construction of a new road, highway, or bridge which, if built, would be a part of the state highway system.

Source: Laws 2011, LB84, § 2.

Effective date August 27, 2011.

39-2703 State Highway Capital Improvement Fund; created; use; investment.

(1) The State Highway Capital Improvement Fund is created. The fund shall consist of money credited to the fund pursuant to section 77-27,132 and any other money as determined by the Legislature.

(2) The department may create or direct the creation of accounts within the fund as the department determines to be appropriate and useful in administering the fund.

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

Source: Laws 2011, LB84, § 3.

Effective date August 27, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

39-2704 Fund; uses enumerated.

The fund shall be used as follows:

(1) At least twenty-five percent of the money credited to the fund pursuant to section 77-27,132 each fiscal year shall be used, as determined by the department, for construction of the expressway system and federally designated high priority corridors; and

(2) The remaining money credited to the fund pursuant to section 77-27,132 each fiscal year shall be used to pay for surface transportation projects of the highest priority as determined by the department.

Source: Laws 2011, LB84, § 4.

Effective date August 27, 2011.

39-2705 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the Build Nebraska Act.

Source: Laws 2011, LB84, § 5.

Effective date August 27, 2011.



CHAPTER 42

HUSBAND AND WIFE

Article.

- 3. Divorce, Alimony, and Child Support.
 - (d) Domestic Relations Actions. 42-361, 42-371.
- 11. Spousal Pension Rights Act. 42-1102.

ARTICLE 3

DIVORCE, ALIMONY, AND CHILD SUPPORT

(d) DOMESTIC RELATIONS ACTIONS

Section

- 42-361. Marriage irretrievably broken; findings; decree issued without hearing; when.
- 42-371. Judgments and orders; liens; release; subordination; procedure; time limitation on lien; security; attachment; priority.

(d) DOMESTIC RELATIONS ACTIONS

42-361 Marriage irretrievably broken; findings; decree issued without hearing; when.

(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.

(3) Sixty days or more after perfection of service of process, the court may enter a decree of dissolution without a hearing if:

(a) Both parties waive the requirement of the hearing and the court has sufficient basis to make a finding that it has subject matter jurisdiction over the dissolution action and personal jurisdiction over both parties; and

(b) Both parties have certified in writing that the marriage is irretrievably broken, both parties have certified that they have made every reasonable effort to effect reconciliation, all documents required by the court and by statute have been filed, and the parties have entered into a written agreement, signed by both parties under oath, resolving all issues presented by the pleadings in their dissolution action.

Source: Laws 1972, LB 820, § 15; Laws 2004, LB 1207, § 24; Laws 2011, LB669, § 25.
Operative date August 27, 2011.

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) 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.

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 and not delinquent or in arrears, 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. For purposes of this section, any delinquency or arrearage of support payments shall be determined as provided in subsection (2) of section 42-358.02;

(3) If a judgment creditor refuses to execute a release of the judgment or subordination of a lien as provided in subdivision (2) of this section or the support payments are not current, the person desiring such release or subordination may file an application for the relief desired in the court which rendered the original judgment. 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. If the court orders a release or subordination, the court may order a judgment creditor who, without a good faith reason, refused to execute a release or subordination to pay the judgment debtor's court costs and attorney's fees involved with the application brought under this subdivision. A showing that all support payments are current shall be evidence that the judgment creditor did not have a good faith reason to refuse to execute such release or subordination. 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 a judgment debtor or 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; Laws 2011, LB673, § 1.
Effective date August 27, 2011.

Cross References

Nebraska Uniform Enforcement of Foreign Judgments Act, see section 25-1587.01.
Uniform Interstate Family Support Act, see section 42-701.

ARTICLE 11
SPOUSAL PENSION RIGHTS ACT

Section
42-1102. Terms, defined.

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 as provided in the Judges Retirement Act, the School Employees Retirement System of the State

SPOUSAL PENSION RIGHTS ACT

§ 42-1102

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; Laws 2011, LB509, § 12.

Operative date July 1, 2011.

Cross References

Judges Retirement Act, see section 24-701.01.

Nebraska State Patrol Retirement System, see section 81-2015.

Retirement System for Nebraska Counties, see section 23-2302.

School Employees Retirement System of the State of Nebraska, see section 79-903.

State Employees Retirement System of the State of Nebraska, see section 84-1302.



**CHAPTER 43
INFANTS AND JUVENILES**

Article.

- 1. Adoption Procedures.
 - (a) General Provisions. 43-107, 43-109.
 - (c) Release of Information. 43-123.01, 43-146.01.
- 2. Juvenile Code.
 - (d) Preadjudication Procedures. 43-258.
 - (g) Disposition. 43-285 to 43-286.01.
 - (i) Miscellaneous Provisions. 43-2,108.01 to 43-2,108.05.
 - (k) Citation and Construction of Code. 43-2,129.
- 4. Office of Juvenile Services. 43-412, 43-416.
- 5. Assistance for Certain Children. 43-536.
- 9. Children Committed to the Department. 43-905.
- 13. Foster Care.
 - (a) Foster Care Review Act. 43-1301 to 43-1318.
- 29. Parenting Act. 43-2920 to 43-2929.01.
- 37. Court Appointed Special Advocate Act. 43-3701 to 43-3720.

**ARTICLE 1
ADOPTION PROCEDURES**

(a) GENERAL PROVISIONS

Section

- 43-107. Investigation by Department of Health and Human Services; adoptive home studies required; when; medical history; required; contents; exceptions; report required; case file; access; department; duties.
- 43-109. Decree; conditions; content.

(c) RELEASE OF INFORMATION

- 43-123.01. Medical history, defined.
- 43-146.01. Sections; applicability.

(a) GENERAL PROVISIONS

43-107 Investigation by Department of Health and Human Services; adoptive home studies required; when; medical history; required; contents; exceptions; report required; case file; access; department; duties.

(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. On and after August 27, 2011, the complete medical history or histories required under this subsection shall include the race, ethnicity, nationality, Indian tribe when applicable and in compliance with the Nebraska Indian Child Welfare Act, or other cultural history of both biological parents, if available. 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.

(3) After the filing of a petition for adoption and before the entry of a decree of adoption for a child who is committed to the Department of Health and Human Services, the person or persons petitioning to adopt the child shall be given the opportunity to read the case file on the child maintained by the department or its duly authorized agent. The department shall not include in the case file to be read any information or documents that the department determines cannot be released based upon state statute, federal statute, federal rule, or federal regulation. The department shall provide a document for such person's or persons' signatures verifying that he, she, or they have been given an opportunity to read the case file and are aware that he, she, or they can review the child's file at any time following finalization of the adoption upon making a written request to the department. The department shall file such document with the court prior to the entry of a decree of adoption in the case. This subsection shall only apply to adoptions when the petition for adoption is filed on or after August 27, 2011.

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; Laws 2011, LB94, § 1; Laws 2011, LB124, § 1.
Effective date August 27, 2011.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB94, section 1, with LB124, section 1, to reflect all amendments.

Cross References

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

43-109 Decree; conditions; content.

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

child has resided with the person or persons petitioning for such adoption for at least six months next preceding the entering of the decree of adoption, except that such residency requirement shall not apply in an adoption of an adult child, (b) the medical histories required by subsection (2) of section 43-107 have been made a part of the court record, (c) the court record includes an affidavit or affidavits signed by the relinquishing biological parent, or parents if both are available, in which it is affirmed that, pursuant to section 43-106.02, prior to the relinquishment of the child for adoption, the relinquishing parent was, or parents if both are available were, (i) presented a copy or copies of the nonconsent form provided for in section 43-146.06 and (ii) given an explanation of the effects of filing or not filing the nonconsent form, and (d) if the child to be adopted is committed to the Department of Health and Human Services, the document required by subsection (3) of section 43-107 is a part of the court record. 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. Subdivision (d) of this subsection shall only apply when the petition for adoption is filed on or after August 27, 2011.

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

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

Source: Laws 1943, c. 104, § 7, p. 351; R.S.1943, § 43-109; Laws 1984, LB 510, § 4; Laws 1985, LB 255, § 22; Laws 1988, LB 372, § 2; Laws 1988, LB 301, § 8; Laws 1989, LB 231, § 2; Laws 1999, LB 594, § 19; Laws 2011, LB94, § 2.
Effective date August 27, 2011.

(c) RELEASE OF INFORMATION

43-123.01 Medical history, defined.

Medical history shall mean medical history as defined by the department in its rules and regulations and shall include the race, ethnicity, nationality, Indian tribe when applicable and in compliance with the Nebraska Indian Child Welfare Act, or other cultural history of both biological parents, if available.

Source: Laws 1988, LB 372, § 22; Laws 1996, LB 1044, § 120; Laws 2007, LB296, § 71; Laws 2011, LB124, § 2.
Effective date August 27, 2011.

Cross References

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

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 subsections (2) and (3) of section 43-107, subdivisions (1)(b), (1)(c), and (1)(d) 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; Laws 2011, LB94, § 3.
Effective date August 27, 2011.

**ARTICLE 2
JUVENILE CODE**

(d) PREADJUDICATION PROCEDURES

Section
43-258.

Preadjudication physical and mental evaluation; placement; restrictions; reports; costs; responsibility.

(g) DISPOSITION

43-285.

Care of juvenile; authority of guardian; placement plan and report; when; standing; State Foster Care Review Board; participation authorized; immunity.

43-286.

Juvenile violator or juvenile in need of special supervision; disposition; violation of probation, supervision, or court order; procedure.

43-286.01.

Juveniles; substance abuse or noncriminal violations of probation; administrative sanctions; probation officer; duties; powers; county attorney; file action to revoke probation; when.

(i) MISCELLANEOUS PROVISIONS

43-2,108.01.

Sealing of records; juveniles eligible.

43-2,108.02.

Sealing of records; notice to juvenile; contents.

43-2,108.03.

Sealing of records; county attorney or city attorney; duties; motion to seal record authorized.

43-2,108.04.

Sealing of records; notification of proceedings; order of court; hearing; notice; findings; considerations.

43-2,108.05.

Sealing of record; court; duties; effect; inspection of records; prohibited acts; violation; contempt of court.

(k) CITATION AND CONSTRUCTION OF CODE

43-2,129.

Code, how cited.

(d) PREADJUDICATION PROCEDURES

43-258 Preadjudication physical and mental evaluation; placement; restrictions; reports; costs; responsibility.

(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 with the Department of Health and Human

Services for evaluation. The department shall make arrangements for an appropriate evaluation. The department shall determine whether the evaluation will be made on a residential or nonresidential basis. Placement with the department for the purposes of this section shall be for a period not to exceed thirty days. If necessary to complete the evaluation, the court may order an extension not to exceed an additional thirty days. Any temporary placement of a juvenile made under this section shall be in the least restrictive environment consistent with the best interests of the juvenile and the safety of the community.

(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. The juvenile shall appear before the court for a hearing on the report of the evaluation results within ten days after the court receives the evaluation.

(4) During any period of detention or evaluation prior to adjudication:

(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 adjudication, the cost of delivering the juvenile to the location of the evaluation, and the cost of returning the juvenile to the court for further proceedings; and

(b) The state is responsible for (i) the costs incurred during an evaluation when the juvenile has been placed with the Department of Health and Human Services 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 court places the juvenile with the department for evaluation.

(5) The Department of Health and Human Services is not responsible for preadjudication costs except as provided in subdivision (4)(b) of this section.

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; Laws 2010, LB800, § 20; Laws 2011, LB669, § 26.

Operative date August 27, 2011.

(g) DISPOSITION

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 independent living transition proposal which meets the requirements of section 43-1311.03. The court may approve the plan, 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.

(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 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; Laws 2010, LB800, § 23; Laws 2011, LB177, § 1; Laws 2011, LB648, § 1.
Effective date August 27, 2011.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB177, section 1, with LB648, section 1, to reflect all amendments.

Cross References

Foster Care Review Act, see section 43-1318.

43-286 Juvenile violator or juvenile in need of special supervision; disposition; violation of probation, supervision, or court order; 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) 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) When a juvenile is placed on probation and a probation officer has reasonable cause to believe that such juvenile has committed or is about to commit a substance abuse violation, a noncriminal violation, or a violation of a condition of his or her probation, the probation officer shall take appropriate measures as provided in section 43-286.01.

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

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

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

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

mitigating circumstances suggest that the violation does not warrant revocation of probation or supervision or a change of disposition. The hearing shall be held within a reasonable time after the juvenile is taken into custody;

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

(iv) The juvenile shall 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, supervision, or court order. 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 or supervision or an order of the court, the court may modify the terms and conditions of the probation, supervision, or other court order, extend the period of probation, supervision, or other court order, or enter any order of disposition that could have been made at the time the original order was entered; and

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

Source: Laws 1981, LB 346, § 42; Laws 1982, LB 787, § 18; Laws 1987, LB 638, § 6; Laws 1989, LB 182, § 13; Laws 1994, LB 988, § 21; Laws 1996, LB 1044, § 134; Laws 1998, LB 1073, § 26; Laws 2000, LB 1167, § 21; Laws 2011, LB463, § 4.
Operative date May 12, 2011.

Cross References

Juvenile probation officers, appointment, see section 29-2253.

Placements and commitments, restrictions, see section 43-251.01.

43-286.01 Juveniles; substance abuse or noncriminal violations of probation; administrative sanctions; probation officer; duties; powers; county attorney; file action to revoke probation; when.

(1) For purposes of this section:

(a) Administrative sanction means additional probation requirements imposed upon a juvenile subject to the supervision of a probation officer by his or her probation officer, with the full knowledge and consent of such juvenile and such juvenile's parents or guardian, designed to hold such juvenile accountable for substance abuse or noncriminal violations of conditions of probation, including, but not limited to:

(i) Counseling or reprimand by his or her probation officer;

(ii) Increased supervision contact requirements;

(iii) Increased substance abuse testing;

(iv) Referral for substance abuse or mental health evaluation or other specialized assessment, counseling, or treatment;

(v) Modification of a designated curfew for a period not to exceed thirty days;

(vi) Community service for a specified number of hours pursuant to sections 29-2277 to 29-2279;

(vii) Travel restrictions to stay within his or her residence or county of residence or employment unless otherwise permitted by the supervising probation officer;

(viii) Restructuring court-imposed financial obligations to mitigate their effect on the juvenile subject to the supervision of a probation officer; and

(ix) Implementation of educational or cognitive behavioral programming;

(b) Noncriminal violation means activities or behaviors of a juvenile subject to the supervision of a probation officer which create the opportunity for re-offending or which diminish the effectiveness of probation supervision resulting in a violation of an original condition of probation, including, but not limited to:

(i) Moving traffic violations;

(ii) Failure to report to his or her probation officer;

(iii) Leaving the juvenile's residence, jurisdiction of the court, or the state without the permission of the court or his or her probation officer;

(iv) Failure to regularly attend school, vocational training, other training, counseling, treatment, programming, or employment;

(v) Noncompliance with school rules;

(vi) Continued violations of home rules;

(vii) Failure to notify his or her probation officer of change of address, school, or employment;

(viii) Frequenting places where controlled substances are illegally sold, used, distributed, or administered and association with persons engaged in illegal activity;

(ix) Failure to perform community service as directed; and

(x) Curfew or electronic monitoring violations; and

(c) Substance abuse violation means activities or behaviors of a juvenile subject to the supervision of a probation officer associated with the use of chemical substances or related treatment services resulting in a violation of an original condition of probation, including, but not limited to:

(i) Positive breath test for the consumption of alcohol;

(ii) Positive urinalysis for the illegal use of drugs;

(iii) Failure to report for alcohol testing or drug testing;

(iv) Failure to appear for or complete substance abuse or mental health treatment evaluations or inpatient or outpatient treatment; and

(v) Tampering with alcohol or drug testing.

(2) Whenever a probation officer has reasonable cause to believe that a juvenile subject to the supervision of a probation officer has committed or is about to commit a substance abuse violation or noncriminal violation while on probation, but that such juvenile will not attempt to leave the jurisdiction and will not place lives or property in danger, the probation officer shall either:

(a) Impose one or more administrative sanctions with the approval of his or her chief probation officer or such chief's designee. The decision to impose administrative sanctions in lieu of formal revocation proceedings rests with the

probation officer and his or her chief probation officer or such chief's designee and shall be based upon such juvenile's risk level, the severity of the violation, and the juvenile's response to the violation. If administrative sanctions are to be imposed, such juvenile shall acknowledge in writing the nature of the violation and agree upon the administrative sanction with approval of such juvenile's parents or guardian. Such juvenile has the right to decline to acknowledge the violation, and if he or she declines to acknowledge the violation, the probation officer shall submit a written report pursuant to subdivision (2)(b) of this section. A copy of the report shall be submitted to the county attorney of the county where probation was imposed; or

(b) Submit a written report to the adjudicating court with a copy to the county attorney of the county where probation was imposed, outlining the nature of the probation violation and request that formal revocation proceedings be instituted against the juvenile subject to the supervision of a probation officer.

(3) Whenever a probation officer has reasonable cause to believe that a juvenile subject to the supervision of a probation officer has violated or is about to violate a condition of probation other than a substance abuse violation or noncriminal violation and that such juvenile will not attempt to leave the jurisdiction and will not place lives or property in danger, the probation officer shall submit a written report to the adjudicating court, with a copy to the county attorney of the county where probation was imposed, outlining the nature of the probation violation.

(4) Whenever a probation officer has reasonable cause to believe that a juvenile subject to the supervision of a probation officer has violated or is about to violate a condition of his or her probation and that such juvenile will attempt to leave the jurisdiction or will place lives or property in danger, the probation officer shall take such juvenile into temporary custody without a warrant and may call on any peace officer for assistance as provided in section 43-248.

(5) Immediately after detention pursuant to subsection (4) of this section, the probation officer shall notify the county attorney of the county where probation was imposed and submit a written report of the reason for such detention and of any violation of probation. After prompt consideration of the written report, the county attorney shall:

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

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

(6) Whenever a county attorney receives a report from a probation officer that a juvenile subject to the supervision of a probation officer has violated a condition of probation, the county attorney may file a motion or information to revoke probation.

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

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

Operative date May 12, 2011.

(i) MISCELLANEOUS PROVISIONS

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

Sections 43-2,108.01 to 43-2,108.05 apply only to persons who were under the age of eighteen years when the offense took place and, after being taken into custody, arrested, cited in lieu of arrest, or referred for prosecution without citation, the county attorney or city attorney (1) released the juvenile without filing a juvenile petition or criminal complaint, (2) offered juvenile pretrial diversion or mediation to the juvenile under the Nebraska Juvenile Code, (3) filed a juvenile court petition describing the juvenile as a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, (4) filed a criminal complaint in county court against the juvenile under state statute or city or village ordinance for misdemeanor or infraction possession of marijuana or misdemeanor or infraction possession of drug paraphernalia, or (5) filed a criminal complaint in county court against the juvenile for any other misdemeanor or infraction under state statute or city or village ordinance, other than for a traffic offense that may be waived.

Source: Laws 2010, LB800, § 26; Laws 2011, LB463, § 6.
Operative date August 27, 2011.

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

For a juvenile described in section 43-2,108.01, the county attorney or city attorney shall provide the juvenile with written notice that:

(1) States in plain language that the juvenile or the juvenile's parent or guardian may file a motion to seal the record with the court when the juvenile has satisfactorily completed the diversion, mediation, probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code or has satisfactorily completed the diversion or sentence ordered by a county court; and

(2) Explains in plain language what sealing the record means.

Source: Laws 2010, LB800, § 27; Laws 2011, LB463, § 7.
Operative date August 27, 2011.

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

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

(2) If the county attorney or city attorney offered and a juvenile described in section 43-2,108.01 has agreed to pretrial diversion or mediation, the county attorney or city attorney shall notify the government agency responsible for the arrest or custody when the juvenile has satisfactorily completed the resulting diversion or mediation.

(3) If the juvenile was taken into custody, arrested, cited in lieu of arrest, or referred for prosecution without citation and charges were filed but later

dismissed and any required pretrial diversion or mediation for any related charges have been completed and no related charges remain under the jurisdiction of the court, the county attorney or city attorney shall notify the government agency responsible for the arrest, custody, citation in lieu of arrest, or referral for prosecution without citation and the court where the charge or petition was filed that the charge or juvenile court petition was dismissed.

(4) Upon receiving notice under subsection (1), (2), or (3) of this section, the government agency or court shall immediately seal all records housed at that government agency or court pertaining to the citation, arrest, record of custody, complaint, disposition, diversion, or mediation.

(5) If a juvenile described in section 43-2,108.01 has satisfactorily completed such juvenile's probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code or has satisfactorily completed such juvenile's diversion or sentence in county court:

(a) The court may initiate proceedings pursuant to section 43-2,108.04 to seal the record pertaining to such disposition or adjudication under the juvenile code or sentence of the county court; and

(b) If the juvenile has attained the age of seventeen years, the court shall initiate proceedings pursuant to section 43-2,108.04 to seal the record pertaining to such disposition or adjudication under the juvenile code or diversion or sentence of the county court, except that the court is not required to initiate proceedings to seal a record pertaining to a misdemeanor or infraction not described in subdivision (4) of section 43-2,108.01 under a city or village ordinance that has no possible jail sentence. Such a record may be sealed under subsection (6) of this section.

(6) If a juvenile described in section 43-2,108.01 has satisfactorily completed diversion, mediation, probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code or has satisfactorily completed the diversion or sentence ordered by a county court, the juvenile or the juvenile's parent or guardian may file a motion in the court of record asking the court to seal the record pertaining to the offense which resulted in such disposition, adjudication, or diversion of the juvenile court or diversion or sentence of the county court.

Source: Laws 2010, LB800, § 28; Laws 2011, LB463, § 8.
Operative date August 27, 2011.

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

(1) When a proceeding to seal the record is initiated, the court shall promptly notify the county attorney or city attorney involved in the case that is the subject of the proceeding to seal the record of the proceedings, and shall promptly notify the Department of Health and Human Services of the proceedings if the juvenile whose record is the subject of the proceeding is a ward of the state at the time the proceeding is initiated or if the department was a party in the proceeding.

(2) A party notified under subsection (1) of this section may file a response with the court within thirty days after receiving such notice.

(3) If a party notified under subsection (1) of this section does not file a response with the court or files a response that indicates there is no objection to

the sealing of the record, the court may: (a) Order the record of the juvenile under consideration be sealed without conducting a hearing on the motion; or (b) decide in its discretion to conduct a hearing on the motion. If the court decides in its discretion to conduct a hearing on the motion, the court shall conduct the hearing within sixty days after making that decision and shall give notice, by regular mail, of the date, time, and location of the hearing to the parties receiving notice under subsection (1) of this section and to the juvenile who is the subject of the record under consideration.

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

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

- (a) The age of the juvenile;
- (b) The nature of the offense and the role of the juvenile in the offense;
- (c) The behavior of the juvenile after the disposition, adjudication, diversion, or sentence and the juvenile's response to diversion, mediation, probation, supervision, other treatment or rehabilitation program, or sentence;
- (d) The education and employment history of the juvenile; and
- (e) Any other circumstances that may relate to the rehabilitation of the juvenile.

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

Source: Laws 2010, LB800, § 29; Laws 2011, LB463, § 9.

Operative date August 27, 2011.

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

(1) If the court orders the record of a juvenile sealed pursuant to section 43-2,108.04, the court shall:

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

(b) Send notice of the order to seal the record (i) to the Nebraska Commission on Law Enforcement and Criminal Justice, (ii) if the record includes

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

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

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

(e) Explain to the juvenile what sealing the record means verbally if the juvenile is present in the court at the time the court issues the sealing order or by written notice sent by regular mail to the juvenile's last-known address if the juvenile is not present in the court at the time the court issues the sealing order.

(2) The effect of having a record sealed under section 43-2,108.04 is that thereafter no person is allowed to release any information concerning such record, except as provided by this section. After a record is sealed, the person whose record was sealed can respond to any public inquiry as if the offense resulting in such record never occurred. A government agency and any other public office or agency shall reply to any public inquiry that no information exists regarding a sealed record. Except as provided in subsection (3) of this section, an order to seal the record applies to every government agency and any other public office or agency that has a record relating to the offense, regardless of whether it receives notice of the hearing on the sealing of the record or a copy of the order. Upon the written request of a person whose record has been sealed and the presentation of a copy of such order, a government agency or any other public office or agency shall seal all records pertaining to the offense.

(3) A sealed record is accessible to law enforcement officers, county attorneys, and city attorneys in the investigation, prosecution, and sentencing of crimes, to the sentencing judge in the sentencing of criminal defendants, and to any attorney representing the subject of the sealed record. Inspection of records that have been ordered sealed under section 43-2,108.04 may be made by the following persons or for the following purposes:

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

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

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

(d) By the Department of Health and Human Services for purposes of juvenile intake services, the preparation of case plans and reports, the preparation of evaluations, compliance with federal reporting requirements, or the supervision and protection of persons placed with the department or for

licensing or certification purposes under sections 71-1901 to 71-1906.01 or the Child Care Licensing Act;

(e) Upon application, by the person who is the subject of the sealed record and by persons authorized by the person who is the subject of the sealed record who are named in that application;

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

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

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

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

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

(6) Any person who violates this section may be held in contempt of court.

Source: Laws 2010, LB800, § 30; Laws 2011, LB463, § 10.
Operative date August 27, 2011.

Cross References

Child Care Licensing Act, see section 71-1908.

(k) CITATION AND CONSTRUCTION OF CODE

43-2,129 Code, how cited.

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

Source: Laws 1981, LB 346, § 85; Laws 1985, LB 447, § 35; Laws 1989, LB 182, § 19; Laws 1994, LB 1106, § 8; Laws 1997, LB 622, § 74; Laws 1998, LB 1041, § 31; Laws 1998, LB 1073, § 27; Laws 2000, LB 1167, § 23; Laws 2003, LB 43, § 16; Laws 2006, LB 1115, § 32; Laws 2008, LB1014, § 42; Laws 2010, LB800, § 31; Laws 2011, LB463, § 11.
Operative date May 12, 2011.

ARTICLE 4

OFFICE OF JUVENILE SERVICES

Section

- 43-412. Commitment to Office of Juvenile Services; discharge of juvenile; effect of discharge; notice to committing court.
- 43-416. Office of Juvenile Services; parole powers; notice to committing court.

43-412 Commitment to Office of Juvenile Services; discharge of juvenile; effect of discharge; notice to committing court.

(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.

(3) The Office of Juvenile Services shall provide the committing court with written notification of the juvenile's discharge within thirty days of a juvenile being discharged from the care and custody of the office.

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; Laws 2011, LB463, § 12.

Operative date August 27, 2011.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

43-416 Office of Juvenile Services; parole powers; notice to committing court.

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. The office shall provide the committing court with written notification of the juvenile's discharge from parole within thirty days of a juvenile being discharged from the supervision of the office.

Source: Laws 1998, LB 1073, § 48; Laws 2011, LB463, § 13.

Operative date August 27, 2011.

ARTICLE 5
ASSISTANCE FOR CERTAIN CHILDREN

Section

43-536. Child care reimbursement; market rate survey; adjustment of rate.

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, 2011, such rate may not be less than the fiftieth percentile or 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; Laws 2011, LB464, § 1. Operative date July 1, 2011.

ARTICLE 9
CHILDREN COMMITTED TO THE DEPARTMENT

Section

43-905. Guardianship; care; placement; duties of department; contracts; payment for maintenance.

43-905 Guardianship; care; placement; duties of department; 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 shall make reasonable efforts to accomplish joint-sibling placement or sibling visitation or ongoing interaction between siblings as provided in section 43-1311.02. The department is authorized to place such children in suitable families for adoption, foster care, or guardianship 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, in foster care, in guardianship, in boarding homes, or in 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; Laws 2011, LB177, § 2.
Effective date August 27, 2011.

Cross References

Foster Parent Liability and Property Damage Fund, see section 43-1320.

**ARTICLE 13
FOSTER CARE**

(a) FOSTER CARE REVIEW ACT

Section	
43-1301.	Terms, defined.
43-1311.	Child removed from home; person or court in charge of child; duties.
43-1311.01.	Child removed from home; notice to noncustodial parent and certain relatives; when; information provided; department; duties.
43-1311.02.	Placement of child and siblings; sibling visitation or ongoing interaction; motions authorized; court review; department; duties.
43-1311.03.	Written independent living transition proposal; development; contents; transition team; department; duties.
43-1312.	Plan or permanency plan for foster child; contents; investigation; hearing.
43-1314.	Court review or hearing; right to participate; notice.
43-1318.	Act, how cited.

(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, except that for purposes of potential sibling placement, the child's family unit shall also include the child's siblings even if the child has not resided with such siblings prior to placement in foster care;

(8) Child-caring agency shall have the definition found in section 71-1902;

(9) Child-placing agency shall have the definition found in section 71-1902; and

(10) Siblings means biological siblings and legal siblings, including, but not limited to, half-siblings and stepsiblings.

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; Laws 2011, LB177, § 3.

Effective date August 27, 2011.

Cross References

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

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;
- (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; and
- (5) Notify the Department of Health and Human Services to identify, locate, and provide written notification to adult relatives of the child as provided in section 43-1311.01.

Source: Laws 1982, LB 714, § 11; Laws 1985, LB 255, § 42; Laws 1998, LB 1041, § 39; Laws 2008, LB1014, § 44; Laws 2011, LB177, § 4.

Effective date August 27, 2011.

Cross References

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

43-1311.01 Child removed from home; notice to noncustodial parent and certain relatives; when; information provided; department; duties.

(1) When notified pursuant to section 43-1311 or upon voluntary placement of a child, the Department of Health and Human Services shall, as provided in this section, identify, locate, and provide written notification of the removal of the child from his or her home, within thirty days after removal, to any noncustodial parent and to all grandparents, adult siblings, adult aunts, adult uncles, adult cousins, and adult relatives suggested by the child or the child's parents, except when that relative's history of family or domestic violence makes notification inappropriate. If the child is an Indian child as defined in section 43-1503, the child's extended family members as defined in such section shall be notified. Such notification shall include all of the following information:

- (a) The child has been or is being removed from the custody of the parent or parents of the child;
- (b) An explanation of the options the relative has under federal, state, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice;
- (c) A description of the requirements for the relative to serve as a foster care provider or other type of care provider for the child and the additional services, training, and other support available for children receiving such care; and
- (d) Information concerning the option to apply for guardianship assistance payments.

(2) The department shall investigate the names and locations of the relatives, including, but not limited to, asking the child in an age-appropriate manner about relatives important to the child and obtaining information regarding the location of the relatives.

(3) The department shall provide to the court, within thirty calendar days after removal of the child, the names and relationship to the child of all relatives contacted, the method of contact, and the responses received from the relatives.

Source: Laws 2011, LB177, § 6.

Effective date August 27, 2011.

43-1311.02 Placement of child and siblings; sibling visitation or ongoing interaction; motions authorized; court review; department; duties.

(1)(a) Reasonable efforts shall be made to place a child and the child's siblings in the same foster care placement or adoptive placement, unless such placement is contrary to the safety or well-being of any of the siblings. This requirement applies even if the custody orders of the siblings are made at separate times.

(b) If the siblings are not placed together in a joint-sibling placement, the Department of Health and Human Services shall provide the siblings and the court with the reasons why a joint-sibling placement would be contrary to the safety or well-being of any of the siblings.

(2) When siblings are not placed together in a joint-sibling placement, the department shall make a reasonable effort to provide for frequent sibling visitation or ongoing interaction between the child and the child's siblings unless the department provides the siblings and the court with reasons why such sibling visitation or ongoing interaction would be contrary to the safety or well-being of any of the siblings. The court shall determine the type and frequency of sibling visitation or ongoing interaction to be implemented by the department.

(3) Parties to the case may file a motion for joint-sibling placement, sibling visitation, or ongoing interaction between siblings.

(4) The court shall periodically review and evaluate the effectiveness and appropriateness of the joint-sibling placement, sibling visitation, or ongoing interaction between siblings.

(5) If an order is entered for termination of parental rights of siblings who are subject to this section, unless the court has suspended or terminated joint-sibling placement, sibling visitation, or ongoing interaction between siblings, the department shall make reasonable efforts to make a joint-sibling placement or do all of the following to facilitate frequent sibling visitation or ongoing interaction between the child and the child's siblings when the child is adopted or enters a permanent placement: (a) Include in the training provided to prospective adoptive parents information regarding the importance of sibling relationships to an adopted child and counseling methods for maintaining sibling relationships; (b) provide prospective adoptive parents with information regarding the child's siblings; and (c) encourage prospective adoptive parents to plan for facilitating post-adoption contact between the child and the child's siblings.

(6) Any information regarding court-ordered or authorized joint-sibling placement, sibling visitation, or ongoing interaction between siblings shall be provided by the department to the parent or parents if parental rights have not been terminated unless the court determines that doing so would be contrary to the safety or well-being of the child and to the foster parent, relative caretaker, guardian, prospective adoptive parent, and child as soon as reasonably possible following the entry of the court order or authorization as necessary to facilitate the sibling time.

Source: Laws 2011, LB177, § 7.

Effective date August 27, 2011.

43-1311.03 Written independent living transition proposal; development; contents; transition team; department; duties.

(1) When a child placed in foster care turns sixteen years of age or enters foster care and is at least sixteen years of age, a written independent living transition proposal shall be developed by the Department of Health and Human Services at the direction and involvement of the child to prepare for the transition from foster care to adulthood. The transition proposal shall be personalized based on the child's needs. The transition proposal shall include, but not be limited to, the following needs:

- (a) Education;
- (b) Employment services and other workforce support;
- (c) Health and health care coverage;
- (d) Financial assistance, including education on credit card financing, banking, and other services;
- (e) Housing;
- (f) Relationship development; and
- (g) Adult services, if the needs assessment indicates that the child is reasonably likely to need or be eligible for services or other support from the adult services system.

(2) The transition proposal shall be developed and frequently reviewed by the department in collaboration with the child's transition team. The transition team shall be comprised of the child, the child's caseworker, the child's guardian ad litem, individuals selected by the child, and individuals who have knowledge of services available to the child.

(3) The transition proposal shall be considered a working document and shall be, at the least, updated for and reviewed at every permanency or review hearing by the court.

(4) The final transition proposal prior to the child's leaving foster care shall specifically identify how the need for housing will be addressed.

(5) If the child is interested in pursuing higher education, the transition proposal shall provide for the process in applying for any applicable state, federal, or private aid.

(6) On or before the date the child reaches nineteen years of age, the department shall provide the child a certified copy of the child's birth certificate and facilitate securing a federal social security card when the child is eligible for such card. All fees associated with securing the certified copy shall be waived by the state.

Source: Laws 2011, LB177, § 8.
Effective date August 27, 2011.

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. If the child is removed from his or her home, the department shall make reasonable efforts to accomplish joint-sibling placement or sibling visitation or ongoing interaction between the siblings as provided in section 43-1311.02.

(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; Laws 2011, LB177, § 5.

Effective date August 27, 2011.

43-1314 Court review or hearing; right to participate; notice.

(1) Except as otherwise provided in the Nebraska Indian Child Welfare Act, notice of the court review or hearing and the right of participation in all court reviews and hearings 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. The Department of Health and Human Services or contract agency shall have the contact information for all child placements available for all courts to comply with the notification requirements found in this section. The department or contract agency shall each have one telephone number by which any court seeking to provide notice may obtain up-to-date contact information of all persons listed in subdivisions (2)(a) through (h) of

this section. All contact information shall be up-to-date within seventy-two hours of any placement change.

(2) Notice shall be provided to all of the following parties that are applicable to the case: (a) The person charged with the care of such child; (b) 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; (c) the foster child if age fourteen or over; (d) the foster parent or parents of the foster child; (e) the guardian ad litem of the foster child; (f) the state board; (g) the preadoptive parent; and (h) the relative providing care for the child. Notice of all court reviews and hearings shall be mailed or personally delivered to the counsel or party, if the party is not represented by counsel, five full days prior to the review or hearing. The use of ordinary mail shall constitute sufficient compliance. 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 or hearing.

(3) The court shall inquire into the well-being of the foster child by asking questions, if present at the hearing, of any willing 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; Laws 2011, LB648, § 2.
Effective date August 27, 2011.

Cross References

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

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; Laws 2011, LB177, § 9.
Effective date August 27, 2011.

**ARTICLE 29
PARENTING ACT**

Section

- 43-2920. Act, how cited.
43-2922. Terms, defined.
43-2929. Parenting plan; developed; approved by court; contents.
43-2929.01. Children of military parents; proceeding involving military parent; court; considerations; limitation on certain orders; attorney's fees.

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; Laws 2011, LB673, § 2.
Effective date August 27, 2011.

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 sections 43-2923 and 43-2929.01;

(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) Military parent means a parent who is a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or Reserves of the United States or the National Guard;

(17) Office of Dispute Resolution means the office established under section 25-2904;

(18) 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;

(19) Parenting plan means a plan for parenting the child that takes into account parenting functions;

(20) Parenting time, visitation, or other access means communication or time spent between the child and parent or stepparent, the child and a court-appointed guardian, or the child and another family member or members including stepbrothers or stepsisters;

(21) 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;

(22) 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;

(23) 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;

(24) 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;

(25) 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

(26) Unresolved parental conflict means persistent conflict in which parents are unable to resolve disputes about parenting functions which has a potentially harmful impact on a child.

Source: Laws 2007, LB554, § 3; Laws 2008, LB1014, § 55; Laws 2011, LB673, § 3.
Effective date August 27, 2011.

Cross References

Conciliation Court Law, see section 42-802.

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, 43-2923, and 43-2929.01 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; Laws 2011, LB673, § 5.
Effective date August 27, 2011.

43-2929.01 Children of military parents; proceeding involving military parent; court; considerations; limitation on certain orders; attorney's fees.

(1) The Legislature finds that for children of military parents it is in the best interests of the child to maintain the parent-child bond during the military parent's mobilization or deployment.

(2) In a custody or parenting time, visitation, or other access proceeding or modification involving a military parent, the court shall consider and provide, if appropriate:

(a) Orders for communication between the military parent and his or her child during any mobilization or deployment of greater than thirty days. Such

communication may be by electronic or other available means, including webcam, Internet, or telephone; and

(b) Parenting time, visitation, or other access orders that ensure liberal access between the military parent and the child during any military leave of the military parent during a mobilization or deployment of greater than thirty days.

(3) A military parent's military membership, mobilization, deployment, absence, relocation, or failure to comply with custody, parenting time, visitation, or other access orders because of military duty shall not, by itself, be sufficient to justify an order or modification of an order involving custody, parenting time, visitation, or other access.

(4) If a custody, child support, or parenting time, visitation, or other access proceeding, or modification thereof, involves a military parent and is filed after the military parent's unit has received notice of potential deployment or during the time the military parent is mobilized or deployed:

(a) The court shall not issue a custody order or modify any previous custody order that changes custody as it existed on the day prior to the military parent's unit receiving notice of potential deployment, except that the court may issue a temporary custody order or temporary modification if there is clear and convincing evidence that the custody change is in the best interests of the child;

(b) The court shall not issue a child support order or modify any previous child support order that changes child support as it existed on the day prior to the military parent's unit receiving notice of potential deployment, except that the court may issue a temporary child support order or temporary modification if there is clear and convincing evidence that the order or modification is required to meet the child support guidelines established pursuant to section 42-364.16; and

(c) The court shall not issue a parenting time, visitation, or other access order or modify any previous order that changes parenting time, visitation, or other access as it existed on the day prior to the military parent's unit receiving notice of potential deployment, except that the court may enter a temporary parenting time, visitation, or other access order or modify any such existing order to permit liberal parenting time, visitation, or other access during any military leave of the military parent.

(5) If a temporary order is issued under subsection (4) of this section, upon the military parent returning from mobilization or deployment, either parent may file a motion requesting a rehearing or reinstatement of a prior order. The court shall rehear the matter if the temporary order was the initial order in the proceeding and shall make a new determination regarding the proceeding. The court shall reinstate the original order if the temporary order was a modification unless the court finds that the best interests of the child or the child support guidelines established pursuant to section 42-364.16 require a new determination.

(6) Upon finding an (a) unreasonable failure of a nonmilitary parent to accommodate the military leave schedule of the military parent, (b) unreasonable delay by the nonmilitary parent of custody, child support, parenting time, visitation, or other access proceedings, (c) unreasonable failure of the military parent to notify the nonmilitary parent or court of release from mobilization, or (d) unreasonable failure of the military parent to provide requested documentation, the court may order the offending party to pay any attorney's fees of the other party incurred due to such unreasonable action.

(7) This section does not apply to permanent change of station moves by a military parent.

Source: Laws 2011, LB673, § 4.
Effective date August 27, 2011.

ARTICLE 37

COURT APPOINTED SPECIAL ADVOCATE ACT

Section

- 43-3701. Act, how cited.
- 43-3717. Legislative findings.
- 43-3718. Court Appointed Special Advocate Fund; created; use; investment.
- 43-3719. Supreme Court; award grants; purposes.
- 43-3720. Applicant awarded grant; report; contents.

43-3701 Act, how cited.

Sections 43-3701 to 43-3720 shall be known and may be cited as the Court Appointed Special Advocate Act.

Source: Laws 2000, LB 1167, § 24; Laws 2011, LB463, § 18.
Operative date May 12, 2011.

43-3717 Legislative findings.

The Legislature finds and declares that:

(1) The safety and well-being of abused and neglected children throughout the State of Nebraska should be of paramount concern to the state and its residents;

(2) Court appointed special advocate volunteers provide a unique and vital service to the children they represent and work to ensure the safety and well-being of abused and neglected children;

(3) Court appointed special advocate volunteers have provided, in many cases, the judges who adjudicate cases with essential information that has not only ensured the safety and well-being of abused and neglected children throughout Nebraska, but has also saved the state thousands of dollars; and

(4) Providing resources through a grant program will increase the savings to the state through court appointed special advocate programs.

Source: Laws 2011, LB463, § 14.
Operative date May 12, 2011.

43-3718 Court Appointed Special Advocate Fund; created; use; investment.

The Court Appointed Special Advocate Fund is created. The fund shall be under the control of the Supreme Court and administered by the State Court Administrator. The fund shall be used for grants as provided in section 43-3719. The fund shall consist of transfers authorized under section 29-3921. 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. Interest earned shall be credited back to the fund.

Source: Laws 2011, LB463, § 15.
Operative date May 12, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

43-3719 Supreme Court; award grants; purposes.

(1) The Supreme Court shall award grants from the Court Appointed Special Advocate Fund as provided in subsection (2) of this section to any court appointed special advocate program that applies for the grant and:

(a) Is a nonprofit organization organized under section 501(c)(3) of the Internal Revenue Code;

(b) Has the ability to operate statewide; and

(c) Has an affiliation agreement with local programs that meet the requirements of section 43-3706.

(2) The Supreme Court shall award grants up to the amount credited to the fund as follows:

(a) Up to ten thousand dollars may be used by the court to administer this section;

(b) Of the remaining amount, eighty percent, but no more than three hundred thousand dollars, shall be awarded as grants used to recruit new court appointed special advocate volunteers and to defray the cost of training court appointed special advocate volunteers;

(c) Of the remaining amount, ten percent, but no more than fifty thousand dollars, shall be awarded as grants used to create innovative programming to implement the Court Appointed Special Advocate Act; and

(d) Of the remaining amount, ten percent, but no more than fifty thousand dollars, shall be awarded as grants used to expand court appointed special advocate programs into counties that have no programs or limited programs.

Source: Laws 2011, LB463, § 16.

Operative date May 12, 2011.

43-3720 Applicant awarded grant; report; contents.

Each applicant who is awarded a grant under section 43-3719 shall provide the Supreme Court, Clerk of the Legislature, and Governor prior to December 31 of each year a report regarding the grant detailing:

(1) The number of court appointed special advocate volunteers trained during the previous fiscal year;

(2) The cost of training the court appointed special advocate volunteers trained during the previous fiscal year;

(3) The number of court appointed special advocate volunteers recruited during the previous fiscal year;

(4) A description of any programs described in subdivision (2)(d) of section 43-3719;

(5) The total number of courts being served by court appointed special advocate programs during the previous fiscal year; and

(6) The total number of children being served by court appointed special advocate volunteers during the previous fiscal year.

Source: Laws 2011, LB463, § 17.

Operative date May 12, 2011.



CHAPTER 44

INSURANCE

Article.

1. Powers of Department of Insurance. 44-102.01.
3. General Provisions Relating to Insurance. 44-3,143.
4. Insurance Reserves; Policy Provisions. 44-402.01.
7. General Provisions Covering Life, Sickness, and Accident Insurance. 44-710.03, 44-710.04.
15. Unfair Practices.
 - (b) Unfair Insurance Claims Settlement Practices Act. 44-1540.
42. Comprehensive Health Insurance Pool Act. 44-4217 to 44-4225.
48. Insurers Supervision, Rehabilitation, and Liquidation. 44-4803 to 44-4862.
55. Surplus Lines Insurance. 44-5502 to 44-5515.
84. Mandate Opt-Out and Insurance Coverage Clarification Act. 44-8401 to 44-8404.
85. Portable Electronics Insurance Act. 44-8501 to 44-8509.

ARTICLE 1

POWERS OF DEPARTMENT OF INSURANCE

Section

44-102.01. Insurance; service contract excluded.

44-102.01 Insurance; service contract excluded.

For purposes of Chapter 44, insurance does not include a service contract. For purposes of this section, service contract means (1) a motor vehicle service contract as defined in section 44-3521 or (2) a contract or agreement, whether designated as a service contract, maintenance agreement, warranty, extended warranty, or similar term, whereby a person undertakes to furnish, arrange for, or, in limited circumstances, reimburse for service, repair, or replacement of any or all of the components, parts, or systems of any covered residential dwelling or consumer product when such service, repair, or replacement is necessitated by wear and tear, failure, malfunction, inoperability, inherent defect, or failure of an inspection to detect the likelihood of failure.

Source: Laws 1990, LB 1136, § 91; Laws 2011, LB535, § 10.
Operative date January 1, 2012.

ARTICLE 3

GENERAL PROVISIONS RELATING TO INSURANCE

Section

44-3,143. Life insurance policy proceeds; payment of interest; when.

44-3,143 Life insurance policy proceeds; payment of interest; when.

(1) Any insurance company authorized to do business in this state shall pay interest on any proceeds due on a life insurance policy if:

- (a) The insured was a resident of this state on the date of death;
- (b) The date of death was on or after June 6, 1991;
- (c) The beneficiary elects in writing to receive the proceeds in a lump-sum payment; and

(d) The proceeds are not paid to the beneficiary within thirty days of receipt of proof of death of the insured by the insurance company.

(2) Interest shall accrue from the date of receipt of proof of death to the date of payment at the rate calculated pursuant to section 45-103 in effect on January 1 of the calendar year in which occurs the date of receipt of proof of death. For purposes of this section, date of payment shall include the date of the postmark stamped on an envelope, properly addressed and postage prepaid, containing the payment.

(3) If an action is commenced to recover the proceeds, this section shall not require the payment of interest for any period of time for which interest is awarded pursuant to sections 45-103 to 45-103.04.

(4) A violation of this section shall be an unfair claims settlement practice subject to the Unfair Insurance Claims Settlement Practices Act.

Source: Laws 1991, LB 419, § 40; Laws 2011, LB72, § 1.
Effective date August 27, 2011.

Cross References

Unfair Insurance Claims Settlement Practices Act, see section 44-1536.

ARTICLE 4

INSURANCE RESERVES; POLICY PROVISIONS

Section

44-402.01. Life insurance; reserves; separate accounts; establish; procedure.

44-402.01 Life insurance; reserves; separate accounts; establish; procedure.

Any domestic life insurance company, including, for the purposes of sections 44-402.01 to 44-402.05, all domestic fraternal benefit societies which operate on a legal reserve basis, may, after adoption of a resolution by its board of directors and upon approval of the Director of Insurance, establish one or more separate accounts and may allocate thereto amounts, including without limitation proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance and benefits incidental thereto, payable in fixed or variable amounts or both, and may, upon approval of the director, guarantee the value of the assets allocated to a separate account.

Source: Laws 1972, LB 771, § 1; Laws 1987, LB 17, § 9; Laws 2005, LB 119, § 6; Laws 2011, LB72, § 2.
Effective date August 27, 2011.

ARTICLE 7

**GENERAL PROVISIONS COVERING LIFE, SICKNESS,
AND ACCIDENT INSURANCE**

Section

44-710.03. Sickness and accident insurance; standard policy form; mandatory provisions.

44-710.04. Sickness and accident insurance; permissive provisions; standard policy form; requirements.

44-710.03 Sickness and accident insurance; standard policy form; mandatory provisions.

Except as provided in section 44-710.05, each policy of sickness and accident insurance delivered or issued for delivery to any person in this state shall

contain the provisions specified in this section in the words in which the provisions appear in this section, except that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the Director of Insurance which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption appearing in this section or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Director of Insurance may approve.

(1) A provision as follows: **ENTIRE CONTRACT: CHANGES:** This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

(2) A provision as follows: **TIME LIMIT ON CERTAIN DEFENSES:** (a) After two years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability, as defined in the policy, commencing after the expiration of such two-year period. The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period nor to limit the application of subdivisions (1) through (5) of section 44-710.04 in the event of misstatement with respect to age or occupation or other insurance. A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium until at least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision, from which the clause "as defined in the policy" may be omitted at the insurer's option, under the caption **INCONTESTABLE:** After this policy has been in force for a period of two years during the lifetime of the insured, excluding any period during which the insured is disabled, it shall become incontestable as to the statements contained in the application. (b) No claim for loss incurred or disability, as defined in the policy, commencing after two years from the date of issue of this policy shall be reduced or denied on the ground that disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

(3) A provision as follows: **GRACE PERIOD:** A grace period of (insert a number not less than 7 for weekly premium policies, 10 for monthly premium policies, and 31 for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force. A policy which contains a cancellation provision may add, at the end of the above provision: Subject to the right of the insurer to cancel in accordance with the cancellation provision hereof. A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision: Unless not less than thirty days prior to the premium due date the insurer has delivered to the insured or has mailed to his or her last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.

(4) A provision as follows: **REINSTATEMENT:** If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy, except that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid but not to any period more than sixty days prior to the date of reinstatement. (The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (a) until at least age fifty or (b) in the case of a policy issued after age forty-four, for at least five years from its date of issue.)

(5) A provision as follows: **NOTICE OF CLAIM:** Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer. In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision: Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he or she shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of such disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given.

(6) A provision as follows: **CLAIM FORMS:** The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character, and the extent of the loss for which claim is made.

(7) A provision as follows: **PROOFS OF LOSS:** Written proof of loss must be furnished to the insurer at its office in case of claim for loss for which the policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time and if such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

(8) A provision as follows: **TIME OF PAYMENT OF CLAIMS:** Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

(9) A provision as follows: **PAYMENT OF CLAIMS:** Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured. The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer: (a) If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$. (insert an amount which shall not exceed five thousand dollars), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment. (b) Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person.

(10) A provision as follows: **PHYSICAL EXAMINATIONS AND AUTOPSY:** The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

(11) A provision as follows: **LEGAL ACTIONS:** No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

(12) A provision as follows: **CHANGE OF BENEFICIARY:** Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy, to any change of beneficiary or beneficiaries, or to any other changes in this policy. The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.

(13) A provision as follows: **CONFORMITY WITH STATE AND FEDERAL LAW:** Any provision of this policy which, on its effective date, is in conflict with the law of the federal government or the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such law.

Source: Laws 1957, c. 188, § 4, p. 644; Laws 1989, LB 92, § 133; Laws 2011, LB72, § 3.
Effective date August 27, 2011.

44-710.04 Sickness and accident insurance; permissive provisions; standard policy form; requirements.

Except as provided in sections 44-710.05 and 44-787, no policy of sickness and accident insurance delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the provisions appear in this section, except that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the Director of Insurance which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this section or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Director of Insurance may approve.

(1) A provision as follows: **CHANGE OF OCCUPATION:** If the insured be injured or contract sickness after having changed his or her occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his or her occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change of occupation.

(2) A provision as follows: **MISSTATEMENT OF AGE:** If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

(3) A provision as follows: **OTHER INSURANCE IN THIS INSURER:** If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for (insert type of coverage or coverages) in excess of \$...... (insert maximum limit of indemnity or indemnities), the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his or her estate; or in lieu thereof: Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his or her beneficiary, or his or her estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

(4) A provision as follows: **INSURANCE WITH OTHER INSURERS:** If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision-of-service basis or on an expense-incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense-incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision-of-service basis, the like amount of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage. If the foregoing policy provision is included in a policy which also contains the next following policy provision there shall be added to the caption of the foregoing provision the phrase **EXPENSE-INCURRED BENEFITS.** The insurer may, at its option, include in this provision a definition of other valid coverage, approved as to form by the Director of Insurance, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada and by hospital or medical service organizations and to any other coverage the inclusion of which may be approved by the Director of Insurance. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employers liability statute, whether provided by a governmental agency or otherwise shall in all cases be deemed to be other valid coverage of which the insurer has had notice. In applying the foregoing policy provision no third-party liability coverage shall be included as other valid coverage.

(5) A provision as follows: **INSURANCE WITH OTHER INSURERS:** If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense-incurred basis and of which this insurer has not

been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined. If the foregoing policy provision is included in a policy which also contains the next preceding policy provision, there shall be added to the caption of the foregoing provision the phrase OTHER BENEFITS. The insurer may, at its option, include in this provision a definition of other valid coverage, approved as to form by the Director of Insurance, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada and to any other coverage the inclusion of which may be approved by the Director of Insurance. In the absence of such definition such term shall not include group insurance or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employers liability statute, whether provided by a governmental agency or otherwise shall in all cases be deemed to be other valid coverage of which the insurer has had notice. In applying the foregoing policy provision no third-party liability coverage shall be included as other valid coverage.

(6) A provision as follows: **RELATION OF EARNINGS TO INSURANCE:** If the total monthly amount of loss-of-time benefits promised for the same loss under all valid loss-of-time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his or her average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time. The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (a) until at least age fifty or (b) in the case of a policy issued after age forty-four for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of valid loss-of-time coverage, approved as to form by the Director of Insurance, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada or to

any other coverage the inclusion of which may be approved by the Director of Insurance or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employers liability statute, or benefits provided by union welfare plans or by employer or employee benefit organizations.

(7) A provision as follows: **UNPAID PREMIUM:** Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

(8) A provision as follows: **CANCELLATION:** The insurer may cancel this policy at any time by written notice delivered to the insured which shall be effective only if mailed by certified or registered mail to the named insured at his or her last-known address, as shown by the records of the insurer, at least thirty days prior to the effective date of cancellation, except that cancellation due to failure to pay the premium or in cases of fraud or misrepresentation shall not require that such notice be given at least thirty days prior to cancellation. Subject to any provisions in the policy or a grace period, cancellation for failure to pay a premium shall be effective as of midnight of the last day for which the premium has been paid. In cases of fraud or misrepresentation, coverage shall be canceled upon the date of the notice or any later date designated by the insurer. After the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

(9) A provision as follows: **ILLEGAL OCCUPATION:** The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

(10) A provision as follows: **INTOXICANTS AND NARCOTICS:** The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.

Source: Laws 1957, c. 188, § 5, p. 650; Laws 1985, LB 76, § 1; Laws 1989, LB 92, § 134; Laws 1997, LB 55, § 2; Laws 2011, LB72, § 4.

Effective date August 27, 2011.

ARTICLE 15

UNFAIR PRACTICES

(b) UNFAIR INSURANCE CLAIMS SETTLEMENT PRACTICES ACT

Section

44-1540. Unfair claims settlement practice; acts and practices prohibited.

(b) UNFAIR INSURANCE CLAIMS SETTLEMENT PRACTICES ACT

44-1540 Unfair claims settlement practice; acts and practices prohibited.

Any of the following acts or practices by an insurer, if committed in violation of section 44-1539, shall be an unfair claims settlement practice:

(1) Knowingly misrepresenting to claimants and insureds relevant facts or policy provisions relating to coverages at issue;

(2) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;

(3) Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies;

(4) Not attempting in good faith to effectuate prompt, fair, and equitable settlement of claims submitted in which liability has become reasonably clear;

(5) Not attempting in good faith to effectuate prompt, fair, and equitable settlement of property and casualty claims (a) in which coverage and the amount of the loss are reasonably clear and (b) for loss of tangible personal property within real property which is insured by a policy subject to section 44-501.02 and which is wholly destroyed by fire, tornado, windstorm, lightning, or explosion;

(6) Compelling insureds or beneficiaries to institute litigation to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in litigation brought by them;

(7) Refusing to pay claims without conducting a reasonable investigation;

(8) Failing to affirm or deny coverage of a claim within a reasonable time after having completed its investigation related to such claim;

(9) Attempting to settle a claim for less than the amount to which a reasonable person would believe the insured or beneficiary was entitled by reference to written or printed advertising material accompanying or made part of an application;

(10) Attempting to settle claims on the basis of an application which was materially altered without notice to or knowledge or consent of the insured;

(11) Making a claims payment to an insured or beneficiary without indicating the coverage under which each payment is being made;

(12) Unreasonably delaying the investigation or payment of claims by requiring both a formal proof-of-loss form and subsequent verification that would result in duplication of information and verification appearing in the formal proof-of-loss form;

(13) Failing, in the case of the denial of a claim or the offer of a compromise settlement, to promptly provide a reasonable and accurate explanation of the basis for such action;

(14) Failing to provide forms necessary to present claims with reasonable explanations regarding their use within fifteen working days of a request;

(15) Failing to adopt and implement reasonable standards to assure that the repairs of a repairer owned by or affiliated with the insurer are performed in a skillful manner. For purposes of this subdivision, a repairer is affiliated with the insurer if there is a preexisting arrangement, understanding, agreement, or contract between the insurer and repairer for services in connection with claims on policies issued by the insurer;

(16) Requiring the insured or claimant to use a particular company or location for motor vehicle repair. Nothing in this subdivision shall prohibit an insurer from entering into discount agreements with companies and locations for motor vehicle repair or otherwise entering into any business arrangements or affiliations which reduce the cost of motor vehicle repair if the insured or claimant has the right to use a particular company or reasonably available location for motor vehicle repair. If the insured or claimant chooses to use a particular company or location other than the one providing the lowest estimate for like kind and quality motor vehicle repair, the insurer shall not be liable for any cost exceeding the lowest estimate. For purposes of this subdivision, motor vehicle repair shall include motor vehicle glass replacement and motor vehicle glass repair;

(17) Failing to provide coverage information or coordinate benefits pursuant to section 68-928; and

(18) Failing to pay interest on any proceeds due on a life insurance policy as required by section 44-3,143.

Source: Laws 1991, LB 234, § 22; Laws 1992, LB 1006, § 16; Laws 1994, LB 978, § 24; Laws 1997, LB 543, § 1; Laws 2002, LB 58, § 1; Laws 2005, LB 589, § 9; Laws 2006, LB 1248, § 59; Laws 2011, LB72, § 5.

Effective date August 27, 2011.

ARTICLE 42

COMPREHENSIVE HEALTH INSURANCE POOL ACT

Section

- 44-4217. Board; pool administrator; selection.
- 44-4219. Plan of operation; contents.
- 44-4220.02. Review of health care provider reimbursement rates; report; health care provider; reimbursement; other payments.
- 44-4223. Selection of pool administrator; procedure.
- 44-4224. Pool administrator; duties.
- 44-4225. Board; report; Comprehensive Health Insurance Pool Distributive Fund; created; use; investment; director; funding powers.

44-4217 Board; pool administrator; selection.

The director shall select the board. The board shall select a pool administrator pursuant to section 44-4223.

Source: Laws 1985, LB 391, § 17; Laws 1989, LB 279, § 6; Laws 1992, LB 1006, § 31; Laws 2000, LB 1253, § 21; Laws 2011, LB73, § 1.
Effective date May 18, 2011.

44-4219 Plan of operation; contents.

In its plan of operation, the board shall:

- (1) Establish procedures for the handling and accounting of assets and funds of the pool;
- (2) Select a pool administrator in accordance with section 44-4223;
- (3) Establish procedures for the selection, replacement, term of office, and qualifications of the directors of the board and rules of procedures for the operation of the board; and

(4) Develop and implement a program to publicize the existence of the pool, the eligibility requirements, and the procedures for enrollment and to maintain public awareness of the pool.

Source: Laws 1985, LB 391, § 19; Laws 1992, LB 1006, § 33; Laws 2000, LB 1253, § 22; Laws 2011, LB73, § 2.
Effective date May 18, 2011.

44-4220.02 Review of health care provider reimbursement rates; report; health care provider; reimbursement; other payments.

(1)(a) In addition to the requirements of section 44-4220.01, following the close of each calendar year, the board shall conduct a review of health care provider reimbursement rates for benefits payable under pool coverage for covered services. The board shall report to the director the results of the review within thirty days after the completion of the review.

(b) The review required by this section shall include a determination of whether (i) health care provider reimbursement rates for benefits payable under pool coverage for covered services are in excess of reasonable amounts and (ii) cost savings in the operation of the pool could be achieved by establishing the level of health care provider reimbursement rates for benefits payable under pool coverage for covered services as a multiplier of an objective standard.

(c) In the determination pursuant to subdivision (1)(b)(i) of this section, the board shall consider:

(i) The success of any efforts by the pool administrator to negotiate reduced health care provider reimbursement rates for benefits payable under pool coverage for covered services on a voluntary basis;

(ii) The effect of health care provider reimbursement rates for benefits payable under pool coverage for covered services on the number and geographic distribution of health care providers providing covered services to covered individuals;

(iii) The administrative cost of implementing a level of health care provider reimbursement rates for benefits payable under pool coverage for covered services; and

(iv) A filing by the pool administrator which shows the difference, if any, between the aggregate amounts set for health care provider reimbursement rates for benefits payable under pool coverage for covered services by existing contracts between the pool administrator and health care providers and the amounts generally charged to reimburse health care providers prevailing in the commercial market. No such filing shall require the pool administrator to disclose proprietary information regarding health care provider reimbursement rates for specific covered services under pool coverage.

(d) If the board determines that cost savings in the operation of the pool could be achieved, the board shall set forth specific findings supporting the determination and may establish the level of health care provider reimbursement rates for benefits payable under pool coverage for covered services as a multiplier of an objective standard.

(2) A health care provider who provides covered services to a covered individual under pool coverage and requests payment is deemed to have agreed to reimbursement according to the health care provider reimbursement rates

for benefits payable under pool coverage for covered services established pursuant to this section. Any reimbursement paid to a health care provider for providing covered services to a covered person under pool coverage is limited to the lesser of billed charges or the health care provider reimbursement rates for benefits payable under pool coverage for covered services established pursuant to this section. A health care provider shall not collect or attempt to collect from a covered individual any money owed to the health care provider by the pool. A health care provider shall not have any recourse against a covered individual for any covered services under pool coverage in excess of the copayment, coinsurance, or deductible amounts specified in the pool coverage.

(3) Nothing in this section shall prohibit a health care provider from billing a covered individual under pool coverage for services which are not covered services under pool coverage.

Source: Laws 2009, LB358, § 3; Laws 2011, LB73, § 3.

Effective date May 18, 2011.

44-4223 Selection of pool administrator; procedure.

(1) The board shall select a pool administrator through a competitive bidding process to administer the pool. The pool administrator may be an insurer or a third-party administrator authorized to transact business in this state. The board shall evaluate bids submitted on the basis of criteria established by the board which shall include:

(a) The applicant's proven ability to handle individual sickness and accident insurance;

(b) The efficiency of the applicant's claim-paying procedures;

(c) The applicant's estimate of total charges for administering the pool;

(d) The applicant's ability to administer the pool in a cost-effective manner; and

(e) The applicant's ability to negotiate reduced health care provider reimbursement rates for benefits payable under pool coverage for covered services.

(2) The pool administrator shall serve for a period of three years subject to removal for cause. At least one year prior to the expiration of each three-year period of service by a pool administrator, the board shall invite all insurers and third-party administrators authorized to transact business in this state, including the current pool administrator, to submit bids to serve as the pool administrator for the succeeding three-year period. Selection of the pool administrator for the succeeding period shall be made at least six months prior to the end of the current three-year period.

Source: Laws 1985, LB 391, § 23; Laws 1992, LB 1006, § 37; Laws 2011, LB73, § 4.

Effective date May 18, 2011.

44-4224 Pool administrator; duties.

The pool administrator shall:

(1) Perform all eligibility verification functions relating to the pool;

(2) Establish a premium billing procedure for collection of premiums from covered individuals on a periodic basis as determined by the board;

(3) Perform all necessary functions to assure timely payment of benefits to covered individuals, including:

(a) Making available information relating to the proper manner of submitting a claim for benefits to the pool and distributing forms upon which submission shall be made; and

(b) Evaluating the eligibility of each claim for payment by the pool;

(4) Submit regular reports to the board regarding the operation of the pool. The frequency, content, and form of the reports shall be determined by the board;

(5) Following the close of each calendar year, report such income and expense items as directed by the board to the board and the department on a form prescribed by the director; and

(6) Be paid as provided in the plan of operation for its expenses incurred in the performance of its services to the pool.

Source: Laws 1985, LB 391, § 24; Laws 2000, LB 1253, § 26; Laws 2011, LB73, § 5.

Effective date May 18, 2011.

44-4225 Board; report; Comprehensive Health Insurance Pool Distributive Fund; created; use; investment; director; funding powers.

(1) Following the close of each calendar year, the board shall report the board's determination of the paid and incurred losses for the year, taking into account investment income and other appropriate gains and losses. The board shall distribute copies of the report to the director, the Governor, and each member of the Legislature.

(2) The Comprehensive Health Insurance Pool Distributive Fund is created. Commencing with the premium and related retaliatory taxes for the taxable year ending December 31, 2001, and for each taxable year thereafter, any premium and related retaliatory taxes imposed by section 44-150 or 77-908 paid by insurers writing health insurance in this state, except as otherwise set forth in subdivisions (1) and (2) of section 77-912, shall be remitted to the State Treasurer for credit to the fund. The fund shall be used for the operation of and payment of claims made against the pool. 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 board shall make periodic estimates of the amount needed from the fund for payment of losses resulting from claims, including a reasonable reserve, and administrative, organizational, and interim operating expenses and shall notify the director of the amount needed and the justification of the board for the request.

(4) The director shall approve all withdrawals from the fund and may determine when and in what amount any additional withdrawals may be necessary from the fund to assure the continuing financial stability of the pool.

(5) No later than May 1, 2002, and each May 1 thereafter, after funding of the net loss from operation of the pool for the prior premium and related retaliatory tax year, taking into account the policyholder premiums, account investment income, claims, costs of operation, and other appropriate gains and losses, the director shall transmit any money remaining in the fund as directed by section 77-912, disregarding the provisions of subdivisions (1) through (3) of such

section. Interest earned on money in the fund shall be credited proportionately in the same manner as premium and related retaliatory taxes set forth in section 77-912.

Source: Laws 1985, LB 391, § 25; Laws 1991, LB 419, § 3; Laws 1992, LB 1006, § 38; Laws 2000, LB 1253, § 27; Laws 2011, LB73, § 6. Effective date May 18, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 48

INSURERS SUPERVISION, REHABILITATION, AND LIQUIDATION

Section

44-4803. Terms, defined.

44-4830.01. Netting agreement; qualified financial contract; net or settlement amount; treatment; receiver; powers; duties; notice; claim of counterparty; rights of counterparty.

44-4862. Act, how cited.

44-4803 Terms, defined.

For purposes of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act:

- (1) Ancillary state means any state other than a domiciliary state;
- (2) Creditor means a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, or absolute, fixed, or contingent;
- (3) Delinquency proceeding means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer and any summary proceeding under section 44-4809 or 44-4810;
- (4) Department means the Department of Insurance;
- (5) Director means the Director of Insurance;
- (6) Doing business includes any of the following acts, whether effected by mail or otherwise:
 - (a) The issuance or delivery of contracts of insurance to persons who are residents of this state;
 - (b) The solicitation of applications for such contracts or other negotiations preliminary to the execution of such contracts;
 - (c) The collection of premiums, membership fees, assessments, or other consideration for such contracts;
 - (d) The transaction of matters subsequent to execution of such contracts and arising out of them; or
 - (e) Operating as an insurer under a license or certificate of authority issued by the department;
- (7) Domiciliary state means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry;
- (8) Fair consideration is given for property or an obligation:

(a) When in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, (i) property is conveyed, (ii) services are rendered, (iii) an obligation is incurred, or (iv) an antecedent debt is satisfied; or

(b) When such property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained;

(9) Foreign country means any other jurisdiction not in any state;

(10) Foreign guaranty association means a guaranty association now in existence in or hereafter created by the legislature of another state;

(11) Formal delinquency proceeding means any liquidation or rehabilitation proceeding;

(12) General assets means all property, real, personal, or otherwise not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, general assets includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or benefit of all insureds or all insureds and creditors, in more than a single state, are treated as general assets;

(13) Guaranty association means the Nebraska Property and Liability Insurance Guaranty Association, the Nebraska Life and Health Insurance Guaranty Association, and any other similar entity now or hereafter created by the Legislature for the payment of claims of insolvent insurers;

(14) Insolvency or insolvent means:

(a) For an insurer formed under Chapter 44, article 8:

(i) The inability to pay any obligation within thirty days after it becomes payable; or

(ii) If an assessment is made within thirty days after such date, the inability to pay such obligation thirty days following the date specified in the first assessment notice issued after the date of loss;

(b) For any other insurer, that it is unable to pay its obligations when they are due or when its admitted assets do not exceed its liabilities plus the greater of:

(i) Any capital and surplus required by law to be maintained; or

(ii) The total par or stated value of its authorized and issued capital stock; and

(c) For purposes of this subdivision, liabilities includes, but is not limited to, reserves required by statute or by rules and regulations adopted and promulgated or specific requirements imposed by the director upon a subject company at the time of admission or subsequent thereto;

(15) Insurer means any person who has done, purports to do, is doing, or is licensed to do an insurance business and is or has been subject to the authority of or to liquidation, rehabilitation, reorganization, supervision, or conservation by the director or the director, commissioner, or equivalent official of another state. Any other persons included under section 44-4802 are deemed to be insurers;

(16) Netting agreement means an agreement and any terms and conditions incorporated by reference therein, including a master agreement that, together

with all schedules, confirmations, definitions, and addenda thereto and transactions under any thereof, shall be treated as one netting agreement:

(a) That documents one or more transactions between parties to the agreement for or involving one or more qualified financial contracts; and

(b) That provides for the netting or liquidation of qualified financial contracts or present or future payment obligations or payment entitlements thereunder, including liquidation or closeout values relating to such obligations or entitlements among the parties to the netting agreement;

(17) Person includes any individual, corporation, partnership, limited liability company, association, trust, or other entity;

(18) Qualified financial contract means a commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, and any similar agreement that the director determines by rule and regulation, resolution, or order to be a qualified financial contract for the purposes of the act;

(19) Receiver means receiver, liquidator, rehabilitator, or conservator as the context requires;

(20) Reciprocal state means any state other than this state in which in substance and effect sections 44-4818, 44-4852, 44-4853, and 44-4855 to 44-4857 are in force, in which provisions are in force requiring that the director, commissioner, or equivalent official of such state be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers;

(21) Secured claim means any claim secured by mortgage, trust deed, pledge, or deposit as security, escrow, or otherwise but does not include a special deposit claim or a claim against general assets. The term includes claims which have become liens upon specific assets by reason of judicial process;

(22) Special deposit claim means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons but does not include any claim secured by general assets;

(23) State means any state, district, or territory of the United States and the Panama Canal Zone; and

(24) Transfer includes the sale of property or an interest therein and every other and different mode, direct or indirect, of disposing of or of parting with property, an interest therein, or the possession thereof or of fixing a lien upon property or an interest therein, absolutely or conditionally, voluntarily, or by or without judicial proceedings. The retention of a security title to property delivered to a debtor is deemed a transfer suffered by the debtor.

Source: Laws 1989, LB 319, § 3; Laws 1990, LB 984, § 4; Laws 1991, LB 236, § 60; Laws 1993, LB 121, § 258; Laws 2011, LB72, § 6. Effective date August 27, 2011.

Cross References

Nebraska Life and Health Insurance Guaranty Association, see section 44-2705.

Nebraska Property and Liability Insurance Guaranty Association, see section 44-2404.

44-4830.01 Netting agreement; qualified financial contract; net or settlement amount; treatment; receiver; powers; duties; notice; claim of counterparty; rights of counterparty.

(1) Notwithstanding any other provision of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act to the contrary, including any other provision of the act that permits the modification of contracts, or another law of this state, a person shall not be stayed or prohibited from exercising any of the following:

(a) A contractual right to terminate, liquidate, or close out any netting agreement or qualified financial contract with an insurer because of one of the following:

(i) The insolvency, financial condition, or default of the insurer at any time, if the right is enforceable under applicable law other than the act; or

(ii) The commencement of a formal delinquency proceeding under the act;

(b) Any right under a pledge, security, collateral, or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract; or

(c) Subject to any provision of subsection (2) of section 44-4830, any right to setoff or net out any termination value, payment amount, or other transfer obligation arising under or in connection with a netting agreement or qualified financial contract if the counterparty or its guarantor is organized under the laws of the United States or a state or foreign jurisdiction approved by the Securities Valuation Office of the National Association of Insurance Commissioners as eligible for netting.

(2) Upon termination of a netting agreement or qualified financial contract, the net or settlement amount, if any, owed by a nondefaulting party to an insurer against which an application or petition has been filed under the act shall be transferred to or on the order of the receiver for the insurer, even if the insurer is the defaulting party, notwithstanding any provision in the netting agreement or qualified financial contract that may provide that the defaulting party is not required to pay any net or settlement amount due to the defaulting party upon termination. Any limited two-way payment provision in a netting agreement or qualified financial contract with an insurer that has defaulted shall be deemed to be a full two-way payment provision as against the defaulting insurer. Any such amount, except to the extent it is subject to one or more secondary liens or encumbrances, shall be a general asset of the insurer.

(3) In making any transfer of a netting agreement or qualified financial contract of an insurer subject to a proceeding under the act, the receiver shall do one of the following:

(a) Transfer to one party, other than an insurer subject to a proceeding under the act, all netting agreements and qualified financial contracts between a counterparty or any affiliate of the counterparty and the insurer that is the subject of the proceeding, including all of the following:

(i) All rights and obligations of each party under each netting agreement and qualified financial contract; and

(ii) All property, including any guarantees or credit support documents, securing any claims of each party under each such netting agreement and qualified financial contract; or

(b) Transfer none of the netting agreements, qualified financial contracts, rights, obligations, or property referred to in subdivision (a) of this subsection with respect to the counterparty and any affiliate of the counterparty.

(4) If a receiver for an insurer makes a transfer of one or more netting agreements or qualified financial contracts, the receiver shall use his or her best efforts to notify any person who is party to the netting agreement or qualified financial contract of the transfer by noon of the receiver's local time on the business day following the transfer. For purposes of this subsection, business day means a day other than a Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(5) Notwithstanding any other provision of the act to the contrary, a receiver shall not avoid a transfer of money or other property arising under or in connection with a netting agreement or qualified financial contract or any pledge, security, collateral, or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract that is made before the commencement of a formal delinquency proceeding under the act. However, a transfer may be avoided under section 44-4828 if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or an existing or future creditor.

(6)(a) In exercising any of its powers under the act to disaffirm or repudiate a netting agreement or qualified financial contract, the receiver shall take action with respect to each netting agreement or qualified financial contract and all transactions entered into in connection therewith in its entirety.

(b) Notwithstanding any other provision of the act to the contrary, any claim of a counterparty against the estate arising from the receiver's disaffirmance or repudiation of a netting agreement or qualified financial contract that has not been previously affirmed in the liquidation or in the immediately preceding rehabilitation case shall be determined and allowed or disallowed as if the claim had arisen before the date of the filing of the petition for liquidation or, if a rehabilitation proceeding is converted to a liquidation proceeding, as if the claim had arisen before the date of the filing of the petition for rehabilitation. The amount of the claim shall be the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial contract. For purposes of this subdivision, actual direct compensatory damages does not include punitive or exemplary damages, damages for lost profit or lost opportunity, or damages for pain and suffering, but does include normal and reasonable costs of cover or other reasonable measures of damages utilized in the derivatives market for the contract and agreement claims.

(7) For purposes of this section, contractual right includes any right, whether or not evidenced in writing, arising under (a) statutory or common law, (b) a rule or bylaw of a national securities exchange, a national securities clearing organization, or a securities clearing agency, (c) a rule or bylaw or a resolution of the governing body of a contract market or its clearing organization, or (d) law merchant.

(8) This section does not apply to persons who are affiliates of the insurer that is the subject of the proceeding.

(9) All rights of a counterparty under the act shall apply to netting agreements and qualified financial contracts entered into on behalf of the general account or separate accounts, if the assets of each separate account are

available only to counterparties to netting agreements and qualified financial contracts entered into on behalf of that separate account.

Source: Laws 2011, LB72, § 7.
Effective date August 27, 2011.

44-4862 Act, how cited.

Sections 44-4801 to 44-4862 shall be known and may be cited as the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

Source: Laws 1991, LB 236, § 85; Laws 2004, LB 1047, § 17; Laws 2011, LB72, § 8.
Effective date August 27, 2011.

ARTICLE 55

SURPLUS LINES INSURANCE

Section

- 44-5502. Terms, defined.
- 44-5503. Surplus lines license; issuance.
- 44-5504. Nonadmitted insurer; surplus lines license; application; fee; expiration; renewal.
- 44-5505. Nonadmitted insurer; surplus lines licensee; record of business; contents; how kept.
- 44-5506. Surplus lines licensee; quarterly statement; tax payment; director; powers.
- 44-5508. Surplus lines licensee; requirements; duties of licensee; violations; penalty; nonadmitted insurer; requirements.
- 44-5510. Insurance; procurement from nonadmitted insurer; when; terms and conditions; surplus lines licensee; exempt from due diligence search; conditions.
- 44-5511. Surplus lines licensee; report; contents; when due.
- 44-5515. Exempt commercial purchaser; taxes; form.

44-5502 Terms, defined.

For purposes of the Surplus Lines Insurance Act:

- (1) Affiliated group means a group of entities in which each entity, with respect to an insured, controls, is controlled by, or is under common control with the insured;
- (2) Control means:
 - (a) To own, control, or have the power of an entity directly, indirectly, or acting through one or more other persons to vote twenty-five percent or more of any class of voting securities of another entity; or
 - (b) To direct, by an entity, in any manner, the election of a majority of the directors or trustees of another entity;
- (3) Department means the Department of Insurance;
- (4) Director means the Director of Insurance;
- (5)(a) Exempt commercial purchaser means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:
 - (i) The person employs or retains a qualified risk manager to negotiate insurance coverage;
 - (ii) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars in the immediately preceding twelve months; and
 - (iii) The person meets at least one of the following criteria:

(A) The person possesses a net worth in excess of twenty million dollars, as such amount is adjusted pursuant to subdivision (5)(b) of this section;

(B) The person generates annual revenue in excess of fifty million dollars, as such amount is adjusted pursuant to subdivision (5)(b) of this section;

(C) The person employs more than five hundred full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand employees in the aggregate;

(D) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars, as such amount is adjusted pursuant to subdivision (5)(b) of this section; or

(E) The person is a municipality with a population in excess of fifty thousand inhabitants.

(b) Beginning on the fifth occurrence of January 1 after July 21, 2011, and each fifth occurrence of January 1 thereafter, the amounts in subdivisions (5)(a)(iii)(A), (B), and (D) of this section shall be adjusted to reflect the percentage change for such five-year period in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics;

(6) Foreign, alien, admitted, and nonadmitted, when referring to insurers, has the same meanings as in section 44-103 but does not include a risk retention group as defined in 15 U.S.C. 3901(a)(4);

(7)(a) Except as provided in subdivision (7)(b) of this section, home state means, with respect to an insured, (i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence or (ii) if one hundred percent of the insured risk is located out of the state referred to in subdivision (7)(a)(i) of this section, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(b) If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, home state means the home state, as determined pursuant to subdivision (7)(a) of this section, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(c) When determining the home state of the insured, the principal place of business is the state in which the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities of the insured;

(8) Insurer has the same meaning as in section 44-103;

(9) Nonadmitted insurance means any property and casualty insurance permitted to be placed directly or through surplus lines licensees with a nonadmitted insurer eligible to accept such insurance; and

(10) Qualified risk manager means, with respect to a policyholder of commercial insurance, a person who meets the definition in section 527 of the Nonadmitted and Reinsurance Reform Act of 2010, which is Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, as such section existed on January 1, 2011.

Source: Laws 1992, LB 1006, § 2; Laws 2007, LB117, § 22; Laws 2011, LB70, § 1.

Operative date July 21, 2011.

44-5503 Surplus lines license; issuance.

The department, in consideration of the payment of the license fee, may issue a surplus lines license, revocable at any time, to any individual who currently holds an insurance producer license or to a foreign or domestic corporation. The corporate surplus lines license shall list all officers or employees of the corporation who currently hold an insurance producer license or meet the requirements for an individual surplus lines license and who have authority to transact surplus lines business on behalf of the corporation. Only individuals listed on the corporate surplus lines license shall transact surplus lines business on behalf of the corporate licensee. If the applicant is an individual, the application for the license shall include the applicant's social security number. The director may utilize the national insurance producer data base of the National Association of Insurance Commissioners, or any other equivalent uniform national data base, for the licensure of an individual or an entity as a surplus lines producer and for renewal of such license.

Source: Laws 1913, c. 154, § 25, p. 408; R.S.1913, § 3161; Laws 1919, c. 190, tit. V, art. III, § 18, p. 587; C.S.1922, § 7762; C.S.1929, § 44-218; R.S.1943, § 44-139; Laws 1955, c. 168, § 3, p. 479; Laws 1978, LB 836, § 1; Laws 1989, LB 92, § 29; R.S.Supp.,1990, § 44-139; Laws 1992, LB 1006, § 3; Laws 1997, LB 752, § 113; Laws 2001, LB 51, § 38; Laws 2002, LB 1139, § 36; Laws 2011, LB70, § 2.
Operative date July 21, 2011.

44-5504 Nonadmitted insurer; surplus lines license; application; fee; expiration; renewal.

(1) No person, other than an exempt commercial purchaser, shall place, procure, or effect insurance for or on behalf of an insured whose home state is the State of Nebraska in any nonadmitted insurer until such person has first been issued a surplus lines license from the department as provided in section 44-5503.

(2) Application for a surplus lines license shall be made to the department on forms designated and furnished by the department and shall be accompanied by a license fee as established by the director not to exceed two hundred fifty dollars for each individual and corporate surplus lines license.

(3)(a) All corporate surplus lines licenses shall expire on April 30 of each year, and all individual surplus lines licenses shall expire on the licensee's birthday in the first year after issuance in which his or her age is divisible by two, and all individual surplus lines licenses may be renewed within the ninety-day period before their expiration dates and all individual surplus lines licenses also may be renewed within the thirty-day period after their expiration dates upon payment of a late renewal fee as established by the director not to exceed two hundred dollars in addition to the applicable fee otherwise required for renewal of individual surplus lines licenses as established by the director pursuant to subsection (2) of this section. All individual surplus lines licenses renewed within the thirty-day period after their expiration dates pursuant to this subdivision shall be deemed to have been renewed before their expiration dates. The department shall establish procedures for the renewal of surplus lines licenses.

(b) Every licensee shall notify the department within thirty days of any changes in the licensee's residential or business address.

Source: Laws 1913, c. 154, § 25, p. 408; R.S.1913, § 3161; Laws 1919, c. 190, tit. V, art. III, § 18, p. 587; C.S.1922, § 7762; C.S.1929, § 44-218; R.S.1943, § 44-140; Laws 1978, LB 836, § 2; Laws 1984, LB 801, § 47; Laws 1989, LB 92, § 30; R.S.Supp.,1990, § 44-140; Laws 1992, LB 1006, § 4; Laws 1999, LB 260, § 15; Laws 2002, LB 1139, § 37; Laws 2007, LB117, § 23; Laws 2011, LB70, § 3.

Operative date July 21, 2011.

44-5505 Nonadmitted insurer; surplus lines licensee; record of business; contents; how kept.

Each surplus lines licensee shall keep in the licensee's office a true and complete record of the business transacted by the licensee showing (1) the exact amount of insurance or limits of exposure, (2) the gross premiums charged therefor, (3) the return premium paid thereon, (4) the rate of premium charged for such insurance, (5) the date of such insurance and terms thereof, (6) the name and address of the nonadmitted insurer writing such insurance, (7) a copy of the declaration page of each policy and a copy of each policy form issued by the licensee, (8) a copy of the written statement described in subdivision (1)(c) of section 44-5510 or, in lieu thereof, a copy of the application containing such written statement, (9) the name of the insured, (10) the address of the principal residence of the insured or the address at which the insured maintains its principal place of business, (11) a brief and general description of the risk or exposure insured and where located, (12) documentation showing that the nonadmitted insurer writing such insurance complies with the requirements of section 44-5508, and (13) such other facts and information as the department may direct and require. Such records shall be kept by the licensee in the licensee's office within the state for not less than five years and shall at all times be open and subject to the inspection and examination of the department or its officers. The expense of any examination shall be paid by the licensee.

Source: Laws 1913, c. 154, § 25, p. 409; R.S.1913, § 3161; Laws 1919, c. 190, tit. V, art. III, § 18, p. 588; C.S.1922, § 7762; C.S.1929, § 44-218; R.S.1943, § 44-141; Laws 1978, LB 836, § 3; Laws 1989, LB 92, § 31; R.S.Supp.,1990, § 44-141; Laws 1992, LB 1006, § 5; Laws 2005, LB 119, § 20; Laws 2011, LB70, § 4.
Operative date July 21, 2011.

44-5506 Surplus lines licensee; quarterly statement; tax payment; director; powers.

(1) For purposes of carrying out the Nonadmitted and Reinsurance Reform Act of 2010, which is Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, as such act existed on January 1, 2011, the director may enter into the Nonadmitted Insurance Multi-State Agreement in order to facilitate the collection, allocation, and disbursement of premium taxes attributable to the placement of nonadmitted insurance, provide for uniform methods of allocation and reporting among nonadmitted insurance

risk classifications, and share information among states relating to nonadmitted insurance premium taxes.

(2) The director may participate in the clearinghouse established through the Nonadmitted Insurance Multi-State Agreement for the purpose of collecting and disbursing to reciprocal states any funds collected applicable to properties, risks, or exposures located or to be performed outside of this state. To the extent that other states where portions of the properties, risks, or exposures reside have failed to enter into a compact or reciprocal allocation procedure with the State of Nebraska, the net premium tax shall be retained by the State of Nebraska. If the director chooses to participate in the clearinghouse for the purpose authorized by this subsection, the director may also participate in such clearinghouse for purposes of surplus lines policies applicable to risks located solely within this state.

(3) Every surplus lines licensee transacting business under the Surplus Lines Insurance Act shall, on or before February 15 for the quarter ending the preceding December 31, May 15 for the quarter ending the preceding March 31, August 15 for the quarter ending the preceding June 30, and November 15 for the quarter ending the preceding September 30 of each year, make and file with the department a verified statement upon a form prescribed by the department or a designee of the director which shall exhibit the true amount of all such business transacted during that period.

(4)(a) Every surplus lines licensee transacting business under the Surplus Lines Insurance Act shall collect and pay to the director or the director's designee, at the time the statement required under subsection (3) of this section is filed, a sum based on the total gross premiums charged, less any return premiums, for surplus lines insurance provided by the licensee pursuant to the license. In no event shall such taxes be determined on a retaliatory basis pursuant to section 44-150.

(b) When the insurance covers properties, risks, or exposures located or to be performed solely in this state on behalf of an insured whose home state is the State of Nebraska, the sum payable shall be computed based on an amount equal to three percent of the premiums to be remitted to the State Treasurer in accordance with section 77-912.

(c) When the insurance covers properties, risks, or exposures located or to be performed both in and out of this state, the sum payable shall be computed based on:

(i) For purposes of the portion that is attributable to instate risks, an amount and rate equal to that set forth in subdivision (4)(b) of this section; plus

(ii) For purposes of the portion that is attributable to out-of-state risks, an amount equal to the portion of the premiums allocated to each of the other states or territories and at a rate as established by each state or territory as being applicable to the properties, risks, or exposures located or performed outside of this state. The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the licensee shall be returned to the policyholder directly by the surplus lines licensee or through the producing broker, if any. The surplus lines licensee is prohibited from rebating, for any reason, any portion of the tax.

(5) The director may utilize or adopt the allocation schedule included in the Nonadmitted Insurance Multi-State Agreement for the purpose of allocating risk and computing the tax due on the portion of premium attributable to each

risk classification and to each state in which properties, risks, or exposures are located.

Source: Laws 1913, c. 154, § 25, p. 409; R.S.1913, § 3161; Laws 1919, c. 190, tit. V, art. III, § 18, p. 588; C.S.1922, § 7762; C.S.1929, § 44-218; R.S.1943, § 44-142; Laws 1978, LB 836, § 4; Laws 1987, LB 302, § 4; Laws 1989, LB 92, § 32; R.S.Supp.,1990, § 44-142; Laws 1992, LB 1006, § 6; Laws 2011, LB70, § 5. Operative date July 21, 2011.

44-5508 Surplus lines licensee; requirements; duties of licensee; violations; penalty; nonadmitted insurer; requirements.

(1) A surplus lines licensee shall not place coverage with a nonadmitted insurer unless, at the time of placement, the surplus lines licensee has determined that the nonadmitted insurer:

(a) Is authorized to write such insurance in its domiciliary jurisdiction;
(b) Has established satisfactory evidence of good repute and financial integrity; and

(c)(i) Possesses capital and surplus or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of the minimum capital and surplus requirements under the laws of this state or fifteen million dollars; or

(ii) If minimum capital and surplus does not meet the requirements of subdivision (1)(c)(i) of this section, then upon an affirmative finding of acceptability by the director. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. The director shall not make an affirmative finding of acceptability if the nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars.

(2) No surplus lines licensee shall place nonadmitted insurance with or procure nonadmitted insurance from a nonadmitted insurer domiciled outside the United States unless the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners.

(3) Any surplus lines licensee violating this section shall be guilty of a Class III misdemeanor.

(4)(a) No nonadmitted foreign or alien insurer shall transact business under the Surplus Lines Insurance Act if it does not comply with the surplus and capital requirements of subsection (1) of this section.

(b) In addition to the requirements of subdivision (a) of this subsection, no nonadmitted alien insurer shall transact business under the act if it does not comply with the requirements of subsection (2) of this section.

Source: Laws 1913, c. 154, § 26, p. 410; R.S.1913, § 3162; Laws 1919, c. 190, tit. V, art. III, § 19, p. 589; C.S.1922, § 7763; C.S.1929, § 44-219; R.S.1943, § 44-147; Laws 1951, c. 135, § 2, p. 558; Laws 1971, LB 757, § 1; Laws 1977, LB 40, § 230; Laws 1978, LB 836, § 6; Laws 1989, LB 92, § 33; R.S.Supp.,1990, § 44-147; Laws 1992, LB 1006, § 8; Laws 1994, LB 978, § 31; Laws 2005, LB 119, § 21; Laws 2011, LB70, § 6. Operative date July 21, 2011.

44-5510 Insurance; procurement from nonadmitted insurer; when; terms and conditions; surplus lines licensee; exempt from due diligence search; conditions.

(1) If an applicant for insurance is unable to procure such insurance as he or she deems reasonably necessary to insure a risk or exposure from an admitted insurer, such insurance may be procured from a nonadmitted insurer upon the following terms and conditions:

(a) The insurance shall be procured from a surplus lines licensee;

(b) The insurance procured shall not include any insurance described in subdivisions (1) through (4) of section 44-201;

(c) Not later than thirty days after the effective date of such insurance, the insured shall provide, in writing, his or her permission for such insurance to be written in a nonadmitted insurer and his or her acknowledgment that, in the event of the insolvency of such insurer, the policy will not be covered by the Nebraska Property and Liability Insurance Guaranty Association; and

(d) Compliance with section 44-5511.

(2) A surplus lines licensee seeking to procure or place nonadmitted insurance for an exempt commercial purchaser whose home state is the State of Nebraska shall not be required to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if:

(a) The surplus lines licensee procuring or placing the insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(b) The exempt commercial purchaser has subsequently requested in writing the surplus lines licensee to procure or place such insurance for a nonadmitted insurer.

Source: Laws 1978, LB 836, § 8; Laws 1989, LB 92, § 35; R.S.Supp.,1990, § 44-147.02; Laws 1992, LB 1006, § 10; Laws 2011, LB70, § 7.

Operative date July 21, 2011.

Cross References

Nebraska Property and Liability Insurance Guaranty Association, see section 44-2404.

44-5511 Surplus lines licensee; report; contents; when due.

On or before February 15 for the quarter ending the preceding December 31, May 15 for the quarter ending the preceding March 31, August 15 for the quarter ending the preceding June 30, and November 15 for the quarter ending the preceding September 30 of each year, every surplus lines licensee shall file with the department a report containing such information as the department may require, including: (1) The name of the nonadmitted insurer; (2) the name of the licensee; (3) the number of policies issued by each nonadmitted insurer; (4) except for insurance placed or procured on behalf of an exempt commercial purchaser, a sworn statement by the licensee with regard to the coverages described in the quarterly report that, to the best of the licensee's knowledge and belief, the licensee could not reasonably procure such coverages from an

admitted insurer; and (5) the premium volume for each nonadmitted insurer by line of business.

Source: Laws 1978, LB 836, § 9; Laws 1989, LB 92, § 36; R.S.Supp.,1990, § 44-147.03; Laws 1992, LB 1006, § 11; Laws 2011, LB70, § 8.
Operative date July 21, 2011.

44-5515 Exempt commercial purchaser; taxes; form.

Every exempt commercial purchaser whose home state is the State of Nebraska shall, on or before February 15 for the quarter ending the preceding December 31, May 15 for the quarter ending the preceding March 31, August 15 for the quarter ending the preceding June 30, and November 15 for the quarter ending the preceding September 30 of each year, pay to the department a tax in the amount required by subdivision (4)(a) of section 44-5506. The calculation of the taxes due pursuant to this section shall be based only on those premiums remitted for the placement or procurement of insurance by an exempt commercial purchaser whose home state is the State of Nebraska. The department shall prescribe a form for an exempt commercial purchaser tax filing.

Source: Laws 2007, LB117, § 24; Laws 2011, LB70, § 9.
Operative date July 21, 2011.

ARTICLE 84

MANDATE OPT-OUT AND INSURANCE COVERAGE CLARIFICATION ACT

Section

- 44-8401. Act, how cited.
44-8402. Legislative findings.
44-8403. Qualified health insurance plan offered through health insurance exchange; abortion coverage; restriction; health insurance plan, contract or policy; optional rider.
44-8404. Act; not construed as right to abortion.

44-8401 Act, how cited.

Sections 44-8401 to 44-8404 shall be known and may be cited as the Mandate Opt-Out and Insurance Coverage Clarification Act.

Source: Laws 2011, LB22, § 1.
Operative date January 1, 2012.

44-8402 Legislative findings.

(1) The Legislature finds that:

(a) In the federal Patient Protection and Affordable Care Act, Public Law 111-148, federal tax dollars are routed via affordability credits to qualified health insurance plans offered through a health insurance exchange created under the act, including plans that provide coverage for abortion;

(b) Federal funding for health insurance plans that cover abortions is prohibited by the federal statutory restriction commonly known as the Hyde Amendment and the Federal Employees Health Benefits Program established under Chapter 89 of Title 5 of the United States Code, as amended;

(c) Section 1303 of the federal Patient Protection and Affordable Care Act explicitly permits each state to pass laws prohibiting qualified health insurance plans offered through a health insurance exchange created under the act in such state from offering abortion coverage. Such section allows a state to prohibit the use of public funds to subsidize health insurance plans that cover abortions within the state;

(d) The laws of the State of Nebraska provide that group health insurance plans or health maintenance agreements paid for with public funds shall not cover abortion unless necessary to prevent the death of the woman;

(e) *Rust v. Sullivan*, 500 U.S. 173 (1991), states that it is permissible for a state to engage in unequal subsidization of abortion and other medical services to encourage alternative activity deemed in the public interest; and

(f) A majority of the citizens of the State of Nebraska, like other Americans, oppose the use of public funds, both federal and state, to pay for abortions.

(2) Based on the findings in subsection (1) of this section, it is the purpose of the Mandate Opt-Out and Insurance Coverage Clarification Act to affirmatively opt out of allowing qualified health insurance plans that cover abortions to participate in health insurance exchanges within the State of Nebraska. Further, it is also the purpose of the act to limit the coverage of abortion in all health insurance plans, contracts, or policies delivered or issued for delivery in the State of Nebraska.

Source: Laws 2011, LB22, § 2.
Operative date January 1, 2012.

44-8403 Qualified health insurance plan offered through health insurance exchange; abortion coverage; restriction; health insurance plan, contract or policy; optional rider.

(1) No abortion coverage shall be provided by a qualified health insurance plan offered through a health insurance exchange created pursuant to the federal Patient Protection and Affordable Care Act, Public Law 111-148, within the State of Nebraska. This subsection shall not apply to coverage for an abortion which is verified in writing by the attending physician as necessary to prevent the death of the woman or to coverage for medical complications arising from an abortion.

(2) No health insurance plan, contract, or policy delivered or issued for delivery in the State of Nebraska shall provide coverage for an elective abortion except through an optional rider to the policy for which an additional premium is paid solely by the insured. This subsection applies to any health insurance plan, contract, or policy delivered or issued for delivery in the State of Nebraska by any health insurer, any nonprofit hospital, medical, surgical, dental, or health service corporation, any group health insurer, and any health maintenance organization subject to the laws of insurance in this state and any employer providing self-funded health insurance for his or her employees. This subsection also applies to any plan provision of hospital, medical, surgical, or funeral benefits or of coverage against accidental death or injury if such benefits or coverage are incidental to or a part of any other insurance plan delivered or issued for delivery in the State of Nebraska.

(3) The issuer of a health insurance plan, contract, or policy in the State of Nebraska shall not provide any incentive or discount to an insured if the insured elects abortion coverage.

(4) For purposes of this section, elective abortion means an abortion (a) other than a spontaneous abortion or (b) that is performed for any reason other than to prevent the death of the female upon whom the abortion is performed.

Source: Laws 2011, LB22, § 3.

Operative date January 1, 2012.

44-8404 Act; not construed as right to abortion.

Nothing in the Mandate Opt-Out and Insurance Coverage Clarification Act shall be construed as creating a right to an abortion.

Source: Laws 2011, LB22, § 4.

Operative date January 1, 2012.

ARTICLE 85

PORTABLE ELECTRONICS INSURANCE ACT

Section

- 44-8501. Act, how cited.
- 44-8502. Terms, defined.
- 44-8503. Vendor; limited lines insurance license; issuance; application; contents.
- 44-8504. Limited lines insurance license; application; contents; period valid; fees.
- 44-8505. Brochure or written material; available to customer; contents; certificate of insurance; powers of insurer.
- 44-8506. Exemption from licensure as insurance producer; conditions; vendor; duties; treatment of funds.
- 44-8507. Violations; director; powers; administrative fine.
- 44-8508. Insurer; rights; duties; notice; policy; termination; vendor; duties.
- 44-8509. Records; maintenance.

44-8501 Act, how cited.

Sections 44-8501 to 44-8509 shall be known and may be cited as the Portable Electronics Insurance Act.

Source: Laws 2011, LB535, § 1.

Operative date January 1, 2012.

44-8502 Terms, defined.

For purposes of the Portable Electronics Insurance Act:

- (1) Customer means a person who purchases portable electronics;
- (2) Covered customer means a customer who elects coverage pursuant to a portable electronics insurance policy issued to a vendor of portable electronics;
- (3) Director means the Director of Insurance;
- (4) Location means any physical location in this state or any web site, call center, or other site or similar location to which Nebraska customers may be directed;
- (5) Portable electronics means a device that is personal, self-contained, easily carried by an individual, and battery-operated and includes devices used for electronic communication, viewing, listening, recording, computing, or global positioning. Portable electronics does not include telecommunications switching equipment, transmission wires, cellular site transceiver equipment, or other

equipment or system used by a telecommunications company to provide telecommunications service to consumers;

(6)(a) Portable electronics insurance means insurance that provides coverage for the repair or replacement of portable electronics and may provide coverage for portable electronics that are lost, stolen, damaged, or inoperable due to mechanical failure or malfunction or suffer other similar causes of loss; and

(b) Portable electronics insurance does not include:

(i) A service contract under the Motor Vehicle Service Contract Reimbursement Insurance Act;

(ii) A service contract or extended warranty providing coverage as described in subdivision (2) of section 44-102.01;

(iii) A policy of insurance providing coverage for a seller's or manufacturer's obligations under a warranty; or

(iv) A homeowner's, renter's, private passenger automobile, commercial multiperil, or other similar policy;

(7) Portable electronics transaction means the sale or lease of portable electronics by a vendor to a customer or the sale of a service related to the use of portable electronics by a vendor to a customer;

(8) Supervising entity means a business entity that is a licensed insurance producer or insurer; and

(9) Vendor means a person in the business of engaging in portable electronics transactions directly or indirectly.

Source: Laws 2011, LB535, § 2.
Operative date January 1, 2012.

Cross References

Motor Vehicle Service Contract Reimbursement Insurance Act, see section 44-3520.

44-8503 Vendor; limited lines insurance license; issuance; application; contents.

(1) A vendor shall hold a limited lines insurance license issued under the Portable Electronics Insurance Act to sell or offer coverage under a policy of portable electronics insurance.

(2) The director may issue a limited lines insurance license under the act. Such license shall authorize an employee or authorized representative of a vendor to sell or offer coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in a portable electronics transaction.

(3) The vendor shall submit an application for a limited lines insurance license pursuant to section 44-8504 to the director, and a list of all locations in this state at which the vendor intends to offer such insurance coverage shall accompany the application. A vendor shall maintain such list and make it available for the director upon request.

(4) Notwithstanding any other provision of law, a limited lines insurance license issued under the act shall authorize the vendor and its employees or authorized representatives to engage in the activities permitted by the act.

Source: Laws 2011, LB535, § 3.
Operative date January 1, 2012.

44-8504 Limited lines insurance license; application; contents; period valid; fees.

(1) An application for a limited lines insurance license shall be made to and filed with the director on forms prescribed and furnished by the director.

(2) An application for an initial or a renewal license shall:

(a) Provide the name, residence address, and other information required by the director for an employee or authorized representative of the vendor that is designated by the vendor as the person responsible for the vendor's compliance with the Portable Electronics Insurance Act. If the vendor derives more than fifty percent of its revenue from the sale of portable electronics insurance, the information required by this subdivision shall be provided for all persons of record having beneficial ownership of ten percent or more of any class of securities of the vendor registered under federal securities law; and

(b) Provide the location of the vendor's home office.

(3) Any application for licensure under the act for an existing vendor shall be made within ninety days after the application is made available by the director.

(4) An initial license issued pursuant to the act shall be valid for one year and expires on April 30 of each year.

(5) Any vendor licensed under the act shall pay an initial license fee to the director in an amount prescribed by the director but not to exceed one hundred dollars and shall pay a renewal fee in an amount prescribed by the director but not to exceed one hundred dollars.

Source: Laws 2011, LB535, § 4.

Operative date January 1, 2012.

44-8505 Brochure or written material; available to customer; contents; certificate of insurance; powers of insurer.

(1) At each location at which portable electronics insurance is offered to a customer, a brochure or other written material shall be available to the customer which:

(a) Discloses the fact that portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's insurance policy, renter's insurance policy, or other similar insurance coverage;

(b) States that the enrollment by the customer in a portable electronics insurance coverage program is not required in order to purchase or lease portable electronics or services;

(c) Summarizes the material terms of the portable electronics insurance, including:

(i) The identity of the insurer;

(ii) The identity of the supervising entity;

(iii) The amount of any applicable deductible and how it is to be paid;

(iv) The benefits of the coverage; and

(v) The key terms and conditions of the coverage, including whether portable electronics may be repaired or replaced with a similar reconditioned make or model or with nonoriginal manufacturer parts or equipment;

(d) Summarizes the process for filing a claim, including a description of how to return the portable electronics and the maximum fee applicable if the customer fails to comply with any equipment return requirements; and

(e) States that the customer may cancel enrollment for portable electronics insurance coverage at any time and receive any applicable unearned premium refund on a pro rata basis.

(2) Portable electronics insurance may be offered on a month-to-month or other periodic basis as a group or master commercial inland marine policy issued to a vendor for its covered customers. A covered customer who elects to enroll for coverage shall receive a certificate of insurance and an explanation of coverage or instructions on how to obtain such materials upon request.

(3) Eligibility and underwriting standards for customers who elect to enroll in portable electronics insurance coverage shall be established by the insurer for each portable electronics insurance program.

Source: Laws 2011, LB535, § 5.

Operative date January 1, 2012.

44-8506 Exemption from licensure as insurance producer; conditions; vendor; duties; treatment of funds.

(1) An employee or authorized representative of a vendor may sell or offer for sale portable electronics insurance to customers and shall not be subject to licensure as an insurance producer if:

(a) The vendor obtains a limited lines insurance license pursuant to section 44-8503 that authorizes its employees or authorized representatives to sell or offer for sale portable electronics insurance under this section;

(b) The insurer issuing the portable electronics insurance directly supervises or appoints a supervising entity to supervise the administration of the insurance program, including development of a training program for employees and authorized representatives of a vendor. The training required by this subdivision shall comply with the following:

(i) The training shall be delivered to employees and authorized representatives of a vendor who are directly involved in the activity of selling or offering for sale portable electronics insurance;

(ii) The training may be provided in electronic form. If the training is provided in electronic form, the supervising entity shall implement a supplemental education program that is conducted and overseen by licensed employees of the supervising entity; and

(iii) Each employee and authorized representative shall receive basic instruction on the portable electronics insurance offered to customers and the disclosures required by section 44-8505; and

(c) The vendor does not advertise, represent, or otherwise hold itself or any of its employees or authorized representatives out as authorized insurers or licensed insurance producers.

(2) The charges for portable electronics insurance coverage may be billed and collected by the vendor. Any charge to the customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics shall be separately itemized on the covered customer's bill. If the portable electronics insurance coverage is included in the purchase or lease of portable

electronics or related services, the vendor shall clearly and conspicuously disclose to the customer that portable electronics insurance coverage is included with the portable electronics or related services. No vendor shall require the purchase of any kind of insurance specified in this section as a condition of the purchase or lease of portable electronics or services. If such insurance is purchased, the portable electronics insurance coverage offered by the limited lines insurance licensee to a customer is primary over any other insurance coverage applicable to the portable electronics. A vendor who bills and collects such charges shall not be required to maintain such funds in a segregated account if the vendor is authorized by the insurer to hold such funds in an alternative manner and remits such amounts to the supervising entity within sixty days after receipt. All funds received by a vendor from a covered customer for the sale of portable electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer. A vendor may receive compensation for billing and collection services.

Source: Laws 2011, LB535, § 6.

Operative date January 1, 2012.

44-8507 Violations; director; powers; administrative fine.

If a vendor violates any provision of the Portable Electronics Insurance Act, the director may, after notice and a hearing:

- (1) Revoke or suspend a limited lines insurance license issued under the act;
- (2) Impose such other penalties, including suspension of the transaction of insurance at specific vendor locations where violations have occurred, as the director deems necessary or convenient to carry out the purposes of the act; and
- (3) Impose an administrative fine of not more than one thousand dollars per violation or five thousand dollars in the aggregate.

Source: Laws 2011, LB535, § 7.

Operative date January 1, 2012.

44-8508 Insurer; rights; duties; notice; policy; termination; vendor; duties.

Notwithstanding any other provision of law:

- (1) An insurer may terminate or otherwise change the terms and conditions of a policy of portable electronics insurance only upon providing the vendor and enrolled customers with at least sixty days' notice, except that:
 - (a) An insurer may terminate an enrolled customer's insurance policy upon fifteen days' notice for:
 - (i) Discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim under such policy; or
 - (ii) Nonpayment of premium; or
 - (b) An insurer may immediately terminate an enrolled customer's insurance policy:
 - (i) If the enrolled customer ceases to have active service with the vendor of portable electronics; or
 - (ii) If an enrolled customer exhausts the aggregate limit of liability, if any, under the portable electronics insurance policy and the insurer sends notice of termination to the customer within thirty days after exhaustion of the limit. If

such notice is not sent within the thirty-day period, the customer shall continue to be enrolled in such insurance policy notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the customer;

(2) If the insurer changes the terms and conditions, the insurer shall provide the vendor with a revised policy or endorsement and each enrolled customer with a revised certificate, endorsement, updated brochure, or other evidence indicating a change in the terms and conditions has occurred and a summary of the material changes;

(3) If a portable electronics insurance policy is terminated by a vendor, the vendor shall mail or deliver written notice to each enrolled customer at least thirty days prior to the termination advising the customer of such termination and of the effective date of termination; and

(4) If notice is required under this section, it shall be:

(a) In writing and may be mailed or delivered to a vendor at the vendor's mailing address and to an enrolled customer at such customer's last-known mailing address on file with the insurer. The insurer or vendor, as applicable, shall maintain proof of mailing in a form authorized or accepted by the United States Postal Service or a commercial mail delivery service; or

(b) In electronic form. If notice is delivered in electronic form, the insurer or vendor, as applicable, shall maintain proof that the notice was sent.

Source: Laws 2011, LB535, § 8.

Operative date January 1, 2012.

44-8509 Records; maintenance.

Any records pertaining to transactions under the Portable Electronics Insurance Act shall be kept available and open to inspection by the director or his or her representatives with notice and during business hours. Records shall be maintained for three years following the completion of transactions under the act.

Source: Laws 2011, LB535, § 9.

Operative date January 1, 2012.

CHAPTER 45

INTEREST, LOANS, AND DEBT

Article.

1. Interest Rates and Loans.
 - (f) Loan Brokers. 45-189, 45-190.
3. Installment Sales. 45-335, 45-336.
7. Residential Mortgage Licensing. 45-742.
10. Nebraska Installment Loan Act. 45-1002, 45-1024.

ARTICLE 1

INTEREST RATES AND LOANS

(f) LOAN BROKERS

Section

- 45-189. Loan brokers; legislative findings.
 45-190. Terms, defined.

(f) LOAN BROKERS

45-189 Loan brokers; legislative findings.

The Legislature finds that:

- (1) Many professional groups are presently licensed or otherwise regulated by the State of Nebraska in the interest of public protection;
- (2) Certain questionable business practices, such as the collection of an advance fee prior to the performance of the service, misleads the public;
- (3) Such practices are avoided by many professional groups and many professional groups are regulated by the state to restrict practices which tend to mislead or deceive the public;
- (4) Loan brokers in Nebraska have engaged in the practice of collecting an advance fee from borrowers in consideration for attempting to procure a loan of money;
- (5) Such practice, as well as others, by loan brokers has led the public to believe that the loan broker has agreed to procure a loan for the borrower when in fact the loan broker has merely promised to attempt to procure a loan; and
- (6) Regulation of loan brokers by the state, in similar fashion to that of other professions, is necessary in order to protect the public welfare and to promote the use of fair and equitable business practices.

Source: Laws 1981, LB 154, § 1; Laws 2011, LB75, § 2.
 Effective date February 23, 2011.

45-190 Terms, defined.

For purposes of sections 45-189 to 45-191.11, unless the context otherwise requires:

- (1) Advance fee means any fee, deposit, or consideration which is assessed or collected, prior to the closing of a loan, by a loan broker and includes, but is

not limited to, any money assessed or collected for processing, appraisals, credit checks, consultations, or expenses;

(2) Borrower means a person obtaining or desiring to obtain a loan of money;

(3) Department means the Department of Banking and Finance;

(4) Director means the Director of Banking and Finance;

(5) Loan broker means any person, except any bank, trust company, savings and loan association or subsidiary of a savings and loan association, building and loan association, credit union, licensed or registered mortgage banker, Federal Housing Administration or United States Department of Veterans Affairs approved lender as long as the loan of money made by the Federal Housing Administration or the United States Department of Veterans Affairs approved lender is secured or covered by guarantees or commitments or agreements to purchase or take over the same by the Federal Housing Administration or the United States Department of Veterans Affairs, credit card company, installment loan licensee, or insurance company which is subject to regulation or supervision under the laws of the United States or this state, who:

(a) For or in expectation of consideration from a borrower, procures, attempts to procure, arranges, or attempts to arrange a loan of money for a borrower;

(b) For or in expectation of consideration from a borrower, assists a borrower in making an application to obtain a loan of money;

(c) Is employed as an agent for the purpose of soliciting borrowers as clients of the employer; or

(d) Holds himself or herself out, through advertising, signs, or other means, as a loan broker;

(6) Loan brokerage agreement means any agreement for services between a loan broker and a borrower; and

(7) Person means natural persons, corporations, trusts, unincorporated associations, joint ventures, partnerships, and limited liability companies.

Source: Laws 1981, LB 154, § 2; Laws 1982, LB 751, § 1; Laws 1985, LB 86, § 1; Laws 1989, LB 272, § 3; Laws 1993, LB 121, § 271; Laws 1993, LB 270, § 1; Laws 1995, LB 599, § 11; Laws 2001, LB 53, § 87; Laws 2003, LB 131, § 26; Laws 2009, LB327, § 16; Laws 2011, LB75, § 3.

Effective date February 23, 2011.

ARTICLE 3

INSTALLMENT SALES

Section

45-335. Terms, defined.

45-336. Installment contract; requirements.

45-335 Terms, defined.

For purposes of the Nebraska Installment Sales Act, unless the context otherwise requires:

(1) Goods means all personal property, except money or things in action, and includes goods which, at the time of sale or subsequently, are so affixed to realty as to become part thereof whether or not severable therefrom;

(2) Services means work, labor, and services of any kind performed in conjunction with an installment sale but does not include services for which the prices charged are required by law to be established and regulated by the government of the United States or any state;

(3) Buyer means a person who buys goods or obtains services from a seller in an installment sale;

(4) Seller means a person who sells goods or furnishes services to a buyer under an installment sale;

(5) Installment sale means any transaction, whether or not involving the creation or retention of a security interest, in which a buyer acquires goods or services from a seller pursuant to an agreement which provides for a time-price differential and under which the buyer agrees to pay all or part of the time-sale price in one or more installments and within one hundred forty-five months, except that installment contracts for the purchase of mobile homes may exceed such one-hundred-forty-five-month limitation. Installment sale does not include a consumer rental purchase agreement defined in and regulated by the Consumer Rental Purchase Agreement Act;

(6) Installment contract means an agreement entered into in this state evidencing an installment sale except those otherwise provided for in separate acts;

(7) Cash price or cash sale price means the price stated in an installment contract for which the seller would have sold or furnished to the buyer and the buyer would have bought or acquired from the seller goods or services which are the subject matter of the contract if such sale had been a sale for cash instead of an installment sale. It may include the cash price of accessories or services related to the sale such as delivery, installation, alterations, modifications, and improvements and may include taxes to the extent imposed on the cash sale;

(8) Basic time price means the cash sale price of the goods or services which are the subject matter of an installment contract plus the amount included therein, if a separate identified charge is made therefor and stated in the contract, for insurance, registration, certificate of title, debt cancellation contract, debt suspension contract, electronic title and lien services, guaranteed asset protection waiver, and license fees, filing fees, an origination fee, and fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying any security related to the credit transaction or any charge for nonfiling insurance if such charge does not exceed the amount of fees and charges prescribed by law which would have been paid to public officials for filing, perfecting, releasing, and satisfying any security related to the credit transaction and less the amount of the buyer's downpayment in money or goods or both;

(9) Time-price differential, however denominated or expressed, means the amount, as limited in the Nebraska Installment Sales Act, to be added to the basic time price;

(10) Time-sale price means the total of the basic time price of the goods or services, the amount of the buyer's downpayment in money or goods or both, and the time-price differential;

(11) Sales finance company means a person purchasing one or more installment contracts from one or more sellers. Sales finance company includes, but is not limited to, a financial institution or installment loan licensee, if so engaged;

(12) Director means the Director of Banking and Finance;

(13) Financial institution has the same meaning as in section 8-101;

(14) Debt cancellation contract means a loan term or contractual arrangement modifying loan terms under which a financial institution or licensee agrees to cancel all or part of a buyer's obligation to repay an extension of credit from the financial institution or licensee upon the occurrence of a specified event. The debt cancellation contract may be separate from or a part of other loan documents. The term debt cancellation contract does not include loan payment deferral arrangements in which the triggering event is the buyer's unilateral election to defer repayment or the financial institution's or licensee's unilateral decision to allow a deferral of repayment;

(15) Debt suspension contract means a loan term or contractual arrangement modifying loan terms under which a financial institution or licensee agrees to suspend all or part of a buyer's obligation to repay an extension of credit from the financial institution or licensee upon the occurrence of a specified event. The debt suspension contract may be separate from or a part of other loan documents. The term debt suspension contract does not include loan payment deferral arrangements in which the triggering event is the buyer's unilateral election to defer repayment or the financial institution's or licensee's unilateral decision to allow a deferral of repayment;

(16) Guaranteed asset protection waiver means a waiver that is offered, sold, or provided in accordance with the Guaranteed Asset Protection Waiver Act; and

(17) Licensee means any person who obtains a license under the Nebraska Installment Sales Act.

Source: Laws 1965, c. 266, § 1, p. 751; Laws 1965, c. 268, § 2, p. 757; Laws 1969, c. 379, § 1, p. 1340; Laws 1969, c. 380, § 1, p. 1343; Laws 1969, c. 381, § 1, p. 1345; Laws 1973, LB 455, § 1; Laws 1978, LB 373, § 1; Laws 1989, LB 94, § 1; Laws 1989, LB 681, § 16; Laws 1992, LB 269, § 1; Laws 2003, LB 217, § 34; Laws 2006, LB 876, § 25; Laws 2010, LB571, § 8; Laws 2011, LB77, § 1.

Effective date March 11, 2011.

Cross References

Consumer Rental Purchase Agreement Act, see section 69-2101.

Guaranteed Asset Protection Waiver Act, see section 45-1101.

45-336 Installment contract; requirements.

(1) Each retail installment contract shall be in writing, shall be signed by both the buyer and the seller, and shall contain the following items and a copy thereof shall be delivered to the buyer at the time the instrument is signed, except for contracts made in conformance with section 45-340: (a) The cash sale price; (b) the amount of the 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; (c) the difference between subdivisions (a)

and (b) of this subsection; (d) the amount included for insurance if a separate charge is made therefor, specifying the types of coverages; (e) the amount included for a debt cancellation contract or a debt suspension contract if the debt cancellation contract or debt suspension contract is a contract of a financial institution or licensee, such contract is sold directly by such financial institution or licensee or by an unaffiliated, nonexclusive agent of such financial institution or licensee in accordance with 12 C.F.R. part 37, as such part existed on January 1, 2011, and the financial institution or licensee is responsible for the unaffiliated, nonexclusive agent's compliance with such part, and a separate charge is made therefor; (f) the amount included for electronic title and lien services other than fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying any security related to the credit transaction; (g) the basic time price, which is the sum of subdivisions (c), (d), (e), and (f) of this subsection; (h) the time-price differential; (i) the amount of the time-price balance, which is the sum of subdivisions (g) and (h) of this subsection, payable in installments by the buyer to the seller; (j) the number, amount, and due date or period of each installment; (k) the time-sales price; and (l) the amount included for a guaranteed asset protection waiver.

(2) The contract shall contain substantially the following notice: **NOTICE TO THE BUYER. DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN.**

(3) The items listed in subsection (1) of this section need not be stated in the sequence or order set forth in such subsection. Additional items may be included to explain the computations made in determining the amount to be paid by the buyer. No installment contract shall be signed by the buyer or proffered by seller when it contains blank spaces to be filled in after execution, except that if delivery of the goods or services is not made at the time of the execution of the contract, the identifying numbers or marks of the goods, or similar information, and the due date of the first installment may be inserted in the contract after its execution.

(4) If a seller proffers an installment contract as part of a transaction which delays or cancels, or promises to delay or cancel, the payment of the time-price differential on the contract if the buyer pays the basic time price, cash price, or cash sale price within a certain period of time, the seller shall, in clear and conspicuous writing, either within the installment contract or in a separate document, inform the buyer of the exact date by which the buyer must pay the basic time price, cash price, or cash sale price in order to delay or cancel the payment of the time-price differential. The seller or any subsequent purchaser of the installment contract, including a sales finance company, shall not be allowed to change such date.

(5) Upon written request from the buyer, the holder of an installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

(6) After payment of all sums for which the buyer is obligated under a contract, the holder shall deliver or mail to the buyer at his or her last-known address one or more good and sufficient instruments or copies thereof to acknowledge payment in full and shall release all security in the goods and

mark canceled and return to the buyer the original agreement or copy thereof or instruments or copies thereof signed by the buyer. For purposes of this section, a copy shall meet the requirements of section 25-12,112.

Source: Laws 1965, c. 268, § 3, p. 758; Laws 1994, LB 979, § 12; Laws 1994, LB 980, § 3; Laws 1999, LB 396, § 28; Laws 2006, LB 876, § 26; Laws 2010, LB571, § 9; Laws 2011, LB77, § 2.
Effective date March 11, 2011.

ARTICLE 7

RESIDENTIAL MORTGAGE LICENSING

Section

45-742. License; suspension or revocation; administrative fine; procedure; surrender; cancellation; expiration; effect; reinstatement.

45-742 License; suspension or revocation; administrative fine; procedure; surrender; cancellation; expiration; effect; reinstatement.

(1) The director may, following a hearing under the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act, suspend or revoke any license issued under the Residential Mortgage Licensing Act. The director may also impose an administrative fine for each separate violation of the act if the director finds:

(a) The licensee has materially violated or demonstrated a continuing pattern of violating the act, rules and regulations adopted and promulgated under the act, any order, including a cease and desist order, issued under the act, or any other state or federal law applicable to the conduct of its business;

(b) A fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the director to deny the application;

(c) The licensee has violated a voluntary consent or compliance agreement which had been entered into with the director;

(d) The licensee has made or caused to be made, in any document filed with the director or in any proceeding under the act, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading in any material respect or suppressed or withheld from the director any information which, if submitted by the licensee, would have resulted in denial of the license application;

(e) The licensee has refused to permit an examination by the director of the licensee's books and affairs pursuant to subsection (1) or (2) of section 45-741 or has refused or failed to comply with subsection (5) of section 45-741 after written notice of the violation by the director. Each day the licensee continues in violation of this subdivision after such written notice constitutes a separate violation;

(f) The licensee has failed to maintain records as required by subdivision (8) of section 45-737 or as otherwise required following written notice of the violation by the director. Each day the licensee continues in violation of this subdivision after such written notice constitutes a separate violation;

(g) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual has been convicted of, pleaded guilty to, or was found guilty

after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law;

(h) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual (i) has had a mortgage loan originator license revoked in any state, unless such revocation was subsequently vacated, (ii) has a mortgage loan originator license which has been suspended by the director, or (iii) while previously associated in any other capacity with another licensee, was the subject of a complaint under the act and the complaint was not resolved at the time the individual became employed by, or began acting as an agent for, the licensee and the licensee with reasonable diligence could have discovered the existence of such complaint;

(i) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent if such individual is conducting activities requiring a mortgage loan originator license in this state without first obtaining such license;

(j) The licensee has violated the written restrictions or conditions under which the license was issued;

(k) The licensee, or if the licensee is a business entity, one of the officers, directors, shareholders, partners, and members, was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor or under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law;

(l) The licensee has had a similar license revoked in any other jurisdiction; or

(m) The licensee has failed to reasonably supervise any officer, employee, or agent to assure his or her compliance with the act or with any state or federal law applicable to the mortgage banking business.

(2) Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act.

(3) A licensee may voluntarily surrender a license by delivering to the director written notice of the surrender, but a surrender shall not affect civil or criminal liability for acts committed before the surrender or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to section 45-743 for acts committed before the surrender. The director's approval of such license surrender shall not be required unless the director has commenced an examination or investigation pursuant to section 45-741 or has commenced a proceeding to revoke or suspend the licensee's license or impose an administrative fine pursuant to this section.

(4)(a) If a licensee fails to (i) renew its license as required by sections 45-706 and 45-732 and does not voluntarily surrender the license pursuant to this section or (ii) pay the required fee for renewal of the license, the department

may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) The director may adopt by rule, regulation, or order procedures for the reinstatement of licenses for which a notice of expiration was issued in accordance with subdivision (a) of this subsection. Such procedures shall be consistent with standards established by the Nationwide Mortgage Licensing System and Registry. The fee for reinstatement shall be the same fee as the fee for the initial license application.

(c) If a licensee fails to maintain a surety bond as required by section 45-724, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(5) Revocation, suspension, surrender, cancellation, or expiration of a license shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.

(6) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to section 45-743 for acts committed before the revocation, suspension, cancellation, or expiration.

Source: Laws 1989, LB 272, § 10; Laws 1997, LB 137, § 23; Laws 1999, LB 396, § 33; Laws 2003, LB 218, § 5; Laws 2005, LB 533, § 54; Laws 2006, LB 876, § 30; R.S.Supp.,2008, § 45-707; Laws 2009, LB328, § 27; Laws 2010, LB892, § 16; Laws 2011, LB75, § 4. Effective date February 23, 2011.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 10

NEBRASKA INSTALLMENT LOAN ACT

Section

45-1002. Terms, defined; act; applicability.

45-1024. Installment loans; interest rate authorized; charges permitted; computation; application of payments; violations; restrictions.

45-1002 Terms, defined; act; applicability.

(1) For purposes of the Nebraska Installment Loan Act:

(a) Applicant means a person applying for a license under the act;

(b) Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by the Nationwide Mortgage Licensing System and Registry, its affiliates, or its subsidiaries;

(c) Department means the Department of Banking and Finance;

(d) Debt cancellation contract means a loan term or contractual arrangement modifying loan terms under which a financial institution or licensee agrees to cancel all or part of a borrower's obligation to repay an extension of credit from the financial institution or licensee upon the occurrence of a specified event. The debt cancellation contract may be separate from or a part of other

loan documents. The term debt cancellation contract does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment or the financial institution's or licensee's unilateral decision to allow a deferral of repayment;

(e) Debt suspension contract means a loan term or contractual arrangement modifying loan terms under which a financial institution or licensee agrees to suspend all or part of a borrower's obligation to repay an extension of credit from the financial institution or licensee upon the occurrence of a specified event. The debt suspension contract may be separate from or a part of other loan documents. The term debt suspension contract does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment or the financial institution's or licensee's unilateral decision to allow a deferral of repayment;

(f) Director means the Director of Banking and Finance;

(g) Financial institution has the same meaning as in section 8-101;

(h) Guaranteed asset protection waiver means a waiver that is offered, sold, or provided in accordance with the Guaranteed Asset Protection Waiver Act;

(i) Licensee means any person who obtains a license under the Nebraska Installment Loan Act;

(j)(i) Mortgage loan originator means an individual who for compensation or gain (A) takes a residential mortgage loan application or (B) offers or negotiates terms of a residential mortgage loan.

(ii) Mortgage loan originator does not include (A) any individual who is not otherwise described in subdivision (i)(A) of this subdivision and who performs purely administrative or clerical tasks on behalf of a person who is described in subdivision (i) of this subdivision, (B) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, or (C) a person or entity solely involved in extensions of credit relating to time-share programs as defined in section 76-1702;

(k) Nationwide Mortgage Licensing System and Registry means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, and installment loan companies;

(l) Person means individual, partnership, limited liability company, association, financial institution, trust, corporation, and any other legal entity; and

(m) Real property means an owner-occupied single-family, two-family, three-family, or four-family dwelling which is located in this state, which is occupied, used, or intended to be occupied or used for residential purposes, and which is, or is intended to be, permanently affixed to the land.

(2) Except as provided in subsection (3) of section 45-1017 and subsection (4) of section 45-1019, no revenue arising under the Nebraska Installment Loan Act shall inure to any school fund of the State of Nebraska or any of its governmental subdivisions.

(3) Loan, when used in the Nebraska Installment Loan Act, does not include any loan made by a person who is not a licensee on which the interest does not exceed the maximum rate permitted by section 45-101.03.

(4) Nothing in the Nebraska Installment Loan Act applies to any loan made by a person who is not a licensee if the interest on the loan does not exceed the maximum rate permitted by section 45-101.03.

Source: Laws 1941, c. 90, § 1, p. 345; C.S.Supp.,1941, § 45-131; Laws 1943, c. 107, § 1, p. 369; R.S.1943, § 45-114; Laws 1961, c. 225, § 1, p. 668; Laws 1963, Spec. Sess., c. 7, § 7, p. 92; Laws 1979, LB 87, § 1; Laws 1982, LB 941, § 1; Laws 1993, LB 121, § 264; Laws 1997, LB 137, § 20; Laws 1997, LB 555, § 3; R.S.1943, (1998), § 45-114; Laws 2001, LB 53, § 30; Laws 2003, LB 131, § 30; Laws 2003, LB 217, § 38; Laws 2006, LB 876, § 48; Laws 2009, LB328, § 41; Laws 2010, LB571, § 10; Laws 2010, LB892, § 19; Laws 2011, LB77, § 3.
Effective date March 11, 2011.

Cross References

Guaranteed Asset Protection Waiver Act, see section 45-1101.

45-1024 Installment loans; interest rate authorized; charges permitted; computation; application of payments; violations; restrictions.

(1) Except as provided in section 45-1025 and subsection (6) of this section, every licensee may make loans and may contract for and receive on such loans charges at a rate not exceeding twenty-four percent per annum on that part of the unpaid principal balance on any loan not in excess of one thousand dollars, and twenty-one percent per annum on any remainder of such unpaid principal balance. Except for loans secured by mobile homes, a licensee may not make loans for a period in excess of one hundred forty-five months if the amount of the loan is greater than three thousand dollars but less than twenty-five thousand dollars. Charges on loans made under the Nebraska Installment Loan Act shall not be paid, deducted, or received in advance. The contracting for, charging of, or receiving of charges as provided for in subsection (2) of this section shall not be deemed to be the payment, deduction, or receipt of such charges in advance.

(2) When the loan contract requires repayment in substantially equal and consecutive monthly installments of principal and charges combined, the licensee may, at the time the loan is made, precompute the charges at the agreed rate on scheduled unpaid principal balances according to the terms of the contract and add such charges to the principal of the loan. Every payment may be applied to the combined total of principal and precomputed charges until the contract is fully paid. All payments made on account of any loan except for default and deferment charges shall be deemed to be applied to the unpaid installments in the order in which they are due. The portion of the precomputed charges applicable to any particular month of the contract, as originally scheduled or following a deferment, shall be that proportion of such precomputed charges, excluding any adjustment made for a first installment period of more than one month and any adjustment made for deferment, which the balance of the contract scheduled to be outstanding during such month bears to the sum of all monthly balances originally scheduled to be outstanding by the contract. This section shall not limit or restrict the manner of calculating

charges, whether by way of add-on, single annual rate, or otherwise, if the rate of charges does not exceed that permitted by this section. Charges may be contracted for and earned at a single annual rate, except that the total charges from such rate shall not be greater than the total charges from the several rates otherwise applicable to the different portions of the unpaid balance according to subsection (1) of this section. All loan contracts made pursuant to this subsection are subject to the following adjustments:

(a) Notwithstanding the requirement for substantially equal and consecutive monthly installments, the first installment period may not exceed one month by more than twenty-one days and may not fall short of one month by more than eleven days. The charges for each day exceeding one month shall be one-thirtieth of the charges which would be applicable to a first installment period of one month. The charge for extra days in the first installment period may be added to the first installment and such charges for such extra days shall be excluded in computing any rebate;

(b) If prepayment in full by cash, a new loan, or otherwise occurs before the first installment due date, the charges shall be recomputed at the rate of charges contracted for in accordance with subsection (1) or (2) of this section upon the actual unpaid principal balances of the loan for the actual time outstanding by applying the payment, or payments, first to charges at the agreed rate and the remainder to the principal. The amount of charges so computed shall be retained in lieu of all precomputed charges;

(c) If a contract is prepaid in full by cash, a new loan, or otherwise after the first installment due date, the borrower shall receive a rebate of an amount which is not less than the amount obtained by applying to the unpaid principal balances as originally scheduled or, if deferred, as deferred, for the period following prepayment, according to the actuarial method, the rate of charge contracted for in accordance with subsection (1) or (2) of this section. The licensee may round the rate of charge to the nearest one-half of one percent if such procedure is not consistently used to obtain a greater yield than would otherwise be permitted. Any default and deferment charges which are due and unpaid may be deducted from any rebate. No rebate shall be required for any partial prepayment. No rebate of less than one dollar need be made. Acceleration of the maturity of the contract shall not in itself require a rebate. If judgment is obtained before the final installment date, the contract balance shall be reduced by the rebate which would be required for prepayment in full as of the date judgment is obtained;

(d) If any installment on a precomputed or interest bearing loan is unpaid in full for ten or more consecutive days, Sundays and holidays included, after it is due, the licensee may charge and collect a default charge not exceeding an amount equal to five percent of such installment. If any installment payment is made by a check, draft, or similar signed order which is not honored because of insufficient funds, no account, or any other reason except an error of a third party to the loan contract, the licensee may charge and collect a fifteen-dollar bad check charge. Such default or bad check charges may be collected when due or at any time thereafter;

(e) If, as of an installment due date, the payment date of all wholly unpaid installments is deferred one or more full months and the maturity of the contract is extended for a corresponding period, the licensee may charge and collect a deferment charge not exceeding the charge applicable to the first of

the installments deferred, multiplied by the number of months in the deferment period. The deferment period is that period during which no payment is made or required by reason of such deferment. The deferment charge may be collected at the time of deferment or at any time thereafter. The portion of the precomputed charges applicable to each deferred balance and installment period following the deferment period shall remain the same as that applicable to such balance and periods under the original loan contract. No installment on which a default charge has been collected, or on account of which any partial payment has been made, shall be deferred or included in the computation of the deferment charge unless such default charge or partial payment is refunded to the borrower or credited to the deferment charge. Any payment received at the time of deferment may be applied first to the deferment charge and the remainder, if any, applied to the unpaid balance of the contract, except that if such payment is sufficient to pay, in addition to the appropriate deferment charge, any installment which is in default and the applicable default charge, it shall be first so applied and any such installment shall not be deferred or subject to the deferment charge. If a loan is prepaid in full during the deferment period, the borrower shall receive, in addition to the required rebate, a rebate of that portion of the deferment charge applicable to any unexpired full month or months of such deferment period; and

(f) If two or more full installments are in default for one full month or more at any installment date and if the contract so provides, the licensee may reduce the contract balance by the rebate which would be required for prepayment in full as of such installment date and the amount remaining unpaid shall be deemed to be the unpaid principal balance and thereafter in lieu of charging, collecting, receiving, and applying charges as provided in this subsection, charges may be charged, collected, received, and applied at the agreed rate as otherwise provided by this section until the loan is fully paid.

(3) The charges, as referred to in subsection (1) of this section, shall not be compounded. The charging, collecting, and receiving of charges as provided in subsection (2) of this section shall not be deemed compounding. If part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under such loan contract may include any unpaid charges on the prior loan which have accrued within sixty days before the making of such loan contract and may include the balance remaining after giving the rebate required by subsection (2) of this section. Except as provided in subsection (2) of this section, charges shall (a) be computed and paid only as a percentage per month of the unpaid principal balance or portions thereof and (b) be computed on the basis of the number of days actually elapsed. For purposes of computing charges, whether at the maximum rate or less, a month shall be that period of time from any date in a month to the corresponding date in the next month but if there is no such corresponding date then to the last day of the next month, and a day shall be considered one-thirtieth of a month when computation is made for a fraction of a month.

(4) Except as provided in subsections (5) and (6) of this section, in addition to that provided for under the Nebraska Installment Loan Act, no further or other amount whatsoever shall be directly or indirectly charged, contracted for, or received. If any amount, in excess of the charges permitted, is charged, contracted for, or received, the loan contract shall not on that account be void, but the licensee shall have no right to collect or receive any interest or other charges whatsoever. If such interest or other charges have been collected or

contracted for, the licensee shall refund to the borrower all interest and other charges collected and shall not collect any interest or other charges contracted for and thereafter due on the loan involved, as liquidated damages, and the licensee or its assignee, if found liable, shall pay the costs of any action relating thereto, including reasonable attorney's fees. No licensee shall be found liable under this subsection if the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

(5) A borrower may be required to pay all reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of loans. Such expenses may include abstracting, recording, releasing, and registration fees; premiums paid for nonfiling insurance; premiums paid on insurance policies covering tangible personal property securing the loan; amounts charged for a debt cancellation contract or a debt suspension contract, as agreed upon by the parties, if the debt cancellation contract or debt suspension contract is a contract of a financial institution or licensee and such contract is sold directly by such financial institution or licensee or by an unaffiliated, nonexclusive agent of such financial institution or licensee in accordance with 12 C.F.R. part 37, as such part existed on January 1, 2011, and the financial institution or licensee is responsible for the unaffiliated, nonexclusive agent's compliance with such part; title examinations; credit reports; survey; taxes or charges imposed upon or in connection with the making and recording or releasing of any mortgage; amounts charged for a guaranteed asset protection waiver; and fees and expenses charged for electronic title and lien services. Except as provided in subsection (6) of this section, a borrower may also be required to pay a nonrefundable loan origination fee not to exceed the lesser of five hundred dollars or an amount equal to seven percent of that part of the original principal balance of any loan not in excess of two thousand dollars and five percent on that part of the original principal balance in excess of two thousand dollars, if the licensee has not made another loan to the borrower within the previous twelve months. If the licensee has made another loan to the borrower within the previous twelve months, a nonrefundable loan origination fee may only be charged on new funds advanced on each successive loan. Such reasonable initial charges may be collected from the borrower or included in the principal balance of the loan at the time the loan is made and shall not be considered interest or a charge for the use of the money loaned.

(6)(a) Loans secured solely by real property that are not made pursuant to subdivision (11) of section 45-101.04 on real property shall not be subject to the limitations on the rate of interest provided in subsection (1) of this section or the limitations on the nonrefundable loan origination fee under subsection (5) of this section if (i) the principal amount of the loan is seven thousand five hundred dollars or more and (ii) the sum of the principal amount of the loan and the balances of all other liens against the property do not exceed one hundred percent of the appraised value of the property. Acceptable methods of determining appraised value shall be made by the department pursuant to rule, regulation, or order.

(b) An origination fee on such loan shall be computed only on the principal amount of the loan reduced by any portion of the principal that consists of the

amount required to pay off another loan made under this subsection by the same licensee.

(c) A prepayment penalty on such loan shall be permitted only if (i) the maximum amount of the penalty to be assessed is stated in writing at the time the loan is made, (ii) the loan is prepaid in full within two years from the date of the loan, and (iii) the loan is prepaid with money other than the proceeds of another loan made by the same licensee. Such prepayment penalty shall not exceed six months interest on eighty percent of the original principal balance computed at the agreed rate of interest on the loan.

(d) A licensee making a loan pursuant to this subsection may obtain an interest in any fixtures attached to such real property and any insurance proceeds payable in connection with such real property or the loan.

(e) For purposes of this subsection, principal amount of the loan means the total sum owed by the borrower including, but not limited to, insurance premiums, loan origination fees, or any other amount that is financed, except that for purposes of subdivision (6)(b) of this section, loan origination fees shall not be included in calculating the principal amount of the loan.

Source: Laws 1941, c. 90, § 15, p. 350; C.S.Supp.,1941, § 45-143; Laws 1943, c. 107, § 3, p. 370; R.S.1943, § 45-137; Laws 1957, c. 193, § 1, p. 684; Laws 1963, c. 273, § 2, p. 821; Laws 1963, Spec. Sess., c. 7, § 9, p. 93; Laws 1963, Spec. Sess., c. 9, § 1, p. 103; Laws 1979, LB 87, § 3; Laws 1980, LB 276, § 8; Laws 1982, LB 702, § 1; Laws 1984, LB 681, § 1; Laws 1994, LB 979, § 8; Laws 1995, LB 614, § 1; Laws 1997, LB 555, § 17; Laws 1999, LB 170, § 1; Laws 2000, LB 932, § 30; R.S.Supp.,2000, § 45-137; Laws 2001, LB 53, § 52; Laws 2003, LB 218, § 14; Laws 2004, LB 999, § 40; Laws 2005, LB 533, § 61; Laws 2006, LB 876, § 50; Laws 2009, LB328, § 47; Laws 2010, LB571, § 11; Laws 2011, LB77, § 4.

Effective date March 11, 2011.

CHAPTER 46

IRRIGATION AND REGULATION OF WATER

Article.

- 2. General Provisions.
 - (f) Application for Water. 46-236, 46-240.01.
 - (p) Water Policy Task Force. 46-2,131 to 46-2,138. Repealed.
 - (r) Republican River Basin Water Sustainability Task Force. 46-2,140, 46-2,141.
- 6. Ground Water.
 - (b) Ground Water Conservation Districts. 46-633, 46-634.01.
 - (i) Republican River Basin. 46-692. Repealed.
- 7. Nebraska Ground Water Management and Protection Act. 46-753.
- 11. Chemigation. 46-1117 to 46-1125.
- 12. Water Well Standards and Contractors' Licensing. 46-1224.
- 16. Safety of Dams and Reservoirs Act. 46-1654.

ARTICLE 2

GENERAL PROVISIONS

(f) APPLICATION FOR WATER

Section

- 46-236. Application for water power; lease from state required; fee; renewal; cancellation; grounds.
- 46-240.01. Supplemental additional appropriations; agricultural appropriators; application.

(p) WATER POLICY TASK FORCE

- 46-2,131. Repealed. Laws 2011, LB 2, § 8.
- 46-2,132. Repealed. Laws 2011, LB 2, § 8.
- 46-2,133. Repealed. Laws 2011, LB 2, § 8.
- 46-2,134. Repealed. Laws 2011, LB 2, § 8.
- 46-2,135. Repealed. Laws 2011, LB 2, § 8.
- 46-2,136. Repealed. Laws 2011, LB 2, § 8.
- 46-2,137. Repealed. Laws 2011, LB 2, § 8.
- 46-2,138. Repealed. Laws 2011, LB 2, § 8.

(r) REPUBLICAN RIVER BASIN WATER SUSTAINABILITY TASK FORCE

- 46-2,140. Republican River Basin Water Sustainability Task Force; created; members; meetings; duties; report.
- 46-2,141. Republican River Basin Water Sustainability Task Force Cash Fund; created; use; investment.

(f) APPLICATION FOR WATER

46-236 Application for water power; lease from state required; fee; renewal; cancellation; grounds.

An application for appropriation of water for water power shall meet the requirements of section 46-234 and subsection (1) of section 46-235 to be approved. Within six months after the approval of an application for water power and before placing water to any beneficial use, the applicant shall enter into a contract with the State of Nebraska, through the department, for leasing the use of all water so appropriated. Such lease shall be upon forms prepared by the department, and the time of such lease shall not run for a greater period

than fifty years; and for the use of water for power purposes the applicant shall pay into the state treasury on or before January 1 each year fifteen dollars for each one hundred horsepower for all water so appropriated. Upon application of the lessee or its assigns, the department shall renew the lease so as to continue it and the water appropriation in full force and effect for an additional period of fifty years.

Upon the failure of the applicant to comply with any of the provisions of such lease and the failure to pay any of such fees, the department shall notify the lessee that the required fees have not been paid to the department or that the lessee is not otherwise in compliance with the provisions of the lease. If the lessee has not come into compliance with all provisions of the lease or has not paid to the department all required fees within fifteen calendar days after the date of such notice, the department shall issue an order denying the applicant the right to divert or otherwise use the water appropriation for power production. The department shall rescind the order denying use of the water appropriation at such time as the lessee has come into compliance with all provisions of the lease and has paid all required fees to the department. If after forty-five calendar days from the date of issuance of the order the lessee is not in compliance with all provisions of the lease or required fees have not been paid to the department, such lease and water appropriation shall be canceled by the department.

Source: Laws 1921, c. 291, § 1, p. 942; C.S.1922, § 8437; C.S.1929, § 81-6318; R.S.1943, § 46-236; Laws 1972, LB 1306, § 1; Laws 1987, LB 140, § 7; Laws 2000, LB 900, § 111; Laws 2011, LB27, § 1.

Effective date August 27, 2011.

46-240.01 Supplemental additional appropriations; agricultural appropriators; application.

All appropriators of water for agricultural purposes of less than the statutory limit of direct flow from the public waters of this state within the drainage basin of the stream from which such waters originate shall be entitled to such additional appropriation or appropriations from the direct flow of such stream, within the statutory limits provided by law, as may be necessary and required for the production of crops in the practice of good husbandry. Applications for such supplemental additional appropriations from the direct flow, upon the approval or granting thereof, shall have priority within the drainage basin as of the date such applications are filed in the office of the department.

Source: Laws 1953, c. 160, § 1, p. 503; Laws 2000, LB 900, § 114; Laws 2011, LB31, § 1.

Effective date August 27, 2011.

(p) WATER POLICY TASK FORCE

46-2,131 Repealed. Laws 2011, LB 2, § 8.

46-2,132 Repealed. Laws 2011, LB 2, § 8.

46-2,133 Repealed. Laws 2011, LB 2, § 8.

46-2,134 Repealed. Laws 2011, LB 2, § 8.

46-2,135 Repealed. Laws 2011, LB 2, § 8.

46-2,136 Repealed. Laws 2011, LB 2, § 8.

46-2,137 Repealed. Laws 2011, LB 2, § 8.

46-2,138 Repealed. Laws 2011, LB 2, § 8.

(r) REPUBLICAN RIVER BASIN WATER SUSTAINABILITY TASK FORCE

46-2,140 Republican River Basin Water Sustainability Task Force; created; members; meetings; duties; report.

(1) The Republican River Basin Water Sustainability Task Force is created. The task force shall consist of twenty-two voting members, and except for the state agency representatives, the members shall be residents representing a cross-section of the Republican River basin. The Governor shall appoint two representatives from each natural resources district in the basin; four representatives from the irrigation districts in the basin; one representative each from the University of Nebraska Institute of Agriculture and Natural Resources, the Game and Parks Commission, the Department of Agriculture, and the Department of Natural Resources; one representative each from a school district, a city, a county, and a public power district in the basin; and two representatives from agriculture-related businesses in the Republican River basin. The chairperson of the Executive Board of the Legislative Council shall appoint five ex officio, nonvoting members from the Legislature, two of whom are residents of the basin, two of whom have a portion of his or her legislative district in the basin, and one who is the chairperson of the Natural Resources Committee of the Legislature. For administrative and budgetary purposes only, the task force shall be housed within the Department of Natural Resources. Additional advisory support may be requested from appropriate federal and state agencies. Members of the task force who are not state employees shall be reimbursed for their actual and necessary expenses incurred in carrying out their duties as members as provided in sections 81-1174 to 81-1177.

(2) The task force shall meet no less than quarterly and shall hire a trained facilitator to conduct its meetings. The purposes of the task force are to define water sustainability for the Republican River basin, develop and recommend a plan to help reach water sustainability in the basin, and develop and recommend a plan to help avoid a water-short year in the basin. The task force shall convene within thirty days after appointment of the members is completed to elect a chairperson and conduct such other business as deemed necessary.

(3) The task force shall present a preliminary report to the Governor and the Legislature on or before May 15, 2011, and a final report before May 15, 2012. This section terminates on June 30, 2012.

Source: Laws 2010, LB1057, § 1; Laws 2011, LB243, § 1.

Effective date March 11, 2011.

Termination date June 30, 2012.

46-2,141 Republican River Basin Water Sustainability Task Force Cash Fund; created; use; investment.

The Republican River Basin Water Sustainability Task Force Cash Fund is created. The fund shall be administered by the Department of Natural Resources.

sources and expended at the direction of the Republican River Basin Water Sustainability Task Force. The fund shall consist of funds appropriated by the Legislature, money received as gifts, grants, and donations, and transfers authorized by the Legislature. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2010, LB1057, § 2; Laws 2011, LB2, § 2.
Effective date August 27, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**ARTICLE 6
GROUND WATER**

(b) GROUND WATER CONSERVATION DISTRICTS

Section

46-633. Repealed. Laws 2011, LB 2, § 8.

46-634.01. Repealed. Laws 2011, LB 2, § 8.

(i) REPUBLICAN RIVER BASIN

46-692. Repealed. Laws 2011, LB 1, § 1.

(b) GROUND WATER CONSERVATION DISTRICTS

46-633 Repealed. Laws 2011, LB 2, § 8.

46-634.01 Repealed. Laws 2011, LB 2, § 8.

(i) REPUBLICAN RIVER BASIN

46-692 Repealed. Laws 2011, LB 1, § 1.

ARTICLE 7

NEBRASKA GROUND WATER MANAGEMENT AND PROTECTION ACT

Section

46-753. Water Resources Trust Fund; created; use; investment; matching funds required; when.

46-753 Water Resources Trust Fund; created; use; investment; matching funds required; when.

(1) The Water Resources Trust Fund is created. The State Treasurer shall credit to the fund such money as is specifically appropriated thereto by the Legislature, transfers authorized by the Legislature, and such funds, fees, donations, gifts, or bequests received by the Department of Natural Resources from any federal, state, public, or private source for expenditure for the purposes described in the Nebraska Ground Water Management and Protection Act. Money in the fund shall not be subject to any fiscal-year limitation or lapse provision of unexpended balance at the end of any fiscal year or biennium. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The fund shall be administered by the department. The department shall adopt and promulgate rules and regulations regarding the allocation and expenditure of money from the fund.

(3) Money in the fund may be expended by the department for costs incurred by the department, by natural resources districts, or by other political subdivisions in (a) determining whether river basins, subbasins, or reaches are fully appropriated in accordance with section 46-713, (b) developing or implementing integrated management plans for such fully appropriated river basins, subbasins, or reaches or for river basins, subbasins, or reaches designated as overappropriated in accordance with section 46-713, (c) developing or implementing integrated management plans in river basins, subbasins, or reaches which have not yet become either fully appropriated or overappropriated, or (d) attaining state compliance with an interstate water compact or decree or other formal state contract or agreement.

(4) Except for funds paid to a political subdivision for forgoing or reducing its own water use or for implementing projects or programs intended to aid the state in complying with an interstate water compact or decree or other formal state contract or agreement, a political subdivision that receives funds from the fund shall provide, or cause to be provided, matching funds in an amount at least equal to twenty percent of the amount received from the fund by that natural resources district or political subdivision. The department shall monitor programs and activities funded by the fund to ensure that the required match is being provided.

Source: Laws 2004, LB 962, § 93; Laws 2010, LB1057, § 4; Laws 2011, LB2, § 3.
Effective date August 27, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**ARTICLE 11
CHEMIGATION**

Section

46-1117. Permit required; exception; application.

46-1118. Repealed. Laws 2011, LB 2, § 8.

46-1123. Districts; annual reports; contents.

46-1125. Permit denial, suspension, revocation; grounds.

46-1117 Permit required; exception; application.

No person shall apply or authorize the application of chemicals to land or crops through the use of chemigation unless such person obtains a permit from the district in which the well or diversion is located, except that nothing in this section shall require a person to obtain a chemigation permit to pump or divert water to or through an open discharge system. Any person who intends to engage in chemigation shall, before commencing, file with the district an application for a chemigation permit for each injection location on forms provided by the department or by the district. Upon request, forms shall be made available by the department to each district office and at such other places as may be deemed appropriate. Except as provided in section 46-1119,

the district shall review each application, conduct an inspection, and approve or deny the application within forty-five days after the application is filed. An application shall be approved and a permit issued by the district if the irrigation distribution system complies with the equipment requirements of section 46-1127 and the applicator has been certified as a chemigation applicator under sections 46-1128 and 46-1129. A copy of each approved application or the information contained in the application shall be maintained by the district and provided to the department upon request. This section shall not be construed to prevent the use of portable chemigation equipment if such equipment meets the requirements of section 46-1127.

Source: Laws 1986, LB 284, § 17; Laws 2011, LB2, § 4; Laws 2011, LB28, § 1.

Effective date August 27, 2011.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB2, section 4, with LB28, section 1, to reflect all amendments.

46-1118 Repealed. Laws 2011, LB 2, § 8.

46-1123 Districts; annual reports; contents.

Annual reports shall be submitted to the department by the district personnel showing the actual number of applications received, the number of applications approved, the number of inspections made, and the name of all chemicals used in chemigation systems within the district during the previous year.

Source: Laws 1986, LB 284, § 23; Laws 2011, LB28, § 2.

Effective date August 27, 2011.

46-1125 Permit denial, suspension, revocation; grounds.

The district shall deny, refuse renewal of, suspend, or revoke a permit applied for or issued pursuant to section 46-1117 on any of the following grounds:

- (1) Practice of fraud or deceit in obtaining a permit; or
- (2) Violation of any of the provisions of the Nebraska Chemigation Act or any standards or rules and regulations adopted and promulgated pursuant to such act.

Source: Laws 1986, LB 284, § 25; Laws 2011, LB2, § 5.

Effective date August 27, 2011.

ARTICLE 12

WATER WELL STANDARDS AND CONTRACTORS' LICENSING

Section

46-1224. Board; set fees; Water Well Standards and Contractors' Licensing Fund; created; use; investment.

46-1224 Board; set fees; Water Well Standards and Contractors' Licensing Fund; created; use; investment.

(1) Except as otherwise provided in subsections (2) through (4) of this section, the board shall set reasonable fees in an amount calculated to recover the costs incurred by the department and the board in administering and carrying out the purposes of the Water Well Standards and Contractors' Practice Act. Such fees shall be paid to the department and remitted to the State Treasurer for credit to the Water Well Standards and Contractors'

Licensing Fund, which fund is hereby created. Such fund shall be used by the department and the board for the purpose of administering the Water Well Standards and Contractors' Practice Act. Additionally, such fund shall be used to pay any required fee to a contractor which provides the on-line services for registration of water wells. Any discount in the amount paid the state by a credit card, charge card, or debit card company or a third-party merchant bank for such registration fees shall be deducted from the portion of the registration fee collected pursuant to 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.

(2) Fees for credentialing individuals under the Water Well Standards and Contractors' Practice Act shall be established and collected as provided in sections 38-151 to 38-157.

(3) The board shall set a fee of not less than twenty-five dollars and not more than forty dollars for each water well which is required to be registered and which is designed and constructed to pump fifty gallons per minute or less and each monitoring and observation well and a fee of not less than forty dollars and not more than eighty dollars for each water well which is required to be registered and which is designed and constructed to pump more than fifty gallons per minute. For water wells permitted pursuant to the Industrial Ground Water Regulatory Act, the fee set pursuant to this subsection shall be collected for each of the first ten such water wells registered, and for each group of ten or fewer such water wells registered thereafter, the fee shall be collected as if only one water well was being registered. For a series of two or more water wells completed and pumped into a common carrier, as defined in section 46-601.01, as part of a single site plan for irrigation purposes, the fee set pursuant to this subsection shall be collected for each of the first two such water wells registered. For a series of water wells completed for purposes of installation of a ground heat exchanger for a structure for utilizing the geothermal properties of the ground, the fee set pursuant to this subsection shall be collected as if only one water well was being registered. For water wells constructed as part of a single site plan for monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground and for water wells constructed as part of remedial action approved by the Department of Environmental Quality pursuant to section 66-1525, 66-1529.02, or 81-15,124, the fee set pursuant to this subsection shall be collected for each of the first five such water wells registered, and for each group of five or fewer such water wells registered thereafter, the fee shall be collected as if only one water well was being registered. The fees shall be remitted to the Director of Natural Resources with the registration form required by section 46-602 and shall be in addition to the fee in section 46-606. The director shall remit the fee to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund.

(4) The board shall set an application fee for a declaratory ruling or variance of not less than fifty dollars and not more than one hundred dollars. The fee shall be remitted to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund.

Source: Laws 1986, LB 310, § 24; Laws 1993, LB 131, § 45; Laws 1994, LB 981, § 17; Laws 1994, LB 1066, § 34; Laws 1999, LB 92, § 4;

Laws 2000, LB 900, § 236; Laws 2001, LB 667, § 18; Laws 2003, LB 242, § 8; Laws 2007, LB463, § 1161; Laws 2011, LB27, § 2.
Effective date August 27, 2011.

Cross References

Industrial Ground Water Regulatory Act, see section 46-690.

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 16

SAFETY OF DAMS AND RESERVOIRS ACT

Section

46-1654. Application approval; issuance; public hearing; notice to department; when.

46-1654 Application approval; issuance; public hearing; notice to department; when.

(1) Approval of applications for which approval under sections 46-233 to 46-242 is not required shall be issued within ninety days after receipt of the completed application plus any extensions of time required to resolve matters diligently pursued by the applicant. At the discretion of the department, one or more public hearings may be held on an application.

(2) Approval of applications under the Safety of Dams and Reservoirs Act, for which approval under sections 46-233 to 46-242 is required, shall not be issued until all pending matters before the department under the Safety of Dams and Reservoirs Act or such sections have been resolved and approved.

(3) Application approval shall be granted with terms, conditions, and limitations necessary to safeguard life and property.

(4) If actual construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of the dam is not commenced within the time established by the department, the application approval becomes void, except that the department may, upon written application and for good cause shown, extend the time for commencing construction, reconstruction, enlargement, alteration, breach, removal, or abandonment. If approval under sections 46-233 to 46-242 is also required, the department may not extend the time for commencing construction without following the procedures and granting a similar extension under subsection (2) of section 46-238.

(5) Written notice shall be provided to the department at least ten days before construction, reconstruction, enlargement, alteration, breach, removal, or abandonment is to begin and such other notices shall be given to the department as it may require.

Source: Laws 2005, LB 335, § 54; Laws 2009, LB209, § 2; Laws 2011, LB32, § 1.

Effective date August 27, 2011.

CHAPTER 47
JAILS AND CORRECTIONAL FACILITIES

Article.

- 6. Community Corrections. 47-621 to 47-639.

ARTICLE 6
COMMUNITY CORRECTIONS

Section

- 47-621. Terms, defined.
- 47-622. Community Corrections Division; created.
- 47-623. Repealed. Laws 2011, LB 390, § 39.
- 47-624. Division; duties.
- 47-624.01. Division; plan for implementation and funding of reporting centers; duties.
- 47-625. Repealed. Laws 2011, LB 390, § 39.
- 47-627. Uniform crime data analysis system.
- 47-628. Community correctional programming; condition of probation.
- 47-629. Community correctional programming; paroled offenders.
- 47-630. Repealed. Laws 2011, LB 390, § 39.
- 47-631. Repealed. Laws 2011, LB 390, § 39.
- 47-632. Community Corrections Uniform Data Analysis Cash Fund; created; use; investment.
- 47-634. Receipt of funds by local entity; local advisory committee required; plan required.
- 47-635. Repealed. Laws 2011, LB 390, § 39.
- 47-636. Repealed. Laws 2011, LB 390, § 39.
- 47-637. Repealed. Laws 2011, LB 390, § 39.
- 47-638. Repealed. Laws 2011, LB 390, § 39.
- 47-639. Repealed. Laws 2011, LB 390, § 39.

47-621 Terms, defined.

For purposes of the Community Corrections Act:

- (1) Community correctional facility or program means a community-based or community-oriented facility or program which (a) is operated either by the state or by a contractor which may be a unit of local government or a nongovernmental agency, (b) may be designed to provide residential accommodations for adult offenders, (c) provides programs and services to aid adult offenders in obtaining and holding regular employment, enrolling in and maintaining participation in academic courses, participating in vocational training programs, utilizing the resources of the community to meet their personal and family needs, obtaining mental health, alcohol, and drug treatment, and participating in specialized programs that exist within the community, and (d) offers community supervision options, including, but not limited to, drug treatment, mental health programs, and day reporting centers;
- (2) Director means the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice;
- (3) Division means the Community Corrections Division of the Nebraska Commission on Law Enforcement and Criminal Justice;

(4) Nongovernmental agency means any person, private nonprofit agency, corporation, association, labor organization, or entity other than the state or a political subdivision of the state; and

(5) Unit of local government means a county, city, village, or entity established pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act.

Source: Laws 2003, LB 46, § 33; Laws 2005, LB 538, § 12; Laws 2011, LB390, § 6.
Operative date July 1, 2011.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

47-622 Community Corrections Division; created.

The Legislature declares that the policy of the State of Nebraska is that there shall be a coordinated effort to (1) establish community correctional programs across the state in order to divert adult felony offenders from the prison system and (2) provide necessary supervision and services to adult felony offenders with the goal of reducing the probability of criminal behavior while maintaining public safety. To further such policy, the Community Corrections Division is created within the Nebraska Commission on Law Enforcement and Criminal Justice. The director shall appoint and remove employees of the division and delegate appropriate powers and duties to such employees.

Source: Laws 2003, LB 46, § 34; Laws 2005, LB 538, § 13; Laws 2011, LB390, § 7.
Operative date July 1, 2011.

47-623 Repealed. Laws 2011, LB 390, § 39.

Operative date July 1, 2011.

47-624 Division; duties.

The division shall:

(1) Develop standards for eligible community correctional facilities and programs in which offenders can participate, taking into consideration the following factors:

- (a) Qualifications of staff;
- (b) Suitability of programs;
- (c) Offender needs;
- (d) Probation population;
- (e) Parole population; and
- (f) Other applicable criminal justice data;

(2) Develop and implement a plan to establish statewide operation and use of a continuum of community correctional facilities and programs;

(3) Develop, in consultation with the probation administrator and the Parole Administrator, standards for the use of community correctional facilities and programs by the Nebraska Probation System and the parole system;

(4) Collaborate with the Office of Probation Administration, the Office of Parole Administration, and the Department of Correctional Services on the development of additional reporting centers as set forth in section 47-624.01;

(5) Analyze and mandate the consistent use of offender risk assessment tools;

(6) Educate the courts, the Board of Parole, criminal justice system stakeholders, and the general public about the availability and use of community correctional facilities and programs;

(7) Enter into contracts, if necessary, for carrying out the purposes of the Community Corrections Act;

(8) In order to ensure adequate funding for substance abuse treatment programs for probationers, consult with the probation administrator and develop or assist with the development of programs as provided in subdivision (14) of section 29-2252;

(9) In order to ensure adequate funding for substance abuse treatment programs for parolees, consult with the Office of Parole Administration and develop or assist with the development of programs as provided in subdivision (8) of section 83-1,102;

(10) Study substance abuse and mental health treatment services in and related to the criminal justice system, recommend improvements, and evaluate the implementation of improvements;

(11) Research and evaluate existing community corrections facilities and programs, within the limits of available funding;

(12) Develop standardized definitions of outcome measures for community corrections facilities and programs, including, but not limited to, recidivism, employment, and substance abuse;

(13) Report annually to the Legislature and the Governor on the development and performance of community corrections facilities and programs. The report shall include the following:

(a) A description of community corrections facilities and programs, endorsed by the division, currently serving offenders in Nebraska, which includes the following information:

(i) The target population and geographic area served by each facility or program, eligibility requirements, and the total number of offenders utilizing the facility or program over the past year;

(ii) Services provided to offenders at the facility or in the program;

(iii) The costs of operating the facility or program and the cost per offender; and

(iv) The funding sources for the facility or program;

(b) The progress made in expanding community corrections facilities and programs statewide and an analysis of the need for additional community corrections services;

(c) An analysis of the impact community corrections facilities and programs have on the number of offenders incarcerated within the Department of Correctional Services; and

(d) The recidivism rates and outcome data for probationers, parolees, and problem-solving-court clients participating in community corrections programs;

(14) Grant funds to entities including local governmental agencies, nonprofit organizations, and behavioral health services which will support the intent of the act;

(15) Administer contracts entered into by the division with community correctional facilities or programs;

(16) Establish and administer grants, projects, and programs for the operation of the division; and

(17) Perform such other duties as may be necessary to carry out the policy of the state established in the act.

Source: Laws 2003, LB 46, § 36; Laws 2005, LB 538, § 15; Laws 2006, LB 1113, § 47; Laws 2010, LB864, § 2; Laws 2011, LB390, § 8.
Operative date July 1, 2011.

47-624.01 Division; plan for implementation and funding of reporting centers; duties.

(1) The division shall collaborate with the Office of Probation Administration, the Office of Parole Administration, and the Department of Correctional Services in developing a plan for the implementation and funding of reporting centers in Nebraska.

(2) The plan shall include recommended locations for at least one reporting center in each district court judicial district that currently lacks such a center and shall prioritize the recommendations for additional reporting centers based upon need.

(3) The plan shall also identify and prioritize the need for expansion of reporting centers in those district court judicial districts which currently have a reporting center but have an unmet need for additional reporting center services due to capacity, distance, or demographic factors.

Source: Laws 2010, LB864, § 3; Laws 2011, LB390, § 9.
Operative date July 1, 2011.

47-625 Repealed. Laws 2011, LB 390, § 39.

Operative date July 1, 2011.

47-627 Uniform crime data analysis system.

The director shall develop and maintain a uniform crime data analysis system in Nebraska which shall include, but need not be limited to, the number of offenses, arrests, charges, probation admissions, probation violations, probation discharges, admissions to and discharges from the Department of Correctional Services, parole reviews, parole hearings, releases on parole, parole violations, and parole discharges. The data shall be categorized by statutory crime. The data shall be collected from the Board of Parole, the State Court Administrator, the Department of Correctional Services, the Office of Parole Administration, the Office of Probation Administration, the Nebraska State Patrol, counties, local law enforcement, and any other entity associated with criminal justice. The division and the Supreme Court shall have access to such data to implement the Community Corrections Act.

Source: Laws 2003, LB 46, § 39; Laws 2005, LB 538, § 17; Laws 2011, LB390, § 10.
Operative date July 1, 2011.

47-628 Community correctional programming; condition of probation.

(1) A sentencing judge may sentence an offender to probation conditioned upon community correctional programming.

(2) A sentence to a community correctional program or facility shall be imposed as a condition of probation pursuant to the Nebraska Probation Administration Act. The court may modify the sentence of an offender serving a sentence in a community correctional program in the same manner as if the offender had been placed on probation.

(3) The Office of Probation Administration shall utilize community correctional facilities and programs as appropriate.

Source: Laws 2003, LB 46, § 40; Laws 2011, LB390, § 11.
Operative date July 1, 2011.

Cross References

Nebraska Probation Administration Act, see section 29-2269.

47-629 Community correctional programming; paroled offenders.

(1) The Board of Parole may parole an offender to a community correctional facility or program pursuant to guidelines developed by the division.

(2) The Department of Correctional Services and the Office of Parole Administration shall utilize community correctional facilities and programs as appropriate.

Source: Laws 2003, LB 46, § 41; Laws 2011, LB390, § 12.
Operative date July 1, 2011.

47-630 Repealed. Laws 2011, LB 390, § 39.

Operative date July 1, 2011.

47-631 Repealed. Laws 2011, LB 390, § 39.

Operative date July 1, 2011.

47-632 Community Corrections Uniform Data Analysis Cash Fund; created; use; investment.

(1) The Community Corrections Uniform Data Analysis Cash Fund is created. Except as provided in subsections (2) and (3) of this section, the fund shall be within the Nebraska Commission on Law Enforcement and Criminal Justice, shall be administered by the division, and shall only be used to support operations costs and analysis relating to the implementation and coordination of the uniform analysis of crime data pursuant to the Community Corrections Act, including associated information technology projects. The fund shall consist of money collected pursuant to section 47-633.

(2) Transfers may be made from the fund to the General Fund at the direction of the Legislature.

(3) The State Treasurer shall transfer the following amounts from the Community Corrections Uniform Data Analysis Cash Fund to the Violence Prevention Cash Fund:

(a) Two hundred thousand dollars on July 1, 2011, or as soon thereafter as administratively possible; and

(b) Two hundred thousand dollars on July 1, 2012, or as soon thereafter as administratively possible.

(4) Any money in the Community Corrections Uniform Data Analysis Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2003, LB 46, § 44; Laws 2005, LB 426, § 11; Laws 2005, LB 538, § 19; Laws 2007, LB322, § 6; Laws 2009, LB63, § 31; Laws 2009, First Spec. Sess., LB3, § 23; Laws 2011, LB378, § 21; Laws 2011, LB390, § 13.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB378, section 21, with LB390, section 13, to reflect all amendments.

Note: Changes made by LB378 became effective May 18, 2011. Changes made by LB390 became operative July 1, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

47-634 Receipt of funds by local entity; local advisory committee required; plan required.

For a local entity to receive funds under the Community Corrections Act, the division shall ensure there is a local advisory committee made up of a broad base of community members concerned with the justice system. Submission of a detailed plan including a budget, program standards, and policies as developed by the local advisory committee shall be required as set forth by the division. Such funds shall be used for the implementation of the recommendations of the division, the expansion of sentencing options, the education of the public, the provision of supplemental community-based corrections programs, and the promotion of coordination between state and county community-based corrections programs.

Source: Laws 2006, LB 1113, § 48; Laws 2011, LB390, § 14.
Operative date July 1, 2011.

47-635 Repealed. Laws 2011, LB 390, § 39.
Operative date July 1, 2011.

47-636 Repealed. Laws 2011, LB 390, § 39.
Operative date July 1, 2011.

47-637 Repealed. Laws 2011, LB 390, § 39.
Operative date July 1, 2011.

47-638 Repealed. Laws 2011, LB 390, § 39.
Operative date July 1, 2011.

47-639 Repealed. Laws 2011, LB 390, § 39.
Operative date July 1, 2011.

LABOR

CHAPTER 48
LABOR

Article.

1. Workers' Compensation.
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 - (c) Schedule of Compensation. 48-120 to 48-125.
 - (e) Settlement and Payment of Compensation. 48-145.01.
 - Part IV—Nebraska Workers' Compensation Court. 48-153 to 48-191.
 - Part V—Claims against the State. 48-1,103.
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8. Commission of Industrial Relations. 48-801 to 48-839.
16. Nebraska Workforce Investment Act.
 - (b) Nebraska Workforce Investment Act. 48-1617 to 48-1624.

ARTICLE 1

WORKERS' COMPENSATION

PART II—ELECTIVE COMPENSATION

(c) SCHEDULE OF COMPENSATION

Section

- 48-120. Medical, surgical, and hospital services; employer's liability; fee schedule; physician, right to select; procedures; powers and duties; court; powers; dispute resolution procedure; managed care plan.
- 48-120.04. Diagnostic Related Group inpatient hospital fee schedule; trauma services inpatient hospital fee schedule; established; applicability; adjustments; methodology; hospital; duties; reports; compensation court; powers and duties.
- 48-125. Compensation; method of payment; delay; appeal; attorney's fees; interest.
(e) SETTLEMENT AND PAYMENT OF COMPENSATION
- 48-145.01. Employers; compensation required; penalty for failure to comply; injunction; Attorney General; duties.
- PART IV—NEBRASKA WORKERS' COMPENSATION COURT**
- 48-153. Judges; number; term; qualifications; continuance in office; prohibition on holding other office or pursuing other occupation.
- 48-155. Presiding judge; how chosen; term; powers and duties; acting presiding judge; selection; powers.
- 48-156. Judges; quorum; powers.
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- 48-177. Hearing; judge; place; dismissal; procedure; manner of conducting hearings.
- 48-178. Hearing; judgment; when conclusive; record of proceedings; costs; payment.
- 48-179. Repealed. Laws 2011, LB 151, § 20.
- 48-180. Findings, order, award, or judgment; modification; effect.
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- 48-182. Notice of appeal; bill of exceptions; requirements; waiver of payment; when; extension of time; filing of order.

Section

- 48-185. Appeal; procedure; judgment by Nebraska Workers' Compensation Court; effect; grounds for modification or reversal.
- 48-191. Time; how computed.

PART V—CLAIMS AGAINST THE STATE

- 48-1,103. Workers' Compensation Claims Revolving Fund; established; deficiency; notify Legislature; investment.

PART VI—NAME OF ACT AND APPLICABILITY OF CHANGES

- 48-1,110. Act, how cited.
- 48-1,112. Laws 2011, LB151, changes; applicability.

PART II—ELECTIVE COMPENSATION

(c) SCHEDULE OF COMPENSATION

48-120 Medical, surgical, and hospital services; employer's liability; fee schedule; physician, right to select; procedures; powers and duties; court; powers; dispute resolution procedure; managed care plan.

(1)(a) The employer is liable for all reasonable medical, surgical, and hospital services, including plastic surgery or reconstructive surgery but not cosmetic surgery when the injury has caused disfigurement, appliances, supplies, prosthetic devices, and medicines as and when needed, which are required by the nature of the injury and which will relieve pain or promote and hasten the employee's restoration to health and employment, and includes damage to or destruction of artificial members, dental appliances, teeth, hearing instruments, and eyeglasses, but, in the case of dental appliances, hearing instruments, or eyeglasses, only if such damage or destruction resulted from an accident which also caused personal injury entitling the employee to compensation therefor for disability or treatment, subject to the approval of and regulation by the Nebraska Workers' Compensation Court, not to exceed the regular charge made for such service in similar cases.

(b) Except as provided in section 48-120.04, the compensation court shall establish schedules of fees for such services. The compensation court shall review such schedules at least biennially and adopt appropriate changes when necessary. The compensation court may contract with any person, firm, corporation, organization, or government agency to secure adequate data to establish such fees. The compensation court shall publish and furnish to the public the fee schedules established pursuant to this subdivision and section 48-120.04. The compensation court may establish and charge a fee to recover the cost of published fee schedules.

(c) Reimbursement for inpatient hospital services provided by hospitals located in or within fifteen miles of a Nebraska city of the metropolitan class or primary class and by other hospitals with fifty-one or more licensed beds shall be according to the Diagnostic Related Group inpatient hospital fee schedule or the trauma services inpatient hospital fee schedule established in section 48-120.04.

(d) A workers' compensation insurer, risk management pool, self-insured employer, or managed care plan certified pursuant to section 48-120.02 may contract with a provider or provider network for medical, surgical, or hospital services. Such contract may establish fees for services different than the fee schedules established under subdivision (1)(b) of this section or established

under section 48-120.04. Such contract shall be in writing and mutually agreed upon prior to the date services are provided.

(e) The provider or supplier of such services shall not collect or attempt to collect from any employer, insurer, government, or injured employee or dependent or the estate of any injured or deceased employee any amount in excess of (i) the fee established by the compensation court for any such service, (ii) the fee established under section 48-120.04, or (iii) the fee contracted under subdivision (1)(d) of this section.

(2)(a) The employee has the right to select a physician who has maintained the employee's medical records prior to an injury and has a documented history of treatment with the employee prior to an injury or a physician who has maintained the medical records of an immediate family member of the employee prior to an injury and has a documented history of treatment with an immediate family member of the employee prior to an injury. For purposes of this subsection, immediate family member means the employee's spouse, children, parents, stepchildren, and stepparents. The employer shall notify the employee following an injury of such right of selection in a form and manner and within a timeframe established by the compensation court. If the employer fails to notify the employee of such right of selection or fails to notify the employee of such right of selection in a form and manner and within a timeframe established by the compensation court, then the employee has the right to select a physician. If the employee fails to exercise such right of selection in a form and manner and within a timeframe established by the compensation court following notice by the employer pursuant to this subsection, then the employer has the right to select the physician. If selection of the initial physician is made by the employee or employer pursuant to this subsection following notice by the employer pursuant to this subsection, the employee or employer shall not change the initial selection of physician made pursuant to this subsection unless such change is agreed to by the employee and employer or is ordered by the compensation court pursuant to subsection (6) of this section. If compensability is denied by the workers' compensation insurer, risk management pool, or self-insured employer, (i) the employee has the right to select a physician and shall not be made to enter a managed care plan and (ii) the employer is liable for medical, surgical, and hospital services subsequently found to be compensable. If the employer has exercised the right to select a physician pursuant to this subsection and if the compensation court subsequently orders reasonable medical services previously refused to be furnished to the employee by the physician selected by the employer, the compensation court shall allow the employee to select another physician to furnish further medical services. If the employee selects a physician located in a community not the home or place of work of the employee and a physician is available in the local community or in a closer community, no travel expenses shall be required to be paid by the employer or his or her workers' compensation insurer.

(b) In cases of injury requiring dismemberment or injuries involving major surgical operation, the employee may designate to his or her employer the physician or surgeon to perform the operation.

(c) If the injured employee unreasonably refuses or neglects to avail himself or herself of medical or surgical treatment furnished by the employer, except as herein and otherwise provided, the employer is not liable for an aggravation of such injury due to such refusal and neglect and the compensation court or

judge thereof may suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act.

(d) If, due to the nature of the injury or its occurrence away from the employer's place of business, the employee or the employer is unable to select a physician using the procedures provided by this subsection, the selection requirements of this subsection shall not apply as long as the inability to make a selection persists.

(e) The physician selected may arrange for any consultation, referral, or extraordinary or other specialized medical services as the nature of the injury requires.

(f) The employer is not responsible for medical services furnished or ordered by any physician or other person selected by the employee in disregard of this section. Except as otherwise provided by the Nebraska Workers' Compensation Act, the employer is not liable for medical, surgical, or hospital services or medicines if the employee refuses to allow them to be furnished by the employer.

(3) No claim for such medical treatment is valid and enforceable unless, within fourteen days following the first treatment, the physician giving such treatment furnishes the employer a report of such injury and treatment on a form prescribed by the compensation court. The compensation court may excuse the failure to furnish such report within fourteen days when it finds it to be in the interest of justice to do so.

(4) All physicians and other providers of medical services attending injured employees shall comply with all the rules and regulations adopted and promulgated by the compensation court and shall make such reports as may be required by it at any time and at such times as required by it upon the condition or treatment of any injured employee or upon any other matters concerning cases in which they are employed. All medical and hospital information relevant to the particular injury shall, on demand, be made available to the employer, the employee, the workers' compensation insurer, and the compensation court. The party requesting such medical and hospital information shall pay the cost thereof. No such relevant information developed in connection with treatment or examination for which compensation is sought shall be considered a privileged communication for purposes of a workers' compensation claim. When a physician or other provider of medical services willfully fails to make any report required of him or her under this section, the compensation court may order the forfeiture of his or her right to all or part of payment due for services rendered in connection with the particular case.

(5) Whenever the compensation court deems it necessary, in order to assist it in resolving any issue of medical fact or opinion, it shall cause the employee to be examined by a physician or physicians selected by the compensation court and obtain from such physician or physicians a report upon the condition or matter which is the subject of inquiry. The compensation court may charge the cost of such examination to the workers' compensation insurer. The cost of such examination shall include the payment to the employee of all necessary and reasonable expenses incident to such examination, such as transportation and loss of wages.

(6) The compensation court shall have the authority to determine the necessity, character, and sufficiency of any medical services furnished or to be furnished and shall have authority to order a change of physician, hospital,

rehabilitation facility, or other medical services when it deems such change is desirable or necessary. Any dispute regarding medical, surgical, or hospital services furnished or to be furnished under this section may be submitted by the parties, the supplier of such service, or the compensation court on its own motion for informal dispute resolution by a staff member of the compensation court or an outside mediator pursuant to section 48-168. In addition, any party or the compensation court on its own motion may submit such a dispute for a medical finding by an independent medical examiner pursuant to section 48-134.01. Issues submitted for informal dispute resolution or for a medical finding by an independent medical examiner may include, but are not limited to, the reasonableness and necessity of any medical treatment previously provided or to be provided to the injured employee. The compensation court may adopt and promulgate rules and regulations regarding informal dispute resolution or the submission of disputes to an independent medical examiner that are considered necessary to effectuate the purposes of this section.

(7) For the purpose of this section, physician has the same meaning as in section 48-151.

(8) The compensation court shall order the employer to make payment directly to the supplier of any services provided for in this section or reimbursement to anyone who has made any payment to the supplier for services provided in this section. No such supplier or payor may be made or become a party to any action before the compensation court.

(9) Notwithstanding any other provision of this section, a workers' compensation insurer, risk management pool, or self-insured employer may contract for medical, surgical, hospital, and rehabilitation services to be provided through a managed care plan certified pursuant to section 48-120.02. Once liability for medical, surgical, and hospital services has been accepted or determined, the employer may require that employees subject to the contract receive medical, surgical, and hospital services in the manner prescribed in the contract, except that an employee may receive services from a physician selected by the employee pursuant to subsection (2) of this section if the physician so selected agrees to refer the employee to the managed care plan for any other treatment that the employee may require and if the physician so selected agrees to comply with all the rules, terms, and conditions of the managed care plan. If compensability is denied by the workers' compensation insurer, risk management pool, or self-insured employer, the employee may leave the managed care plan and the employer is liable for medical, surgical, and hospital services previously provided. The workers' compensation insurer, risk management pool, or self-insured employer shall give notice to employees subject to the contract of eligible service providers and such other information regarding the contract and manner of receiving medical, surgical, and hospital services under the managed care plan as the compensation court may prescribe.

Source: Laws 1913, c. 198, § 20, p. 585; R.S.1913, § 3661; Laws 1917, c. 85, § 6, p. 202; Laws 1919, c. 91, § 1, p. 228; Laws 1921, c. 122, § 1, p. 520; C.S.1922, § 3043; C.S.1929, § 48-120; Laws 1935, c. 57, § 19, p. 197; C.S.Supp.,1941, § 48-120; R.S.1943, § 48-120; Laws 1965, c. 278, § 1, p. 799; Laws 1969, c. 388, § 2, p. 1359; Laws 1969, c. 392, § 1, p. 1376; Laws 1975, LB 127, § 1; Laws 1978, LB 529, § 2; Laws 1979, LB 215, § 1; Laws 1986, LB 811, § 38; Laws 1987, LB 187, § 1; Laws 1992, LB 360, § 13; Laws 1993, LB 757, § 2; Laws 1998, LB 1010, § 2; Laws 1999, LB 216,

§ 3; Laws 2005, LB 238, § 3; Laws 2007, LB588, § 1; Laws 2009, LB195, § 51; Laws 2011, LB152, § 1.
Effective date August 27, 2011.

48-120.04 Diagnostic Related Group inpatient hospital fee schedule; trauma services inpatient hospital fee schedule; established; applicability; adjustments; methodology; hospital; duties; reports; compensation court; powers and duties.

(1) This section applies only to hospitals identified in subdivision (1)(c) of section 48-120.

(2) For inpatient discharges on or after January 1, 2008, the Diagnostic Related Group inpatient hospital fee schedule shall be as set forth in this section, except as otherwise provided in subdivision (1)(d) of section 48-120. Adjustments shall be made annually as provided in this section, with such adjustments to become effective each January 1.

(3) For inpatient trauma discharges on or after January 1, 2012, the trauma services inpatient hospital fee schedule shall be as set forth in this section, except as otherwise provided in subdivision (1)(d) of section 48-120. Adjustments shall be made annually as provided in this section, with such adjustments to become effective each January 1.

(4) For purposes of this section:

(a) Current Medicare Factor is derived from the Diagnostic Related Group Prospective Payment System as established by the Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services and means the summation of the following components:

(i) Hospital-specific Federal Standardized Amount, including all wage index adjustments and reclassifications;

(ii) Hospital-specific Capital Standard Federal Rate, including geographic, outlier, and exception adjustment factors;

(iii) Hospital-specific Indirect Medical Education Rate, reflecting a percentage add-on for indirect medical education costs and related capital; and

(iv) Hospital-specific Disproportionate Share Hospital Rate, reflecting a percentage add-on for disproportionate share of low-income patient costs and related capital;

(b) Current Medicare Weight means the weight assigned to each Medicare Diagnostic Related Group as established by the Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services;

(c) Diagnostic Related Group means the Diagnostic Related Group assigned to inpatient hospital services using the public domain classification and methodology system developed for the Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services;

(d) Trauma means a major single-system or multisystem injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability;

(e) Workers' Compensation Factor means the Current Medicare Factor for each hospital multiplied by one hundred fifty percent except for inpatient hospital trauma services; and

(f) Workers' Compensation Trauma Factor for inpatient hospital trauma services means the Current Medicare Factor for each hospital multiplied by one hundred sixty percent.

(5) The Diagnostic Related Group inpatient hospital fee schedule shall include at least thirty-eight of the most frequently utilized Medicare Diagnostic Related Groups for workers' compensation with the goal that the fee schedule covers at least ninety percent of all workers' compensation inpatient hospital claims submitted by hospitals identified in subdivision (1)(c) of section 48-120. Rehabilitation Diagnostic Related Groups shall not be included in the Diagnostic Related Group inpatient hospital fee schedule. Claims for inpatient trauma services shall not be reimbursed under the Diagnostic Related Group inpatient hospital fee schedule established under this section. Claims for inpatient trauma services prior to January 1, 2012, shall be reimbursed under the fees established by the compensation court pursuant to subdivision (1)(b) of section 48-120 or as contracted pursuant to subdivision (1)(d) of such section. Claims for inpatient trauma services on or after January 1, 2012, for Diagnostic Related Groups subject to the Diagnostic Related Group inpatient hospital fee schedule shall be reimbursed under the trauma services inpatient hospital fee schedule established in this section, except as otherwise provided in subdivision (1)(d) of section 48-120.

(6) The trauma services inpatient hospital fee schedule shall be established by the following methodology:

(a) The trauma services reimbursement amount required under the Nebraska Workers' Compensation Act shall be equal to the Current Medicare Weight multiplied by the Workers' Compensation Trauma Factor for each hospital;

(b) The Stop-Loss Threshold amount shall be the trauma services reimbursement amount calculated in subdivision (6)(a) of this section multiplied by one and one-quarter;

(c) For charges over the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the trauma services reimbursement amount calculated in subdivision (6)(a) of this section plus sixty-five percent of the charges over the Stop-Loss Threshold amount; and

(d) For charges less than the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the lower of the hospital's billed charges or the trauma services reimbursement amount calculated in subdivision (6)(a) of this section.

(7) The Diagnostic Related Group inpatient hospital fee schedule shall be established by the following methodology:

(a) The Diagnostic Related Group reimbursement amount required under the Nebraska Workers' Compensation Act shall be equal to the Current Medicare Weight multiplied by the Workers' Compensation Factor for each hospital;

(b) The Stop-Loss Threshold amount shall be the Diagnostic Related Group reimbursement amount calculated in subdivision (7)(a) of this section multiplied by two and one-half;

(c) For charges over the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the Diagnostic Related Group reimbursement amount calculated in subdivision (7)(a) of this section plus sixty percent of the charges over the Stop-Loss Threshold amount; and

(d) For charges less than the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the lower of the hospital's billed charges or the Diagnostic Related Group reimbursement amount calculated in subdivision (7)(a) of this section.

(8) For charges for all other stays or services that are not reimbursed under the Diagnostic Related Group inpatient hospital fee schedule or the trauma services inpatient hospital fee schedule or are not contracted for under subdivision (1)(d) of section 48-120, the hospital shall be reimbursed under the schedule of fees established by the compensation court pursuant to subdivision (1)(b) of section 48-120.

(9) Each hospital shall assign and include a Diagnostic Related Group on each workers' compensation claim submitted. The workers' compensation insurer, risk management pool, or self-insured employer may audit the Diagnostic Related Group assignment of the hospital.

(10) The chief executive officer of each hospital shall sign and file with the administrator of the compensation court by October 15 of each year, in the form and manner prescribed by the administrator, a sworn statement disclosing the Current Medicare Factor of the hospital in effect on October 1 of such year and each item and amount making up such factor.

(11) Each hospital, workers' compensation insurer, risk management pool, and self-insured employer shall report to the administrator of the compensation court by October 15 of each year, in the form and manner prescribed by the administrator, the total number of claims submitted for each Diagnostic Related Group, the number of claims for each Diagnostic Related Group that included trauma services, the number of times billed charges exceeded the Stop-Loss Threshold amount for each Diagnostic Related Group, and the number of times billed charges exceeded the Stop-Loss Threshold amount for each trauma service.

(12) The compensation court may add or subtract Diagnostic Related Groups in striving to achieve the goal of including those Diagnostic Related Groups that encompass at least ninety percent of the inpatient hospital workers' compensation claims submitted by hospitals identified in subdivision (1)(c) of section 48-120. The administrator of the compensation court shall annually make necessary adjustments to comply with the Current Medicare Weights and shall annually adjust the Current Medicare Factor for each hospital based on the annual statement submitted pursuant to subsection (10) of this section.

Source: Laws 2007, LB588, § 2; Laws 2009, LB630, § 2; Laws 2010, LB872, § 1; Laws 2011, LB152, § 2.
Effective date August 27, 2011.

48-125 Compensation; method of payment; delay; appeal; attorney's fees; interest.

(1)(a) Except as hereinafter provided, all amounts of compensation payable under the Nebraska Workers' Compensation Act shall be payable periodically in accordance with the methods of payment of wages of the employee at the time of the injury or death. Such payments shall be sent directly to the person entitled to compensation or his or her designated representative except as otherwise provided in section 48-149.

(b) Fifty percent shall be added for waiting time for all delinquent payments after thirty days' notice has been given of disability or after thirty days from the entry of a final order, award, or judgment of the Nebraska Workers' Compensation Court, except that for any award or judgment against the state in excess of one hundred thousand dollars which must be reviewed by the Legislature as provided in section 48-1,102, fifty percent shall be added for waiting time for delinquent payments thirty days after the effective date of the legislative bill appropriating any funds necessary to pay the portion of the award or judgment in excess of one hundred thousand dollars.

(2)(a) Whenever the employer refuses payment of compensation or medical payments subject to section 48-120, or when the employer neglects to pay compensation for thirty days after injury or neglects to pay medical payments subject to such section after thirty days' notice has been given of the obligation for medical payments, and proceedings are held before the compensation court, a reasonable attorney's fee shall be allowed the employee by the compensation court in all cases when the employee receives an award. Attorney's fees allowed shall not be deducted from the amounts ordered to be paid for medical services nor shall attorney's fees be charged to the medical providers.

(b) If the employer files an appeal from an award of a judge of the compensation court and fails to obtain any reduction in the amount of such award, the Court of Appeals or Supreme Court shall allow the employee a reasonable attorney's fee to be taxed as costs against the employer for such appeal.

(c) If the employee files an appeal from an order of a judge of the compensation court denying an award and obtains an award or if the employee files an appeal from an award of a judge of the compensation court when the amount of compensation due is disputed and obtains an increase in the amount of such award, the Court of Appeals or Supreme Court may allow the employee a reasonable attorney's fee to be taxed as costs against the employer for such appeal.

(d) A reasonable attorney's fee allowed pursuant to this subsection shall not affect or diminish the amount of the award.

(3) When an attorney's fee is allowed pursuant to this section, there shall further be assessed against the employer an amount of interest on the final award obtained, computed from the date compensation was payable, as provided in section 48-119, until the date payment is made by the employer, at a rate equal to the rate of interest allowed per annum under section 45-104.01, as such rate may from time to time be adjusted by the Legislature. Interest shall apply only to those weekly compensation benefits awarded which have accrued as of the date payment is made by the employer. If the employer pays or tenders payment of compensation, the amount of compensation due is disputed, and the award obtained is greater than the amount paid or tendered by the employer, the assessment of interest shall be determined solely upon the difference between the amount awarded and the amount tendered or paid.

Source: Laws 1913, c. 198, § 25, p. 591; R.S.1913, § 3666; Laws 1917, c. 85, § 9 1/2, p. 208; Laws 1919, c. 91, § 4, p. 234; C.S.1922, § 3048; C.S.1929, § 48-125; Laws 1935, c. 57, § 20, p. 197; C.S.Supp.,1941, § 48-125; R.S.1943, § 48-125; Laws 1973, LB 169, § 1; Laws 1975, LB 187, § 2; Laws 1983, LB 18, § 1; Laws 1986, LB 811, § 43; Laws 1991, LB 732, § 110; Laws 1992, LB

360, § 14; Laws 1999, LB 216, § 6; Laws 2005, LB 13, § 5; Laws 2005, LB 238, § 4; Laws 2009, LB630, § 3; Laws 2011, LB151, § 1.

Operative date August 27, 2011.

(e) SETTLEMENT AND PAYMENT OF COMPENSATION

48-145.01 Employers; compensation required; penalty for failure to comply; injunction; Attorney General; duties.

(1) Any employer required to secure the payment of compensation under the Nebraska Workers' Compensation Act who willfully fails to secure the payment of such compensation shall be guilty of a Class I misdemeanor. If the employer is a corporation, limited liability company, or limited liability partnership, any officer, member, manager, partner, or employee who had authority to secure payment of compensation on behalf of the employer and willfully failed to do so shall be individually guilty of a Class I misdemeanor and shall be personally liable jointly and severally with such employer for any compensation which may accrue under the act in respect to any injury which may occur to any employee of such employer while it so fails to secure the payment of compensation as required by section 48-145.

(2) If an employer subject to the Nebraska Workers' Compensation Act fails to secure the payment of compensation as required by section 48-145, the employer may be enjoined from doing business in this state until the employer complies with subdivision (1) of section 48-145. If a temporary injunction is granted at the request of the State of Nebraska, no bond shall be required to make the injunction effective. The Nebraska Workers' Compensation Court or the district court may order an employer who willfully fails to secure the payment of compensation to pay a monetary penalty of not more than one thousand dollars for each violation. For purposes of this subsection, each day of continued failure to secure the payment of compensation as required by section 48-145 constitutes a separate violation. If the employer is a corporation, limited liability company, or limited liability partnership, any officer, member, manager, partner, or employee who had authority to secure payment of compensation on behalf of the employer and willfully failed to do so shall be personally liable jointly and severally with the employer for such monetary penalty. All penalties collected pursuant to this subsection shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(3) It shall be the duty of the Attorney General to act as attorney for the State of Nebraska for purposes of this section. The Attorney General may file a motion pursuant to section 48-162.03 for an order directing an employer to appear before a judge of the compensation court and show cause as to why a monetary penalty should not be assessed against the employer pursuant to subsection (2) of this section. The Attorney General shall be considered a party for purposes of such motion. The Attorney General may appear before the compensation court and present evidence of a violation or violations pursuant to subsection (2) of this section and the identity of the person who had authority to secure the payment of compensation. Appeal from an order of a judge of the

compensation court pursuant to subsection (2) of this section shall be in accordance with sections 48-182 and 48-185.

Source: Laws 1971, LB 572, § 18; Laws 1977, LB 40, § 272; Laws 1986, LB 811, § 68; Laws 1993, LB 121, § 283; Laws 1999, LB 331, § 1; Laws 2005, LB 13, § 9; Laws 2011, LB151, § 2.
Operative date August 27, 2011.

PART IV—NEBRASKA WORKERS' COMPENSATION COURT

48-153 Judges; number; term; qualifications; continuance in office; prohibition on holding other office or pursuing other occupation.

The Nebraska Workers' Compensation Court shall consist of seven judges. Judges holding office on August 30, 1981, shall continue in office until expiration of their respective terms of office and thereafter for an additional term which shall expire on the first Thursday after the first Tuesday in January immediately following the first general election at which they are retained in office after August 30, 1981. Judge of the Nebraska Workers' Compensation Court shall include any person appointed to the office of judge of the Nebraska Workmen's Compensation Court prior to July 17, 1986, pursuant to Article V, section 21, of the Nebraska Constitution. Any person serving as a judge of the Nebraska Workmen's Compensation Court immediately prior to July 17, 1986, shall be a judge of the Nebraska Workers' Compensation Court. The right of judges of the compensation court to continue in office shall be determined in the manner provided in sections 24-813 to 24-818, and the terms of office thereafter shall be for six years beginning on the first Thursday after the first Tuesday in January immediately following their retention at such election. In case of a vacancy occurring in the Nebraska Workers' Compensation Court, the same shall be filled in accordance with the provisions of Article V, section 21, of the Nebraska Constitution and the right of any judge so appointed to continue in office shall be determined in the manner provided in sections 24-813 to 24-818. All such judges shall hold office until their successors are appointed and qualified, or until death, voluntary resignation, or removal for cause. No judge of the compensation court shall, during his or her tenure in office as judge, hold any other office or position of profit, pursue any other business or avocation inconsistent or which interferes with his or her duties as such judge, or serve on or under any committee of any political party.

Source: Laws 1935, c. 57, § 2, p. 188; C.S.Supp.,1941, § 48-163; R.S. 1943, § 48-153; Laws 1945, c. 113, § 1, p. 363; Laws 1963, c. 288, § 1, p. 865; Laws 1965, c. 280, § 2, p. 806; Laws 1967, c. 292, § 2, p. 798; Laws 1975, LB 187, § 10; Laws 1978, LB 649, § 4; Laws 1979, LB 237, § 5; Laws 1981, LB 111, § 4; Laws 1983, LB 18, § 3; Laws 1986, LB 811, § 81; Laws 1988, LB 868, § 2; Laws 2011, LB151, § 3.
Operative date August 27, 2011.

48-155 Presiding judge; how chosen; term; powers and duties; acting presiding judge; selection; powers.

The judges of the Nebraska Workers' Compensation Court shall, on July 1 of every odd-numbered year by a majority vote, select one of their number as presiding judge for the next two years, subject to approval of the Supreme Court. The presiding judge may designate one of the other judges to act as

presiding judge in his or her stead whenever necessary during the disqualification, disability, or absence of the presiding judge. The presiding judge shall rule on all matters submitted to the compensation court except those arising in the course of hearings or as otherwise provided by law, assign or direct the assignment of the work of the compensation court to the several judges, clerk, and employees who support the judicial proceedings of the compensation court, preside at such meetings of the judges of the compensation court as may be necessary, and perform such other supervisory duties as the needs of the compensation court may require. During the disqualification, disability, or absence of the presiding judge, the acting presiding judge shall exercise all of the powers of the presiding judge.

Source: Laws 1935, c. 57, § 4, p. 189; C.S.Supp.,1941, § 48-165; R.S. 1943, § 48-155; Laws 1945, c. 113, § 2, p. 364; Laws 1959, c. 225, § 1, p. 791; Laws 1969, c. 396, § 1, p. 1386; Laws 1986, LB 811, § 84; Laws 1992, LB 360, § 15; Laws 2000, LB 1221, § 10; Laws 2005, LB 13, § 14; Laws 2011, LB151, § 4.
Operative date August 27, 2011.

48-156 Judges; quorum; powers.

A majority of the judges of the Nebraska Workers' Compensation Court shall constitute a quorum to adopt rules and regulations, as provided in sections 48-163 and 48-164, to transact business, except when the statute or a rule adopted by the compensation court permits one judge thereof to act. The act or decision of a majority of the judges constituting such quorum shall in all such cases be deemed the act or decision of the compensation court, except that a majority vote of all the judges shall be required to adopt rules and regulations.

Source: Laws 1935, c. 57, § 5, p. 190; C.S.Supp.,1941, § 48-166; R.S. 1943, § 48-156; Laws 1945, c. 113, § 3, p. 364; Laws 1965, c. 280, § 3, p. 807; Laws 1983, LB 18, § 4; Laws 1986, LB 811, § 86; Laws 1992, LB 360, § 16; Laws 1999, LB 216, § 13; Laws 2011, LB151, § 5.
Operative date August 27, 2011.

48-167 Compensation court; record.

The Nebraska Workers' Compensation Court shall keep and maintain a full and true record of all proceedings, documents, or papers ordered filed, rules and regulations, and decisions or orders.

Source: Laws 1917, c. 85, § 29, p. 221; C.S.1922, § 3080; C.S.1929, § 48-157; Laws 1935, c. 57, § 36, p. 205; C.S.Supp.,1941, § 48-157; R.S.1943, § 48-167; Laws 1945, c. 113, § 7, p. 366; Laws 1986, LB 811, § 100; Laws 2011, LB151, § 6.
Operative date May 25, 2011.

48-170 Compensation court; orders; awards; when binding.

Every order and award of the Nebraska Workers' Compensation Court shall be binding upon each party at interest unless an appeal has been filed with the compensation court within thirty days after the date of entry of the order or award.

Source: Laws 1917, c. 85, § 29, p. 222; C.S.1922, § 3080; C.S.1929, § 48-157; Laws 1935, c. 57, § 36, p. 206; C.S.Supp.,1941,

§ 48-157; R.S.1943, § 48-170; Laws 1967, c. 294, § 1, p. 800; Laws 1975, LB 187, § 12; Laws 1986, LB 811, § 103; Laws 1992, LB 360, § 19; Laws 1999, LB 43, § 24; Laws 2011, LB151, § 7. Operative date August 27, 2011.

48-175.01 Nonresident employer; service of process; manner of service; continuance; record.

(1)(a) The performance of work in the State of Nebraska (i) by an employer, who is a nonresident of the State of Nebraska, (ii) by any resident employer who becomes a nonresident of this state after the occurrence of an injury to an employee, or (iii) by any agent of such an employer shall be deemed an appointment by such employer of the clerk of the Nebraska Workers' Compensation Court as a true and lawful attorney and agent upon whom may be served all legal processes in any action or proceeding against him or her, arising out of or under the provisions of the Nebraska Workers' Compensation Act, and such performance of work shall be a signification of the employer's agreement that any such process, which is so served in any action against him or her, shall be of the same legal force and validity as if served upon him or her personally within this state. The appointment of agent, thus made, shall not be revocable by death but shall continue and be binding upon the executor or administrator of such employer.

(b) For purposes of this section, performance of work shall include, but not be limited to, situations in which (i) the injury or injury resulting in death occurred within this state, (ii) the employment was principally localized within this state, or (iii) the contract of hire was made within this state.

(2) Service of such process, as referred to in subsection (1) of this section, shall be made by serving a copy thereof upon the clerk of the Nebraska Workers' Compensation Court, personally in his or her office or upon someone who, previous to such service, has been designated in writing by the clerk of the Nebraska Workers' Compensation Court as the person or one of the persons with whom such copy may be left for such service upon the clerk of the Nebraska Workers' Compensation Court, and such service shall be sufficient service upon the employer. In making such service, a copy of the petition and a copy of the process shall, within ten days after the date of service, be sent by the clerk of the Nebraska Workers' Compensation Court, or such person acting for him or her in his or her office, to the defendant by registered or certified mail addressed to the defendant's last-known address, and the defendant's return receipt and affidavit of the clerk of the Nebraska Workers' Compensation Court, or such person in his or her office acting for him or her, of compliance therewith shall be appended to such petition and filed in the office of the clerk of the Nebraska Workers' Compensation Court. The date of the mailing and the date of the receipt of the return card aforesaid shall be properly endorsed on such petition and filed by the clerk of the Nebraska Workers' Compensation Court, or someone acting for him or her.

(3) The Nebraska Workers' Compensation Court shall, on its own motion, order such continuance of answer day and trial date, as may to the compensation court seem necessary to afford the defendant reasonable opportunity to plead and to defend. No such continuance shall be for more than ninety days except for good cause shown.

(4) It shall be the duty of the clerk of the Nebraska Workers' Compensation Court to keep a record of all processes so served, in accordance with subsections (1) and (2) of this section, which record shall show the date of such service, and to so arrange and index such record as to make the same readily accessible and convenient for inspection.

Source: Laws 1957, c. 202, § 2, p. 708; Laws 1973, LB 150, § 2; Laws 1986, LB 811, § 108; Laws 2011, LB151, § 8.
Operative date May 25, 2011.

48-177 Hearing; judge; place; dismissal; procedure; manner of conducting hearings.

(1) At the time a petition or motion is filed, one of the judges of the Nebraska Workers' Compensation Court shall be assigned to hear the cause. It shall be heard in the county in which the accident occurred, except as otherwise provided in section 25-412.02 and except that, upon the written stipulation of the parties, filed with the compensation court at least fourteen days before the date of hearing, the cause may be heard in any other county in the state.

(2) Any such cause may be dismissed without prejudice to a future action (a) by the plaintiff, if represented by legal counsel, before the final submission of the case to the compensation court or (b) by the compensation court upon a stipulation of the parties that a dispute between the parties no longer exists.

(3) Notwithstanding subsection (1) of this section, all nonevidentiary hearings, and any evidentiary hearings approved by the compensation court and by stipulation of the parties, may be heard by the court telephonically or by videoconferencing or similar equipment at any location within the state as ordered by the court and in a manner that ensures the preservation of an accurate record. Hearings conducted in this manner shall be consistent with the public's access to the courts.

Source: Laws 1935, c. 57, §§ 13, 15, pp. 193, 195; C.S.Supp.,1941, §§ 48-174, 48-176; R.S.1943, § 48-177; Laws 1945, c. 113, § 8, p. 366; Laws 1949, c. 161, § 5, p. 413; Laws 1975, LB 97, § 8; Laws 1978, LB 649, § 8; Laws 1986, LB 811, § 109; Laws 1997, LB 128, § 6; Laws 2005, LB 13, § 29; Laws 2011, LB151, § 9.
Operative date August 27, 2011.

48-178 Hearing; judgment; when conclusive; record of proceedings; costs; payment.

The judge shall make such findings and orders, awards, or judgments as the Nebraska Workers' Compensation Court or judge is authorized by law to make. Such findings, orders, awards, and judgments shall be signed by the judge before whom such proceedings were had. When proceedings are had before a judge of the compensation court, his or her findings, orders, awards, and judgments shall be conclusive upon all parties at interest unless reversed or modified upon appeal as hereinafter provided. A shorthand record or tape recording shall be made of all testimony and evidence submitted in such proceedings. The compensation court or judge thereof, at the party's expense, may appoint a court reporter or may direct a party to furnish a court reporter to be present and report or, by adequate mechanical means, to record and, if necessary, transcribe proceedings of any hearing. The charges for attendance shall be paid initially to the reporter by the employer or, if insured, by the

employer's workers' compensation insurer. The charges shall be taxed as costs and the party initially paying the expense shall be reimbursed by the party or parties taxed with the costs. The compensation court or judge thereof may award and tax such costs and apportion the same between the parties or may order the compensation court to pay such costs as in its discretion it may think right and equitable. If the expense is unpaid, the expense shall be paid by the party or parties taxed with the costs or may be paid by the compensation court. The reporter shall faithfully and accurately report or record the proceedings.

Source: Laws 1935, c. 57, § 13, p. 193; C.S.Supp.,1941, § 48-174; R.S. 1943, § 48-178; Laws 1945, c. 113, § 9, p. 367; Laws 1986, LB 811, § 110; Laws 1992, LB 360, § 20; Laws 2005, LB 238, § 14; Laws 2011, LB151, § 10.
Operative date August 27, 2011.

48-179 Repealed. Laws 2011, LB 151, § 20.

Operative date August 27, 2011.

48-180 Findings, order, award, or judgment; modification; effect.

The Nebraska Workers' Compensation Court may, on its own motion or on the motion of any party, modify or change its findings, order, award, or judgment at any time before appeal and within fourteen days after the date of such findings, order, award, or judgment. The time for appeal shall not be lengthened because of the modification or change unless the correction substantially changes the result of the award.

Source: Laws 1935, c. 57, § 13, p. 193; C.S.Supp.,1941, § 48-174; R.S. 1943, § 48-180; Laws 1986, LB 811, § 113; Laws 1992, LB 360, § 22; Laws 2011, LB151, § 11.
Operative date August 27, 2011.

48-181 Repealed. Laws 2011, LB 7, § 1.

48-182 Notice of appeal; bill of exceptions; requirements; waiver of payment; when; extension of time; filing of order.

In case either party at interest refuses to accept any final order of the Nebraska Workers' Compensation Court, such party may, within thirty days thereafter, file with the compensation court a notice of appeal and within thirty days after the date of such final order file with the compensation court a praecipe for a bill of exceptions. Within two months from the date of the filing of the praecipe, the court reporter or transcriber shall deliver to the clerk of the Nebraska Workers' Compensation Court a bill of exceptions which shall include a transcribed copy of the testimony and the evidence taken before the compensation court at the hearing, which transcribed copy when certified to by the person who made or transcribed the record shall constitute the bill of exceptions. The transcript and bill of exceptions shall be paid for by the party ordering the same, except that upon the affidavit of any claimant for workers' compensation, filed with or before the praecipe, that he or she is without means with which to pay and unable to secure such means, payment may, in the discretion of the compensation court, be waived as to such claimant and the bill of exceptions shall be paid for by the compensation court in the same manner as other compensation court expenses.

The procedure for preparation, settlement, signature, allowance, certification, filing, and amendment of a bill of exceptions shall be regulated and governed by rules of practice prescribed by the Supreme Court except as otherwise provided in this section.

When a bill of exceptions has been ordered according to law and the court reporter or transcriber fails to prepare and file the bill of exceptions with the clerk of the Nebraska Workers' Compensation Court within two months from the date of the filing of the praecipe, the Supreme Court may, on the motion of any party accompanied by a proper showing, grant additional time for the preparation and filing of the bill of exceptions under such conditions as the court may require. Applications for such an extension of time shall be regulated and governed by rules of practice prescribed by the Supreme Court. A copy of such order granting an extension of time shall be filed with the Nebraska Workers' Compensation Court by the party requesting such extension within five days after the date of such order.

Source: Laws 1935, c. 57, §§ 13, 15, pp. 194, 195; C.S.Supp.,1941, §§ 48-174, 48-176; R.S.1943, § 48-182; Laws 1967, c. 294, § 2, p. 801; Laws 1971, LB 252, § 1; Laws 1973, LB 192, § 1; Laws 1975, LB 187, § 13; Laws 1986, LB 811, § 114; Laws 1986, LB 529, § 51; Laws 1991, LB 732, § 111; Laws 1992, LB 360, § 23; Laws 2011, LB151, § 12.
Operative date August 27, 2011.

48-185 Appeal; procedure; judgment by Nebraska Workers' Compensation Court; effect; grounds for modification or reversal.

Any appeal from the judgment of the Nebraska Workers' Compensation Court shall be prosecuted and the procedure, including the designation of parties, handling of costs and the amounts thereof, filing of briefs, certifying the opinion of the Supreme Court or decision of the Court of Appeals to the compensation court, handling of the bill of exceptions, and issuance of the mandate, shall be in accordance with the general laws of the state and procedures regulating appeals in actions at law from the district courts except as otherwise provided in section 48-182 and this section. The proceedings to obtain a reversal, vacation, or modification of judgments, awards, or final orders made by the compensation court shall be by filing in the office of the clerk of the Nebraska Workers' Compensation Court, within thirty days after the entry of such judgment, decree, or final order, a notice of appeal signed by the appellant or his or her attorney of record. No motion for a new trial shall be filed. An appeal shall be deemed perfected and the appellate court shall have jurisdiction of the cause when such notice of appeal shall have been filed in the office of the clerk of the Nebraska Workers' Compensation Court, and after being so perfected no appeal shall be dismissed without notice, and no step other than the filing of such notice of appeal shall be deemed jurisdictional. The clerk of the Nebraska Workers' Compensation Court shall forthwith forward a certified copy of such notice of appeal to the Clerk of the Supreme Court, whereupon the Clerk of the Supreme Court shall forthwith docket such appeal. Within thirty days after the date of filing of notice of appeal, the clerk of the Nebraska Workers' Compensation Court shall prepare and file with the Clerk of the Supreme Court a transcript certified as a true copy of the proceedings contained therein. The transcript shall contain the judgment, decree, or final order sought to be reversed, vacated, or modified and all pleadings filed with such clerk. Neither

the form nor the substance of such transcript shall affect the jurisdiction of the appellate court. Such appeal shall be perfected within thirty days after the entry of judgment by the compensation court, the cause shall be advanced for argument before the appellate court, and the appellate court shall render its judgment and write an opinion, if any, in such cases as speedily as possible. The judgment made by the compensation court shall have the same force and effect as a jury verdict in a civil case. A judgment, order, or award of the compensation court may be modified, reversed, or set aside only upon the grounds that (1) the compensation court acted without or in excess of its powers, (2) the judgment, order, or award was procured by fraud, (3) there is not sufficient competent evidence in the record to warrant the making of the order, judgment, or award, or (4) the findings of fact by the compensation court do not support the order or award.

Source: Laws 1935, c. 57, § 13, p. 195; C.S.Supp.,1941, § 48-174; R.S. 1943, § 48-185; Laws 1953, c. 165, § 1, p. 517; Laws 1957, c. 207, § 1, p. 726; Laws 1975, LB 187, § 14; Laws 1986, LB 811, § 115; Laws 1986, LB 529, § 52; Laws 1991, LB 732, § 112; Laws 1992, LB 360, § 24; Laws 1999, LB 43, § 25; Laws 2011, LB151, § 13.

Operative date August 27, 2011.

48-191 Time; how computed.

Notwithstanding any more general or special law respecting the subject matter hereof, whenever the last day of the period within which a party to an action may file any document or pleading with the Nebraska Workers' Compensation Court, or take any other action with respect to a claim for compensation, falls on a Saturday, a Sunday, any day on which the compensation court is closed by order of the Chief Justice of the Supreme Court, or any day declared by statutory enactment or proclamation of the Governor to be a holiday, the next following day, which is not a Saturday, a Sunday, a day on which the compensation court is closed by order of the Chief Justice of the Supreme Court, or a day declared by such enactment or proclamation to be a holiday, shall be deemed to be the last day for filing any such document or pleading or taking any such other action with respect to a claim for compensation.

Source: Laws 1955, c. 187, § 1, p. 535; Laws 1986, LB 811, § 120; Laws 2003, LB 760, § 16; Laws 2011, LB151, § 14.

Operative date August 27, 2011.

PART V—CLAIMS AGAINST THE STATE

48-1,103 Workers' Compensation Claims Revolving Fund; established; deficiency; notify Legislature; investment.

There is hereby established in the state treasury a Workers' Compensation Claims Revolving Fund, to be administered by the Risk Manager, from which all workers' compensation costs, including prevention and administration, shall be paid. The fund may also be used to pay the costs of administering the Risk Management Program. The fund shall receive deposits from assessments against state agencies charged by the Risk Manager to pay for workers' compensation costs. When the amount of money in the Workers' Compensation Claims Revolving Fund is not sufficient to pay any awards or judgments under sections 48-192 to 48-1,109, the Risk Manager shall immediately advise the

Legislature and request an emergency appropriation to satisfy such awards and judgments. Any money in the Workers' Compensation Claims Revolving Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1971, LB 390, § 12; Laws 1981, LB 273, § 12; Laws 1986, LB 811, § 130; Laws 1994, LB 1211, § 3; Laws 1995, LB 7, § 45; Laws 2011, LB378, § 22.
Effective date May 18, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

PART VI—NAME OF ACT AND APPLICABILITY OF CHANGES

48-1,110 Act, how cited.

Sections 48-101 to 48-1,117 shall be known and may be cited as the Nebraska Workers' Compensation Act.

Source: Laws 1986, LB 811, § 136; Laws 1986, LB 1036, § 2; Laws 1990, LB 313, § 4; Laws 1992, LB 360, § 26; Laws 1993, LB 757, § 30; Laws 1997, LB 128, § 7; Laws 1997, LB 474, § 7; Laws 2005, LB 13, § 32; Laws 2007, LB588, § 5; Laws 2010, LB780, § 3; Laws 2011, LB151, § 16.
Operative date August 27, 2011.

48-1,112 Laws 2011, LB151, changes; applicability.

Cases pending before the Nebraska Workers' Compensation Court on August 27, 2011, in which a hearing on the merits has been held prior to such date shall not be affected by the changes made in sections 48-125, 48-145.01, 48-155, 48-156, 48-170, 48-178, 48-180, 48-182, and 48-185 by Laws 2011, LB151. Any cause of action not in suit on August 27, 2011, and any cause of action in suit in which a hearing on the merits has not been held prior to such date shall follow the procedures in such sections as amended by Laws 2011, LB151.

Source: Laws 2011, LB151, § 15.
Operative date August 27, 2011.

ARTICLE 6

EMPLOYMENT SECURITY

Section

- 48-604. Employment, defined.
- 48-622.01. State Unemployment Insurance Trust Fund; created; use; investment; commissioner; powers and duties; cessation of state unemployment insurance tax; effect.
- 48-631. Claims; redetermination; time; notice; appeal.

48-604 Employment, defined.

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

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

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

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

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

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

(c)(i) Services of an individual who is a citizen of the United States, performed outside the United States except in Canada in the employ of an American employer, other than service which is deemed employment under subdivisions (2) and (3)(a) and (b) of this section or the parallel provisions of another state's law, if:

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

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

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

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

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

(4)(a) Service performed in the employ of this state or any political subdivision thereof or any instrumentality of any one or more of the foregoing or any instrumentality which is wholly owned by this state and one or more other states or political subdivisions, or any service performed in the employ of any instrumentality of this state or of any political subdivision thereof and one or more other states or political subdivisions if such service is excluded from employment as defined in the Federal Unemployment Tax Act, as amended, solely by reason of 26 U.S.C. 3306(c)(7), and is not otherwise excluded under this section;

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

(c)(i) Service performed by an individual in agricultural labor as defined in subdivision (6)(a) of this section when such service is performed for a person who during any calendar quarter in either the current or preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor, or for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor ten or more individuals, regardless of whether they were employed at the same moment of time.

(ii) For purposes of this subdivision:

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

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

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

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

(5) Services performed by an individual for wages, including wages received under a contract of hire, shall be deemed to be employment unless it is shown to the satisfaction of the commissioner that (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact, (b) such service is either outside the usual course of the business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (c) such individual is customarily engaged in an independently established trade, occupation, profession, or business. The provisions of this subdivision are not intended to be a codification of the common law and shall be considered complete as written;

(6) The term employment shall not include:

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

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

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

(iii) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the federal Agricultural Marketing Act, as amended, 12 U.S.C. 1141j, in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(iv)(A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator produced more than one-half of the commodity with respect to which such service is performed, or (B) in the employ of a group of operators of farms, or a cooperative organization of which such operators are members, in the performance of service described in subdivision (A) of this subdivision, but only if such operators produced more than one-half of the commodity with respect to which such service is performed. Subdivisions (A) and (B) of this

subdivision shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

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

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

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

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

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

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

(f) Service performed in the employ of this state or any political subdivision thereof or any instrumentality of any one or more of the foregoing if such services are performed by an individual in the exercise of his or her duties: (i) As an elected official; (ii) as a member of the legislative body or a member of the judiciary of a state or political subdivision thereof; (iii) as a member of the Army National Guard or Air National Guard; (iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; (v) in a position which, under or pursuant to the state law, is

designated a major nontenured policymaking or advisory position, or a policymaking or advisory position, the performance of the duties of which ordinarily does not require more than eight hours per week; or (vi) as an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than one thousand dollars;

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

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

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

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

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

(v) By an inmate of a custodial or penal institution;

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

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

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

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

who has completed a four-year course in a medical school chartered or approved pursuant to state law;

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

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

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

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

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

(q) Service performed for a motor carrier, as defined in 49 U.S.C. 13102 or section 75-302, as amended, by a lessor leasing one or more motor vehicles driven by the lessor or one or more drivers provided by the lessor under a lease, with the motor carrier as lessee, executed pursuant to 49 C.F.R. part 376, Title 291, Chapter 3, as amended, of the rules and regulations of the Public Service Commission, or the rules and regulations of the Division of Motor Carrier Services. This shall not preclude the determination of an employment relationship between the lessor and any personnel provided by the lessor in the conduct of the service performed for the lessee;

(r) Service performed by an individual for a business engaged in compilation of marketing data bases if such service consists only of the processing of data and is performed in the residence of the individual;

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

(t) Service performed by a direct seller if:

(i) Such person is engaged in sales primarily in person and is:

(A) Engaged in the trade or business of selling or soliciting the sale of consumer products or services to any buyer on a buy-sell basis or a deposit-

commission basis for resale, by the buyer or any other person, in the home or otherwise than in a permanent retail establishment;

(B) Engaged in the trade or business of selling or soliciting the sale of consumer products or services in the home or otherwise than in a permanent retail establishment; or

(C) Engaged in the trade or business of the delivering or distribution of newspapers or shopping news, including any services directly related to such trade or business;

(ii) Substantially all the remuneration, whether or not paid in cash, for the performance of the services described in subdivision (t)(i) of this subdivision is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and

(iii) The services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and the contract provides that the person will not be treated as an employee for federal and state tax purposes. Sales by a person whose business is conducted primarily by telephone or any other form of electronic sales or solicitation is not service performed by a direct seller under this subdivision;

(u) Service performed by an individual who is a participant in the National and Community Service State Grant Program, also known as AmeriCorps, because a participant is not considered an employee of the organization receiving assistance under the national service laws through which the participant is engaging in service pursuant to 42 U.S.C. 12511(30)(B); and

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

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

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

Source: Laws 1937, c. 108, § 2, p. 372; Laws 1939, c. 56, § 1, p. 230; Laws 1940, Spec. Sess., c. 2, § 1, p. 54; Laws 1941, c. 94, § 1, p. 375; C.S.Supp.,1941, § 48-702; R.S.1943, § 48-604; Laws 1945, c. 115, § 1, p. 376; Laws 1947, c. 175, § 2, p. 566; Laws 1953, c.

167, § 3, p. 523; Laws 1959, c. 228, § 1, p. 795; Laws 1961, c. 238, § 2, p. 704; Laws 1971, LB 651, § 3; Laws 1972, LB 1392, § 2; Laws 1977, LB 509, § 3; Laws 1979, LB 581, § 2; Laws 1983, LB 248, § 2; Laws 1983, LB 319, § 1; Laws 1984, LB 745, § 1; Laws 1985, LB 339, § 4; Laws 1986, LB 799, § 1; Laws 1993, LB 121, § 291; Laws 1994, LB 1337, § 3; Laws 1995, LB 424, § 1; Laws 1995, LB 574, § 52; Laws 1997, LB 79, § 1; Laws 1997, LB 129, § 1; Laws 1997, LB 130, § 1; Laws 1999, LB 168, § 2; Laws 2000, LB 953, § 1; Laws 2001, LB 387, § 1; Laws 2003, LB 199, § 2; Laws 2011, LB261, § 1.

Effective date August 27, 2011.

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

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

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

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

(4) Upon certification from the commissioner that disallowed costs by the United States Department of Labor for FY2007-08, FY2008-09, and FY2009-10, or any one of them, have been reduced to an amount certain by way of settlement or final judgment, the State Treasurer shall transfer the amount of such settlement or final judgment from the State Unemployment Insurance Trust Fund to the Employment Security Special Contingent Fund. The total amount of such transfers shall not exceed \$2,816,345. The amount of the

reappropriation of Federal Funds appropriated in FY2004-05 under section 903(d) of the federal Social Security Act shall be reduced by the amount transferred.

Source: Laws 1994, LB 1337, § 4; Laws 1995, LB 7, § 48; Laws 2009, LB631, § 2; Laws 2011, LB378, § 23.
Effective date May 18, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

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

The deputy may reconsider a determination whenever he or she finds that an error in computation or identity has occurred in connection therewith, or that wages of the claimant pertinent to such determination, but not considered in connection therewith, have been newly discovered, or that benefits have been allowed or denied or the amount of benefits fixed on the basis of misrepresentations of fact, but no such redetermination shall be made after two years from the date of the original determination. Notice of any such redetermination shall be promptly given to the parties entitled to notice of the original determination, in the manner prescribed in section 48-630 with respect to notice of an original determination. If the amount of benefits is increased or decreased upon such redetermination, an appeal therefrom solely with respect to the matters involved in such increase or decrease may be filed in the manner and subject to the limitations provided in section 48-634. Subject to the same limitations and for the same reasons, the Commissioner of Labor may reconsider the determination, in any case in which the final decision has been rendered by an appeal tribunal or a court, and may apply to the tribunal or court which rendered such final decision to issue a revised decision. In the event that an appeal involving an original determination is pending as of the date a redetermination thereof is issued, such appeal, unless withdrawn, shall be treated as an appeal from such redetermination.

Source: Laws 1941, c. 94, § 4, p. 385; C.S.Supp.,1941, § 48-706; R.S. 1943, § 48-631; Laws 1961, c. 238, § 5, p. 711; Laws 2011, LB11, § 1.
Effective date August 27, 2011.

ARTICLE 8

COMMISSION OF INDUSTRIAL RELATIONS

Section	
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Section

- 48-816. Preliminary proceedings; commission; powers; duties; collective bargaining; posttrial conference.
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- 48-818. Commission; findings; order; powers; duties; orders authorized; modification.
- 48-818.01. School districts, educational service units, and community colleges; collective bargaining; timelines; procedure; resolution officer; powers; duties; action filed with commission; when; collective-bargaining agreement; contents.
- 48-818.02. School district, educational service unit, or community college; total compensation; considerations.
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- 48-824. Labor negotiations; prohibited practices.
- 48-838. Collective bargaining; questions of representation; elections; nonmember employee duty to reimburse; when.
- 48-839. Changes made by Laws 2011, LB397; applicability.

48-801 Terms, defined.

As used in the Industrial Relations Act, unless the context otherwise requires:

- (1) Certificated employee has the same meaning as in section 79-824;
- (2) Commission means the Commission of Industrial Relations;
- (3) Commissioner means a member of the commission;
- (4) Governmental service means all services performed under employment by the State of Nebraska or any political or governmental subdivision thereof, including public corporations, municipalities, and public utilities;
- (5) Industrial dispute includes any controversy between public employers and public employees concerning terms, tenure, or conditions of employment; the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment; or refusal to discuss terms or conditions of employment;
- (6) Instructional employee means an employee of a community college who provides direct instruction to students;
- (7) Labor organization means any organization of any kind or any agency or employee representation committee or plan, in which public employees participate and which exists for the purpose, in whole or in part, of dealing with public employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;
- (8) Metropolitan statistical area means a metropolitan statistical area as defined by the United States Office of Management and Budget;
- (9) Municipality means any city or village in Nebraska;
- (10) Noncertificated and noninstructional school employee means a school district, educational service unit, or community college employee who is not a certificated or instructional employee;
- (11) Public employee includes any person employed by a public employer;
- (12) Public employer means the State of Nebraska or any political or governmental subdivision of the State of Nebraska except the Nebraska National Guard or state militia;
- (13) Public utility includes any person or governmental entity, including any public corporation, public power district, or public power and irrigation

district, which carries on an intrastate business in this state and over which the government of the United States has not assumed exclusive regulation and control, that furnishes transportation for hire, telephone service, telegraph service, electric light, heat, or power service, gas for heating or illuminating, whether natural or artificial, or water service, or any one or more thereof; and

(14) Supervisor means any public employee having authority, in the interest of the public employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees, or responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with such action the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

Source: Laws 1947, c. 178, § 1, p. 586; Laws 1967, c. 303, § 1, p. 823; Laws 1967, c. 304, § 1, p. 826; Laws 1969, c. 407, § 1, p. 1405; Laws 1972, LB 1228, § 1; Laws 1985, LB 213, § 1; Laws 1986, LB 809, § 2; Laws 1993, LB 121, § 294; Laws 2007, LB472, § 1; Laws 2011, LB397, § 1.

Operative date October 1, 2011.

48-801.01 Act, how cited.

Sections 48-801 to 48-839 shall be known and may be cited as the Industrial Relations Act.

Source: Laws 1986, LB 809, § 1; Laws 1995, LB 365, § 1; Laws 1995, LB 382, § 3; Laws 2011, LB397, § 2.

Operative date October 1, 2011.

48-802 Public policy.

To make operative the provisions of section 9, Article XV, of the Constitution of Nebraska, the public policy of the State of Nebraska is hereby declared to be as follows:

(1) The continuous, uninterrupted and proper functioning and operation of the governmental service including governmental service in a proprietary capacity and of public utilities engaged in the business of furnishing transportation for hire, telephone service, telegraph service, electric light, heat, or power service, gas for heating or illuminating, whether natural or artificial, or water service, or any one or more of them, to the people of Nebraska are hereby declared to be essential to their welfare, health, and safety. It is contrary to the public policy of the state to permit any substantial impairment or suspension of the operation of governmental service, including governmental service in a proprietary capacity or any such utility by reason of industrial disputes therein. It is the duty of the State of Nebraska to exercise all available means and every power at its command to prevent the same so as to protect its citizens from any dangers, perils, calamities, or catastrophes which would result therefrom. It is therefor further declared that governmental service, including governmental service in a proprietary capacity, and the service of such public utilities are clothed with a vital public interest and to protect the same it is necessary that the relations between the public employers and public employees in such industries be regulated by the State of Nebraska to the extent and in the manner provided in the Industrial Relations Act;

(2) No right shall exist in any natural or corporate person or group of persons to hinder, delay, limit, or suspend the continuity or efficiency of any governmental service or governmental service in a proprietary capacity of this state, either by strike, lockout, or other means; and

(3) No right shall exist in any natural or corporate person or group of persons to hinder, delay, limit, or suspend the continuity or efficiency of any public utility service, either by strike, lockout, or other means.

Source: Laws 1947, c. 178, § 2, p. 587; Laws 2011, LB397, § 3.
Operative date October 1, 2011.

48-804 Commissioners, appointment, term; vacancy; removal; presiding officer; selection; duties; quorum; applicability of law.

(1) The Commission of Industrial Relations shall be composed of five commissioners appointed by the Governor, with the advice and consent of the Legislature. The commissioners shall be representative of the public. Each commissioner shall be appointed and hold office for a term of six years and until a successor has qualified. In case of a vacancy, the Governor shall appoint a successor to fill the vacancy for the unexpired term.

(2) Any commissioner may be removed by the Governor for the same causes as a judge of the district court may be removed.

(3) The commissioners shall, on July 1 of every odd-numbered year by a majority vote, select one of their number as presiding officer for the next two years, who shall preside at all hearings by the commission en banc, and shall assign the work of the commission to the several commissioners and perform such other supervisory duties as the needs of the commission may require. A majority of the commissioners shall constitute a quorum to transact business. The act or decision of any three of the commissioners shall in all cases be deemed the act or decision of the commission. Three commissioners shall preside over and decide all industrial disputes where the matter at issue is the comparability of wages, benefits, and terms and conditions of employment.

(4) The commission shall not be subject to the Administrative Procedure Act.

Source: Laws 1947, c. 178, § 4, p. 588; Laws 1969, c. 407, § 2, p. 1407; Laws 1974, LB 819, § 1; Laws 1979, LB 444, § 2; Laws 2007, LB472, § 2; Laws 2011, LB397, § 4.
Operative date October 1, 2011.

Cross References

Administrative Procedure Act, see section 84-920.

48-809 Commission; powers.

The commission may adopt all reasonable and proper regulations to govern its proceedings, the filing of pleadings, the issuance and service of process, and the issuance of subpoenas for attendance of witnesses, may administer oaths, and may regulate the mode and manner of all its investigations, inspections, hearings, and trials. Except as otherwise provided in the Industrial Relations Act or the State Employees Collective Bargaining Act, in the taking of evidence, the rules of evidence, prevailing in the trial of civil cases in Nebraska, shall be observed by the commission.

Source: Laws 1947, c. 178, § 9, p. 590; Laws 2011, LB397, § 5.
Operative date October 1, 2011.

Cross References

State Employees Collective Bargaining Act, see section 81-1369.

48-811 Commission; filing of petition; effect; change in employment status, wages, or terms and conditions of employment; motion; hearing; order authorized; exception.

(1) Except as provided in the State Employees Collective Bargaining Act, any public employer, public employee, or labor organization, or the Attorney General of Nebraska on his or her own initiative or by order of the Governor, when any industrial dispute exists between parties as set forth in section 48-810, may file a petition with the commission invoking its jurisdiction. No adverse action by threat or harassment shall be taken against any public employee because of any petition filing by such employee, and the employment status of such employee shall not be altered in any way pending disposition of the petition by the commission except as provided in subsection (2) of this section.

(2) If a change in the employment status or in wages or terms and conditions of employment is necessary, a motion by either party or by the parties jointly may be presented to the commission at that time and if the commission finds, based on a showing of evidence at a hearing thereon, that the requested change is both reasonable and necessary to serve an important public interest and that the employer has not considered a change in the employment status, wages, or terms and conditions of employment as a policy alternative on an equal basis with other policy alternatives to achieve budgetary savings, the commission may order that the requested change be allowed pending final resolution of the pending industrial dispute.

(3) Subsection (2) of this section does not apply to public employers subject to the State Employees Collective Bargaining Act.

Source: Laws 1947, c. 178, § 11, p. 590; Laws 1969, c. 407, § 4, p. 1408; Laws 1987, LB 661, § 24; Laws 2011, LB397, § 6.
Operative date October 1, 2011.

Cross References

State Employees Collective Bargaining Act, see section 81-1369.

48-811.02 Repealed. Laws 2011, LB 397, § 35.

Operative date July 1, 2012.

48-813 Commission; notice of pendency of proceedings; service; response; filing; final offer; included with petition; included with answers; procedure; exception; hearing; waiver of notice.

(1) Whenever the jurisdiction of the commission is invoked, notice of the pendency of the proceedings shall be given in such manner as the commission shall provide for serving a copy of the petition and notice of filing upon the adverse party. A public employer or labor organization may be served by sending a copy of the petition filed to institute the proceedings and a notice of filing, which shall show the filing date, in the manner provided for service of a summons in a civil action. Such employer or labor organization shall have twenty days after receipt of the petition and notice of filing in which to serve and file its response.

(2) The petitioner shall include its final offer, as voted by the petitioner, the governing body, or the bargaining unit or as considered pursuant to a ratification process, with its petition. The respondent shall include its final offer, as voted by the respondent, the governing body, or the bargaining unit or as considered pursuant to a ratification process, with its answer. Within fourteen days after filing of the answer, the parties shall vote to accept or reject or consider pursuant to a ratification process the other's final offer and file a subsequent pleading indicating the result. The vote concerning the governing body's final offer shall be published on its agenda and held where the public may attend. The commission shall not enter a final order on wages or conditions of employment unless both parties have rejected the others' final offer. This subsection does not apply to public employers subject to the State Employees Collective Bargaining Act.

(3) When a petition is filed to resolve an industrial dispute, a hearing shall mandatorily be held within sixty days from the date of filing thereof. A recommended decision and order in cases arising under section 48-818, an order in cases not arising under section 48-818, and findings if required, shall mandatorily be made and entered thereon within thirty days after such hearing. The time requirements specified in this section may be extended for good cause shown on the record or by agreement of the parties. Failure to meet such mandatory time requirements shall not deprive the commission of jurisdiction. However, if the commission fails to hold a hearing on the industrial dispute within sixty days of filing or has failed to make a recommended decision and order, and findings of fact if required, in cases arising under section 48-818, or an order, and findings of fact if required, in cases not arising under section 48-818, and findings, within thirty days after the hearing and good cause is not shown on the record or the parties to the dispute have not jointly stipulated to the enlargement of the time limit, then either party may file an action for mandamus in the district court for Lancaster County to require the commission to hold the hearing or to render its order and findings if required. For purposes of this section, the hearing on an industrial dispute shall not be deemed completed until the record is prepared and counsel briefs have been submitted, if such are required by the commission.

(4) Any party, including the State of Nebraska or any of its employer-representatives as defined in section 81-1371 or any political subdivision of the State of Nebraska, may waive such notice and may enter a voluntary appearance in any matter in the commission. The giving of such notice in such manner shall subject the public employers, the labor organizations, and the persons therein to the jurisdiction of the commission.

Source: Laws 1947, c. 178, § 13, p. 590; Laws 1972, LB 1228, § 2; Laws 1974, LB 819, § 7; Laws 1983, LB 447, § 72; Laws 1984, LB 832, § 1; Laws 1987, LB 661, § 25; Laws 2011, LB397, § 7.
Operative date October 1, 2011.

Cross References

State Employees Collective Bargaining Act, see section 81-1369.

48-816 Preliminary proceedings; commission; powers; duties; collective bargaining; posttrial conference.

(1)(a) After a petition has been filed under section 48-811, the clerk shall immediately notify the commission which shall promptly take such preliminary

proceedings as may be necessary to ensure prompt hearing and speedy adjudication of the industrial dispute. The commission may, upon its own initiative or upon request of a party to the dispute, make such temporary findings and orders as necessary to preserve and protect the status of the parties, property, and public interest involved pending final determination of the issues. In the event of an industrial dispute between a public employer and a public employee or a labor organization when such public employer and public employee or labor organization have failed or refused to bargain in good faith concerning the matters in dispute, the commission may order such bargaining to begin or resume, as the case may be, and may make any such order or orders as appropriate to govern the situation pending such bargaining. The commission shall require good faith bargaining concerning the terms and conditions of employment of its employees by any public employer. Upon the request of either party, the commission shall require the parties to an industrial dispute to submit to mediation or factfinding. Before July 1, 2012, upon the request of both parties, a special master may be appointed if the parties are within the provisions of section 48-811.02. On and after July 1, 2012, upon the request of either party, a resolution officer may be appointed if the parties are within the provisions of section 48-818.01. The commission shall appoint mediators, factfinders, or before July 1, 2012, special masters and on and after such date resolution officers for such purpose. Such orders for bargaining, mediation, factfinding, or before July 1, 2012, a special master proceeding and on and after such date a resolution officer proceeding may be issued at any time during the pendency of an action to resolve an industrial dispute. To bargain in good faith means the performance of the mutual obligation of the public employer and the labor organization to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment or any question arising thereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

(b) In negotiations between a municipality, municipally owned utility, or county and a labor organization, staffing related to issues of safety shall be mandatory subjects of bargaining and staffing relating to scheduling work, such as daily staffing, staffing by rank, and overall staffing requirements, shall be permissive subjects of bargaining.

(2) Except as provided in the State Employees Collective Bargaining Act, public employers may recognize employee organizations for the purpose of negotiating collectively in the determination of and administration of grievances arising under the terms and conditions of employment of their public employees as provided in the Industrial Relations Act and may negotiate and enter into written agreements with such employee organizations in determining such terms and conditions of employment.

(3)(a) Except as provided in subdivisions (b) and (c) of this subsection, a supervisor shall not be included in a single bargaining unit with any other public employee who is not a supervisor.

(b) All firefighters and police officers employed in the fire department or police department of any municipality in a position or classification subordinate to the chief of the department and his or her immediate assistant or assistants holding authority subordinate only to the chief shall be presumed to have a community of interest and may be included in a single bargaining unit

represented by a public employee organization for the purposes of the Industrial Relations Act. Public employers shall be required to recognize a public employees bargaining unit composed of firefighters and police officers holding positions or classifications subordinate to the chief of the fire department or police department and his or her immediate assistant or assistants holding authority subordinate only to the chief when such bargaining unit is designated or elected by public employees in the unit.

(c) All administrators employed by a Class V school district shall be presumed to have a community of interest and may join a single bargaining unit composed otherwise of teachers and other certificated employees for purposes of the Industrial Relations Act, except that the following administrators shall be exempt: The superintendent, associate superintendent, assistant superintendent, secretary and assistant secretary of the board of education, executive director, administrators in charge of the offices of state and federal relations and research, chief negotiator, and administrators in the immediate office of the superintendent. A Class V school district shall recognize a public employees bargaining unit composed of teachers and other certificated employees and administrators, except the exempt administrators, when such bargaining unit is formed by the public employees as provided in section 48-838 and may recognize such a bargaining unit as provided in subsection (2) of this section. In addition, all administrators employed by a Class V school district, except the exempt administrators, may form a separate bargaining unit represented either by the same bargaining agent for all collective-bargaining purposes as the teachers and other certificated employees or by another collective-bargaining agent of such administrators' choice. If a separate bargaining unit is formed by election as provided in section 48-838, a Class V school district shall recognize the bargaining unit and its agent for all purposes of collective bargaining. Such separate bargaining unit may also be recognized by a Class V school district as provided in subsection (2) of this section.

(4) When a public employee organization has been certified as an exclusive collective-bargaining agent or recognized pursuant to any other provisions of the Industrial Relations Act, the appropriate public employer shall be and is hereby authorized to negotiate collectively with such public employee organization in the settlement of grievances arising under the terms and conditions of employment of the public employees as provided in such act and to negotiate and enter into written agreements with such public employee organizations in determining such terms and conditions of employment, including wages and hours.

(5) Upon receipt by a public employer of a request from a labor organization to bargain on behalf of public employees, the duty to engage in good faith bargaining shall arise if the labor organization has been certified by the commission or recognized by the public employer as the exclusive bargaining representative for the public employees in that bargaining unit.

(6) A party to an action filed with the commission may request the commission to send survey forms or data request forms. The requesting party shall prepare its own survey forms or data request forms and shall provide the commission the names and addresses of the entities to whom the documents shall be sent, not to exceed twenty addresses in any case. All costs resulting directly from the reproduction of such survey or data request forms and the cost of mailing such forms shall be taxed by the commission to the requesting party. The commission may (a) make studies and analyses of and act as a

clearinghouse of information relating to conditions of employment of public employees throughout the state, (b) request from any government, and such governments are authorized to provide, such assistance, services, and data as will enable it properly to carry out its functions and powers, (c) conduct studies of problems involved in representation and negotiation, including, but not limited to, those subjects which are for determination solely by the appropriate legislative body, and make recommendations from time to time for legislation based upon the results of such studies, (d) make available to public employee organizations, governments, mediators, factfinding boards and joint study committees established by governments, and public employee organizations statistical data relating to wages, benefits, and employment practices in public and private employment applicable to various localities and occupations to assist them to resolve complex issues in negotiations, and (e) establish, after consulting representatives of public employee organizations and administrators of public services, panels of qualified persons broadly representative of the public to be available to serve as mediators, before July 1, 2012, special masters and on and after such date resolution officers, or members of factfinding boards.

(7)(a) Except for those cases arising under section 48-818, the commission shall make findings of facts in all cases in which one of the parties to the dispute requests findings. Such request shall be specific as to the issues on which the party wishes the commission to make findings of fact.

(b) In cases arising under section 48-818, findings of fact shall not be required of the commission unless both parties to the dispute stipulate to the request and to the specific issues on which findings of fact are to be made.

(c) If findings of fact are requested under subdivision (a) or (b) of this subsection, the commission may require the parties making the request to submit proposed findings of fact to the commission on the issues on which findings of facts are requested.

(d) In cases arising under section 48-818, the commission shall issue a recommended decision and order, which decision and order shall become final within twenty-five days of entry unless either party to the dispute files with the commission a request for a posttrial conference. If such a request is filed, the commission shall hold a posttrial conference within ten days of receipt of such request and shall issue an order within ten days after holding such posttrial conference, which order shall become the final order in the case. The purpose of such posttrial conference shall be to allow the commission to hear from the parties on those portions of the recommended decision and order which is not based upon or which mischaracterizes evidence in the record and to allow the commission to correct any such errors after having heard the matter in a conference setting in which all parties are represented.

Source: Laws 1947, c. 178, § 16, p. 591; Laws 1967, c. 303, § 2, p. 825; Laws 1969, c. 407, § 5, p. 1408; Laws 1972, LB 1402, § 1; Laws 1972, LB 1228, § 3; Laws 1979, LB 444, § 5; Laws 1984, LB 832, § 2; Laws 1985, LB 213, § 2; Laws 1986, LB 809, § 5; Laws 1987, LB 524, § 2; Laws 1987, LB 661, § 26; Laws 1988, LB 519, § 1; Laws 1988, LB 684, § 1; Laws 1988, LB 942, § 1; Laws 1995, LB 365, § 2; Laws 2011, LB397, § 8.

Operative date October 1, 2011.

Cross References

State Employees Collective Bargaining Act, see section 81-1369.

48-817 Commission; findings; decisions; orders.

After the hearing and any investigation, the commission shall make all findings, findings of fact, recommended decisions and orders, and decisions and orders in writing, which findings, findings of fact, recommended decisions and orders, and decisions and orders shall be entered of record. Except as provided in the State Employees Collective Bargaining Act, the final decision and order or orders shall be in effect from and after the date therein fixed by the commission, but no such order or orders shall be retroactive except as provided otherwise in the Industrial Relations Act. Except as provided otherwise in the Industrial Relations Act, in the making of any findings or orders in connection with any such industrial dispute, the commission shall give no consideration to any evidence or information which it may obtain through an investigation or otherwise receive, except matters of which the district court might take judicial notice, unless such evidence or information is presented and made a part of the record in a hearing and opportunity is given, after reasonable notice to all parties to the controversy of the initiation of any investigation and the specific contents of the evidence or information obtained or received, to rebut such evidence or information either by cross-examination or testimony.

Source: Laws 1947, c. 178, § 17, p. 592; Laws 1979, LB 444, § 7; Laws 1984, LB 832, § 3; Laws 1987, LB 661, § 27; Laws 2011, LB397, § 9.

Operative date October 1, 2011.

Cross References

State Employees Collective Bargaining Act, see section 81-1369.

48-818 Commission; findings; order; powers; duties; orders authorized; modification.

(1) Except as provided in the State Employees Collective Bargaining Act, the findings and order or orders may establish or alter the scale of wages, hours of labor, or conditions of employment, or any one or more of the same. In making such findings and order or orders, the commission shall establish rates of pay and conditions of employment which are comparable to the prevalent wage rates paid and conditions of employment maintained for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions. In establishing wage rates the commission shall take into consideration the overall compensation presently received by the employees, having regard not only to wages for time actually worked but also to wages for time not worked, including vacations, holidays, and other excused time, and all benefits received, including insurance and pensions, and the continuity and stability of employment enjoyed by the employees. Any order or orders entered may be modified on the commission's own motion or on application by any of the parties affected, but only upon a showing of a change in the conditions from those prevailing at the time the original order was entered.

(2) For purposes of industrial disputes involving public employers other than school districts, educational service units, and community colleges with their certificated and instructional employees and public employers subject to the State Employees Collective Bargaining Act:

(a) Job matches shall be sufficient for comparison if (i) evidence supports at least a seventy percent match based on a composite of the duties and time spent

performing those duties and (ii) at least three job matches per classification are available for comparison. If three job matches are not available, the commission shall base its order on the historic relationship of wages paid to such position over the last three fiscal years, for which data is available, as compared to wages paid to a position for which a minimum of three job matches are available;

(b) The commission shall adhere to the following criteria when establishing an array:

(i) Geographically proximate public employers and Nebraska public employers are preferable for comparison;

(ii) The preferred size of an array is seven to nine members. As few as five members may be chosen if all array members are Nebraska employers. The commission shall include members mutually agreed to by the parties in the array;

(iii) If more than nine employers with job matches are available, the commission shall limit the array to nine members, based upon selecting array members with the highest number of job matches at the highest job match percentage;

(iv) Nothing in this subdivision (2)(b) of this section shall prevent parties from stipulating to an array member that does not otherwise meet the criteria in such subdivision, and nothing in such subdivision shall prevent parties from stipulating to less than seven or more than nine array members;

(v) The commission shall not require a balanced number of larger or smaller employers or a balanced number of Nebraska or out-of-state employers;

(vi) If the array includes a public employer in a metropolitan statistical area other than the metropolitan statistical area in which the employer before the commission is located, only one public employer from such metropolitan statistical area may be included in the array;

(vii) Arrays for public utilities with annual revenue of five hundred million dollars or more shall include both comparable public and privately owned utilities. Arrays for public utilities with annual revenue of less than five hundred million dollars may include both comparable public and privately owned utilities. Public utilities that produce radioactive material and energy pursuant to section 70-627.02 shall have at least four members in its array that produce radioactive material and energy when employees directly involved in this production are included in the bargaining unit. For public utilities that generate, transmit, and distribute power, the array shall include members that also perform these functions. For a public utility serving a city of the primary class, the array shall only include public power districts in Nebraska that generate, transmit, and distribute power and any out-of-state utilities whose number of meters served is not more than double or less than one-half of the number of meters served by the public utility serving a city of the primary class unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar;

(viii) In constructing an array for a public utility, the commission shall use fifty-mile concentric circles until it reaches the optimum array pursuant to subdivision (2)(b)(ii) of this section; and

(ix) For a statewide public utility that provides service to a majority of the counties in Nebraska, any Nebraska public or private job match may be used without regard to the population or full-time equivalent employment require-

ments of this section, and any out-of-state job match may be used if the full-time equivalent employment of the out-of-state employer is no more than double and no less than one-half of the full time equivalent employment of the bargaining unit of the statewide public utility in question;

(c) In determining same or similar working conditions, the commission shall adhere to the following:

(i) Public employers in Nebraska shall be presumed to provide same or similar working conditions unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar;

(ii) Public employers shall be presumed to provide the same or similar working conditions if (A) for public employers that are counties or municipalities, the population of such public employer is not more than double or less than one-half of the population of the public employer before the commission, unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar, (B) for public employers that are public utilities, the number of such public employer's employees is not more than double or less than one-half of the number of employees of the public employer before the commission, unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar, or (C) for public employers that are school districts, educational service units, or community colleges with noncertificated and noninstructional school employees, the student enrollment of such public employer is not more than double or less than one-half of the student enrollment of the public employer before the commission, unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar;

(iii)(A) Public employers located within a metropolitan statistical area who meet the population requirements of subdivision (2)(c)(ii)(A) of this section, if the public employer is a county or municipality, or the student enrollment requirements of subdivision (2)(c)(ii)(C) of this section, if the public employer is a school district or an educational service unit, shall be presumed to provide the same or similar working conditions if the metropolitan statistical area population in which they are located is not more than double or less than one-half the metropolitan statistical area population of the public employer before the commission, unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar.

(B) The presumption created by subdivision (2)(c)(iii)(A) of this section may be overcome in situations where evidence establishes that there are substantial similarities which cause the work or conditions of employment to be similar, allowing the commission to consider public employers located within a metropolitan statistical area even if the metropolitan statistical area population in which that employer or employers are located is more than double or less than one-half the metropolitan statistical area population of the public employer before the commission. The burden of establishing sufficient similarity is on the party seeking to include a public employer pursuant to this subdivision (2)(c)(iii)(B) of this section; and

(iv) Public employers other than public utilities which are not located within a metropolitan statistical area shall not be compared to public employers located in a metropolitan statistical area. For purposes of this subdivision,

metropolitan statistical area includes municipalities with populations of fifty thousand inhabitants or more;

(d) Prevalent shall be determined as follows: (i) For numeric values, prevalent shall be the midpoint between the arithmetic mean and the arithmetic median. For fringe benefits, prevalent shall be the midpoint between the arithmetic mean and the arithmetic median as long as a majority of the array members provide the benefit; and (ii) for nonnumeric comparisons, prevalent shall be the mode that the majority of the array members provide if the compared-to benefit is similar in nature. If there is no clear mode, the benefit or working condition shall remain unaltered by the commission;

(e) For any out-of-state employer, the parties may present economic variable evidence and the commission shall determine what, if any, adjustment is to be made if such evidence is presented. The commission shall not require that any such economic variable evidence be shown to directly impact the wages or benefits paid to employees by such out-of-state employer;

(f) In determining total or overall compensation, the commission shall value every economic item even if the year in question has expired. The commission shall require that all wage and benefit levels be leveled over the twelve-month period in dispute to account for increases or decreases which occur in the wage or benefit levels provided by any array member during such twelve-month period;

(g) In cases filed pursuant to this subsection (2) of this section, the commission shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than those adopted by rule pursuant to section 48-809. The commission shall receive evidence relating to array selection, job match, and wages and benefits which have been assembled by telephone, electronic transmission, or mail delivery, and any such evidence shall be accompanied by an affidavit from the employer or any other person with personal knowledge which affidavit shall demonstrate the affiant's personal knowledge and competency to testify on the matters thereon. The commission, with the consent of the parties to the dispute, and in the presence of the parties to the dispute, may contact an individual employed by an employer under consideration as an array member by telephone to inquire as to the nature or value of a working condition, wage, or benefit provided by that particular employer as long as the individual in question has personal knowledge about the information being sought. The commission may rely upon information gained in such inquiry for its decision. Opinion testimony shall be received by the commission based upon evidence provided in accordance with this subdivision. Testimony concerning job match shall be received if job match inquiries were conducted by telephone, electronic transmission, or mail delivery if the witness providing such testimony verifies the method of such job match inquiry and analysis;

(h) In determining the value of defined benefit and defined contribution retirement plans and health insurance plans or health benefit plans, the commission shall use an hourly rate value calculation as follows:

(i) Once the array has been chosen, each array member and the public employer of the subject bargaining unit shall provide a copy of its most recent defined benefit pension actuarial valuation report. Each array member and the public employer of the subject bargaining unit shall provide the most recent copy of its health insurance plans or health benefit plans, covering the preced-

ing twelve-month period, with associated employer and employee costs, to the parties and the commission. Each array member shall also provide information concerning premium equivalent payments and contributions for health savings accounts. Each array member and the public employer of the subject bargaining unit shall indicate which plans are most used. The plans that are most used shall be used for comparison;

(ii) Once the actuarial valuation reports are received, the parties shall have thirty calendar days to determine whether to have the pensions actuarially valued at an hourly rate value other than equal. The hourly rate value for defined benefit plans shall be presumed to be equal to that of the array selected unless one or both of the parties presents evidence establishing that the actuarially derived annual normal cost of the pension benefit for each job classification in the subject bargaining unit is above or below the midpoint of the average normal cost. Consistent methods and assumptions are to be applied to determine the annual normal cost of any defined benefit pension plan of the subject bargaining unit and each array member. For this purpose, the entry age normal actuarial cost method is recommended. The actuarial assumptions that are selected for this purpose should reflect expectations for a defined benefit pension plan maintained for the employees of the subject bargaining unit and acknowledge the eligibility and benefit provisions for each respective defined benefit pension plan. In this regard, different eligibility and benefit provisions may suggest different retirement or termination of employment assumptions. The methods and assumptions shall be attested to by an actuary holding a current membership with the American Academy of Actuaries. Any party who requests or presents evidence regarding actuarial valuation of a defined benefit plan shall be responsible for costs associated with such valuation and testimony. The actuarial valuation is presumed valid, unless a party presents competent actuarial evidence that the valuation is invalid;

(iii) The hourly rate value for defined contribution plans shall be established upon comparison of employer contributions;

(iv) The hourly rate value for health insurance plans or health benefit plans shall be established based upon the public employer's premium payments, premium equivalent payments, and public employer and public employee contributions to health savings accounts;

(v) The commission shall not compare defined benefit plans to defined contribution plans or defined contribution plans to defined benefit plans; and

(vi) The commission shall order increases or decreases in wage rates by job classification based upon the hourly rate value for health-related benefits, benefits provided for retirement plans, and wages;

(i) For benefits other than defined benefit and defined contribution retirement plans and health insurance plans or health benefit plans, the commission shall issue an order based upon a determination of prevalency as determined under subdivision (2)(d) of this section; and

(j) The commission shall issue an order regarding increases or decreases in base wage rates or benefits as follows:

(i) The order shall be retroactive with respect to increases and decreases to the beginning of the bargaining year in dispute;

(ii) The commission shall determine whether the hourly rate value of the bargaining unit's members or classification falls within a ninety-eight percent

to one hundred two percent range of the array's midpoint. If the hourly rate value falls within the ninety-eight percent to one hundred two percent range, the commission shall order no change in wage rates. If the hourly rate value is less than ninety-eight percent of the midpoint, the commission shall enter an order increasing wage rates to ninety-eight percent of the midpoint. If the hourly rate value is more than one hundred two percent of the midpoint, the commission shall enter an order decreasing wage rates to one hundred two percent of the midpoint. If the hourly rate value is more than one hundred seven percent of the midpoint, the commission shall enter an order reducing wage rates to one hundred two percent of the midpoint in three equal annual reductions. If the hourly rate value is less than ninety-three percent of the midpoint, the commission shall enter an order increasing wage rates to ninety-eight percent of the midpoint in three equal annual increases. If the commission finds that the year in dispute occurred during a time of recession, the applicable range will be ninety-five percent to one hundred two percent. For purposes of this subdivision (2)(j) of this section, recession occurrence means the two nearest quarters in time, excluding the immediately preceding quarter, to the effective date of the contract term in which the sum of the net state sales and use tax, individual income tax, and corporate income tax receipts are less than the same quarters for the prior year. Each of these receipts shall be rate and base adjusted for state law changes. The Department of Revenue shall report and publish such receipts on a quarterly basis;

(iii) The parties shall have twenty-five calendar days to negotiate modifications to wages and benefits. If no agreement is reached, the commission's order shall be followed as issued; and

(iv) The commission shall provide an offset to the public employer when a lump-sum payment is due because benefits were paid in excess of the prevalent as determined under subdivision (2)(d) of this section or when benefits were paid below the prevalent as so determined but wages were above prevalent.

Source: Laws 1947, c. 178, § 18, p. 592; Laws 1969, c. 407, § 6, p. 1410; Laws 1987, LB 661, § 28; Laws 2011, LB397, § 10.
Operative date October 1, 2011.

Cross References

State Employees Collective Bargaining Act, see section 81-1369.

48-818.01 School districts, educational service units, and community colleges; collective bargaining; timelines; procedure; resolution officer; powers; duties; action filed with commission; when; collective-bargaining agreement; contents.

(1) The Legislature finds that it is in the public's interest that collective bargaining involving school districts, educational service units, and community colleges and their certificated and instructional employees commence and conclude in a timely fashion consistent with school district budgeting and financing requirements. To that end, the timelines in this section shall apply when the public employer is a school district, educational service unit, or community college.

(2) On or before September 1 of the year preceding the contract year in question, the certificated and instructional employees' collective-bargaining agent shall request recognition as bargaining agent. The governing board shall respond to such request not later than the following October 1. A request for

recognition need not be filed if the certificated and instructional employees' bargaining agent has been certified by the commission as the exclusive collective-bargaining agent. On or before November 1 of the year preceding the contract year in question, negotiations shall begin. There shall be no fewer than four negotiations meetings between the certificated and instructional employees' collective-bargaining agent and the governing board's bargaining agent. Either party may seek a bargaining order pursuant to subsection (1) of section 48-816 at any stage in the negotiations. If an agreement is not reached on or before the following February 8, the parties shall submit to mandatory mediation or factfinding as ordered by the commission pursuant to sections 48-811 and 48-816 unless the parties mutually agree in writing to forgo mandatory mediation or factfinding.

(3)(a) The mediator or factfinder as ordered by the commission under subsection (2) of this section shall be a resolution officer. The commission shall provide the parties with the names of five individuals qualified to serve as the resolution officer. If the parties cannot agree on an individual, each party shall alternately strike names. The remaining individual shall serve as the resolution officer.

(b) The resolution officer may:

- (i) Determine whether the issues are ready for adjudication;
- (ii) Identify for resolution terms and conditions of employment that are in dispute and which were negotiated in good faith but upon which no agreement was reached;
- (iii) Accept stipulations;
- (iv) Schedule hearings;
- (v) Prescribe rules of conduct for conferences;
- (vi) Order additional mediation if necessary;
- (vii) Take any other action which may aid in resolution of the industrial dispute; and
- (viii) Consult with a party ex parte only with the concurrence of all parties.

(c) The resolution officer shall choose the most reasonable final offer on each issue in dispute. In making such choice, he or she shall consider factors relevant to collective bargaining between public employers and public employees, including comparable rates of pay and conditions of employment as described in subsection (1) of section 48-818. The resolution officer shall not apply strict rules of evidence. Persons who are not attorneys may present cases to the resolution officer.

(d) If either party to a resolution officer proceeding is dissatisfied with the resolution officer's decision, such party shall have the right to file an action with the commission seeking a determination of terms and conditions of employment pursuant to subsection (1) of section 48-818. Such action shall not constitute an appeal of the resolution officer's decision, but rather shall be heard by the commission as an action brought pursuant to subsection (1) of section 48-818. The commission shall resolve, pursuant to the mandates of such section, all of the issues identified by either party and which were recognized by the resolution officer as an industrial dispute. If parties have not filed with the commission pursuant to subsection (6) of this section, the decision of the resolution officer shall be deemed final and binding.

(4) For purposes of this section, issue means broad subjects of negotiation which are presented to the resolution officer pursuant to this section. All aspects of wages are a single issue, all aspects of insurance are a single issue, and all other subjects of negotiations classified in broad categories are single issues.

(5) On or before March 25 of the year preceding the contract year in question or within twenty-five days after the certification of the amounts to be distributed to each local system and each school district pursuant to the Tax Equity and Educational Opportunities Support Act as provided in section 79-1022 for the contract year in question, whichever occurs last in time, negotiations, mediation, and factfinding shall end.

(6) If an agreement for the contract year in question has not been achieved on or before the date for negotiation, mediation, or factfinding to end in subsection (5) of this section, either party may, within fourteen days after such date, file a petition with the commission pursuant to section 48-811 and subsection (1) of section 48-818 to resolve the industrial dispute for the contract year in question. The commission shall render a decision on such industrial dispute on or before September 15 of the contract year in question.

(7) Any existing collective-bargaining agreement will continue in full force and effect until superseded by further agreement of the parties or by an order of the commission. The parties may continue to negotiate unresolved issues by mutual agreement while the matter is pending with the commission.

(8) All collective-bargaining agreements shall be written and executed by representatives of the governing board and representatives of the certificated and instructional employees' bargaining unit. The agreement shall contain at a minimum the following:

- (a) A salary schedule or objective method of determining salaries;
- (b) A description of benefits being provided or agreed upon including a specific level of coverage provided in any group insurance plan, a dollar amount, or percentage of premiums to be paid, and by whom; and
- (c) A provision that the existing agreement will continue until replaced by a successor agreement or as amended by a final order of the commission.

Source: Laws 2011, LB397, § 11.

Operative date July 1, 2012.

Cross References

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

48-818.02 School district, educational service unit, or community college; total compensation; considerations.

When determining total compensation pursuant to subsection (1) of section 48-818 for a school district, educational service unit, or community college with their certificated and instructional employees, the commission shall consider the employer's contribution to retirement plans and health insurance premiums, premium equivalent payments, or cash equivalent payments and any other costs, including Federal Insurance Contributions Act contributions, associated with providing such benefits.

Source: Laws 2011, LB397, § 12.

Operative date July 1, 2012.

48-818.03 School district, educational service unit, or community college; wage rates; commission; duties; orders authorized.

When establishing wage rates pursuant to subsection (1) of section 48-818 for a school district, educational service unit, or community college with their certificated and instructional employees, the commission shall determine whether the total compensation of the members of the bargaining unit or classification falls within a ninety-eight percent to one hundred two percent range of the array's midpoint. If the total compensation falls within the ninety-eight percent to one hundred two percent range, the commission shall order no change in wage rates. If the total compensation is less than ninety-eight percent of the midpoint, the commission shall enter an order increasing wage rates to ninety-eight percent of the midpoint. If the total compensation is more than one hundred two percent of the midpoint, the commission shall enter an order decreasing wage rates to one hundred two percent of the midpoint. If the total compensation is more than one hundred seven percent of the midpoint, the commission shall enter an order reducing wage rates to one hundred two percent of the midpoint in three equal annual reductions. If the total compensation is less than ninety-three percent of the midpoint, the commission shall enter an order increasing wage rates to ninety-eight percent of the midpoint in three equal annual increases. If the commission finds that the year in dispute occurred during a time of recession, the applicable range will be ninety-five percent to one hundred two percent. For purposes of this section, recession occurrence means the two nearest quarters in time, excluding the immediately preceding quarter, to the effective date of the contract term in which the sum of the net state sales and use tax, individual income tax, and corporate income tax receipts are less than the same quarters for the prior year. Each of these receipts shall be rate and base adjusted for state law changes. The Department of Revenue shall report and publish such receipts on a quarterly basis.

Source: Laws 2011, LB397, § 13.

Operative date July 1, 2012.

48-824 Labor negotiations; prohibited practices.

(1) It is a prohibited practice for any public employer, public employee, public employee organization, or collective-bargaining agent to refuse to negotiate in good faith with respect to mandatory topics of bargaining.

(2) It is a prohibited practice for any public employer or the public employer's negotiator to:

(a) Interfere with, restrain, or coerce employees in the exercise of rights granted by the Industrial Relations Act;

(b) Dominate or interfere in the administration of any public employee organization;

(c) Encourage or discourage membership in any public employee organization, committee, or association by discrimination in hiring, tenure, or other terms or conditions of employment;

(d) Discharge or discriminate against a public employee because the employee has filed an affidavit, petition, or complaint or given any information or testimony under the Industrial Relations Act or because the public employee has formed, joined, or chosen to be represented by any public employee organization;

(e) Refuse to negotiate collectively with representatives of collective-bargaining agents as required by the Industrial Relations Act;

(f) Deny the rights accompanying certification or recognition granted by the Industrial Relations Act; and

(g) Refuse to participate in good faith in any impasse procedures for public employees as set forth in the Industrial Relations Act.

(3) It is a prohibited practice for any public employee, public employee organization, or bargaining unit or for any representative or collective-bargaining agent to:

(a) Interfere with, restrain, coerce, or harass any public employee with respect to any of the public employee's rights granted by the Industrial Relations Act;

(b) Interfere with, restrain, or coerce a public employer with respect to rights granted by the Industrial Relations Act or with respect to selecting a representative for the purposes of negotiating collectively on the adjustment of grievances;

(c) Refuse to bargain collectively with a public employer as required by the Industrial Relations Act; and

(d) Refuse to participate in good faith in any impasse procedures for public employees as set forth in the Industrial Relations Act.

(4) The expressing of any view, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, is not evidence of any unfair labor practice under any of the provisions of the Industrial Relations Act if such expression contains no threat of reprisal or force or promise of benefit.

Source: Laws 1995, LB 382, § 1; Laws 2011, LB397, § 14.
Operative date October 1, 2011.

48-838 Collective bargaining; questions of representation; elections; non-member employee duty to reimburse; when.

(1) The commission shall determine questions of representation for purposes of collective bargaining for and on behalf of public employees and shall make rules and regulations for the conduct of elections to determine the exclusive collective-bargaining agent for public employees, except that in no event shall a contract between a public employer and an exclusive collective-bargaining agent act as a bar for more than three years to any other party seeking to represent public employees, nor shall any contract bar for more than three years a petition by public employees seeking an election to revoke the authority of an agent to represent them. Except as provided in the State Employees Collective Bargaining Act, the commission shall certify the exclusive collective-bargaining agent for employees affected by the Industrial Relations Act following an election by secret ballot, which election shall be conducted according to rules and regulations established by the commission.

(2) The election shall be conducted by one member of the commission who shall be designated to act in such capacity by the presiding officer of the commission, or the commission may appoint the clerk of the district court of the county in which the principal office of the public employer is located to conduct the election in accordance with the rules and regulations established by the commission. Except as provided in the State Employees Collective

Bargaining Act, the commission shall also determine the appropriate unit for bargaining and for voting in the election, and in making such determination, the commission shall consider established bargaining units and established policies of the public employer. It shall be presumed, in the case of governmental subdivisions such as municipalities, counties, power districts, or utility districts with no previous history of collective bargaining, that units of public employees of less than departmental size shall not be appropriate.

(3) Except as provided in the State Employees Collective Bargaining Act, the commission shall not order an election until it has determined that at least thirty percent of the employees in an appropriate unit have requested in writing that the commission hold such an election. Such request in writing by an employee may be in any form in which an employee specifically either requests an election or authorizes the employee organization to represent him or her in bargaining, or otherwise evidences a desire that an election be conducted. Such request of an employee shall not become a matter of public record. No election shall be ordered in one unit more than once a year.

(4) Except as provided in the State Employees Collective Bargaining Act, the commission shall only certify an exclusive collective-bargaining agent if a majority of the employees voting in the election vote for the agent. A certified exclusive collective-bargaining agent shall represent all employees in the appropriate unit with respect to wages, hours, and conditions of employment, except that such right of exclusive recognition shall not preclude any employee, regardless of whether or not he or she is a member of a labor organization, from bringing matters to the attention of his or her superior or other appropriate officials.

Any employee may choose his or her own representative in any grievance or legal action regardless of whether or not an exclusive collective-bargaining agent has been certified. If an employee who is not a member of the labor organization chooses to have legal representation from the labor organization in any grievance or legal action, such employee shall reimburse the labor organization for his or her pro rata share of the actual legal fees and court costs incurred by the labor organization in representing the employee in such grievance or legal action.

The certification of an exclusive collective-bargaining agent shall not preclude any public employer from consulting with lawful religious, social, fraternal, or other similar associations on general matters affecting public employees so long as such contracts do not assume the character of formal negotiations in regard to wages, hours, and conditions of employment. Such consultations shall not alter any collective-bargaining agreement which may be in effect.

Source: Laws 1972, LB 1228, § 4; Laws 1974, LB 819, § 10; Laws 1986, LB 809, § 10; Laws 1987, LB 661, § 30; Laws 2002, LB 29, § 1; Laws 2007, LB472, § 7; Laws 2011, LB397, § 15.
Operative date October 1, 2011.

Cross References

State Employees Collective Bargaining Act, see section 81-1369.

48-839 Changes made by Laws 2011, LB397; applicability.

Changes made to the Industrial Relations Act by Laws 2011, LB397 shall apply to petitions filed with the commission on or after October 1, 2011, except for petitions filed involving school districts, educational service units, and

community colleges with their certificated and instructional employees for which such changes shall apply on or after July 1, 2012.

Source: Laws 2011, LB397, § 16.

Operative date October 1, 2011.

ARTICLE 16

NEBRASKA WORKFORCE INVESTMENT ACT

(b) NEBRASKA WORKFORCE INVESTMENT ACT

Section

48-1617. Purpose of act.

48-1623. Nebraska Workforce Investment Board; members.

48-1624. State board; duties.

(b) NEBRASKA WORKFORCE INVESTMENT ACT

48-1617 Purpose of act.

(1) The purpose of the Nebraska Workforce Investment Act is to provide workforce investment activities through statewide and local workforce investment systems that will improve the quality of the workforce and enhance the productivity and competitiveness of Nebraska through its workforce, including health care workers.

(2) The Legislature recognizes the following principles:

(a) Nebraskans must upgrade their skills to succeed in today's workplace;

(b) In business, workforce skills are the key competitive advantage;

(c) Workforce skills will be Nebraska's primary job-creating incentive for business;

(d) Efficiency and accountability mandate the consolidation of program services and the elimination of unwarranted duplication;

(e) Streamlined state and local partnerships must focus on outcomes, not process;

(f) Locally designed, customer-focused, market-driven service delivery which offers a single point of entry for all services is vital; and

(g) Job training services must be developed in concert with the input and needs of existing employers and businesses, and must consider anticipated demand for targeted job opportunities.

In recognition of these principles, the Nebraska Workforce Investment Act will coordinate state and local activities to increase employment, retention, occupational skills, and earnings in the workforce. The act will enhance the productivity and competitiveness of state business and industry and encourage continuous improvement in worker preparation beginning with youth in middle school through adulthood.

(3) Nebraska's workforce development plan must implicate a comprehensive, consumer-driven, employment and career development system that meets the needs of all members of the workforce, including those entering the workforce for the first time, those in employment transition, and those currently employed but seeking to enhance their skills for continued career advancement.

Source: Laws 2001, LB 193, § 2; Laws 2011, LB502, § 1.

Effective date August 27, 2011.

48-1623 Nebraska Workforce Investment Board; members.

(1) The Nebraska Workforce Investment Board is established to assist in the development of a state plan to carry out the functions described in the federal Workforce Investment Act.

(2) The state board shall include:

(a) The Governor;

(b) Two members of the Legislature selected by and serving at the pleasure of the Speaker of the Legislature; and

(c) Members appointed by the Governor who serve at the pleasure of the Governor who are:

(i) Representatives of business in the state who:

(A) Are owners of businesses, chief executives or operating officers of businesses, and other business executives or employers with optimum policymaking or hiring authority, including members of local boards described in subdivision (2)(a)(i) of section 48-1620;

(B) Represent businesses with employment opportunities that reflect the employment opportunities of the state; and

(C) Are appointed from among individuals nominated by state business organizations and business trade associations;

(ii) A representative of health care employers of the state who conducts statewide health workforce planning and training;

(iii) Chief elected officials representing both cities and counties;

(iv) Representatives of labor organizations who have been nominated by state labor federations;

(v) Representatives of individuals and organizations that have experience with respect to youth programs authorized under section 129 of the federal Workforce Investment Act, 29 U.S.C. 2854;

(vi) Representatives of individuals and organizations that have experience and expertise in the delivery of workforce investment activities, including chief executive officers of community colleges and community-based organizations within the state;

(vii)(A) The officials from each of the lead state agencies with responsibility for the programs and activities that are described in section 48-1619 and carried out by one-stop partners; and

(B) In any case in which no lead state agency official has responsibility for such a program, service, or activity, a representative in the state with expertise relating to such program, service, or activity; and

(viii) Such other representatives and state agency officials as the Governor may designate.

(3) The two members of the Legislature serving on the state board shall be nonvoting, ex officio members. All other members shall be voting members. The Governor may designate a representative to participate on his or her behalf in state board committee and general meetings. Such representative shall be entitled to vote on matters brought before the board and shall be considered a member of the board for purposes of determining if a quorum is present.

(4) Members of the board that represent organizations, agencies, or other entities shall be individuals with optimum policymaking authority within the

organizations, agencies, or entities. The members of the board shall represent diverse regions of the state, including urban, rural, and suburban areas.

(5) A majority of the voting members of the state board shall be private sector representatives described in subdivision (2)(c)(i) of this section. The Governor shall select a chairperson and a vice-chairperson for the state board from among the representatives described in such subdivision.

(6) To transact business at all meetings of the state board, a quorum of voting members must be present. A majority of the voting members shall constitute a quorum of the Nebraska Workforce Investment Board.

Source: Laws 2001, LB 193, § 8; Laws 2003, LB 194, § 1; Laws 2008, LB210, § 1; Laws 2011, LB502, § 2.
Effective date August 27, 2011.

48-1624 State board; duties.

The state board shall advise the Governor in:

- (1) The development of the state plan;
- (2) The development and continuous improvement of a statewide system of services that are funded under the federal Workforce Investment Act carried out through a one-stop delivery system described in section 134(c) of the federal act, 29 U.S.C. 2864(c), that receives funds under the statewide workforce investment system, including:
 - (a) The development of linkages in order to assure coordination and non duplication among the programs and activities described in section 48-1619; and
 - (b) The review of local plans;
- (3) Commenting at least once annually on the measures taken pursuant to section 113(b)(14) of the federal Carl D. Perkins Vocational and Applied Technology Education Act, 20 U.S.C. 2323(b), as such section existed on March 2, 2001. Such comments shall be included in the annual report provided for in subsection (2) of section 48-1625;
- (4) The designation of local areas as required in section 116 of the federal Workforce Investment Act, 29 U.S.C. 2831;
- (5) The development of allocation formulas for the distribution of funds for adult employment and training activities and youth activities to local areas as permitted under sections 128(b)(3)(B) and 133(b)(3)(B) of the federal Workforce Investment Act, 29 U.S.C. 2853(b)(3)(B) and 29 U.S.C. 2863(b)(3)(B);
- (6) The development and continuous improvement of comprehensive state performance measures, including state adjusted levels of performance, to assess the effectiveness of the workforce investment activities in the state as required under section 136(b) of the federal Workforce Investment Act, 29 U.S.C. 2871(b);
- (7) The preparation of the annual report to the Secretary of Labor described in section 136(d) of the federal Workforce Investment Act, 29 U.S.C. 2871(d);
- (8) The development of the statewide employment statistics system described in section 15(e) of the federal Wagner-Peyser Act, 29 U.S.C. 49 et seq., as the section existed on March 2, 2001;
- (9) The development of an application for an incentive grant under section 503 of the federal Workforce Investment Act, 20 U.S.C. 9273; and

(10) The development of a plan which has a component to reduce the current and projected shortage of health care workers in the state.

Source: Laws 2001, LB 193, § 9; Laws 2011, LB502, § 3.
Effective date August 27, 2011.

CHAPTER 49

LAW

Article.

6. Printing and Distribution of Statutes. 49-617.
8. Definitions, Construction, and Citation. 49-801.01.
14. Nebraska Political Accountability and Disclosure Act.
 - (e) Nebraska Accountability and Disclosure Commission. 49-14,120 to 49-14,140.

ARTICLE 6

PRINTING AND DISTRIBUTION OF STATUTES

Section

49-617. Printing of statutes; distribution of copies.

49-617 Printing of statutes; distribution of copies.

The Revisor of Statutes shall cause the statutes to be printed. The printer shall deliver all completed copies to the Supreme Court. These copies shall be held and disposed of by the court as follows: Sixty copies to the State Library to exchange for statutes of other states; five copies to the State Library to keep for daily use; not to exceed twenty-five copies to the Legislative Council for bill drafting and related services to the Legislature and executive state officers; as many copies to the Attorney General as he or she has attorneys on his or her staff; as many copies to the Commission on Public Advocacy as it has attorneys on its staff; up to sixteen copies to the State Court Administrator; thirteen copies to the Tax Commissioner; eight copies to the Nebraska Publications Clearinghouse; six copies to the Public Service Commission; four copies to the Secretary of State; three copies to the Tax Equalization and Review Commission; four copies to the Clerk of the Legislature for use in his or her office and three copies to be maintained in the legislative chamber, one copy on each side of the chamber and one copy at the desk of the Clerk of the Legislature, under control of the sergeant at arms; three copies to the Department of Health and Human Services; two copies each to the Governor of the state, the Chief Justice and each judge of the Supreme Court, each judge of the Court of Appeals, the Clerk of the Supreme Court, the Reporter of the Supreme Court and Court of Appeals, the Commissioner of Labor, the Auditor of Public Accounts, and the Revisor of Statutes; one copy each to the Secretary of State of the United States, each Indian tribal court located in the State of Nebraska, the library of the Supreme Court of the United States, the Adjutant General, the Air National Guard, the Commissioner of Education, the State Treasurer, the Board of Educational Lands and Funds, the Director of Agriculture, the Director of Administrative Services, the Director of Aeronautics, the Director of Economic Development, the director of the Nebraska Public Employees Retirement Systems, the Director-State Engineer, the Director of Banking and Finance, the Director of Insurance, the Director of Motor Vehicles, the Director of Veterans' Affairs, the Director of Natural Resources, the Director of Correctional Services, the Nebraska Emergency Operating Center, each judge of the Nebraska Workers' Compensation Court, each commissioner of the Commission of Indus-

trial Relations, the Nebraska Liquor Control Commission, the State Real Estate Commission, the secretary of the Game and Parks Commission, the Board of Pardons, each state institution under the Department of Health and Human Services, each state institution under the State Department of Education, the State Surveyor, the Nebraska State Patrol, the materiel division of the Department of Administrative Services, the personnel division of the Department of Administrative Services, the Nebraska Motor Vehicle Industry Licensing Board, the Board of Trustees of the Nebraska State Colleges, each of the Nebraska state colleges, each district judge of the State of Nebraska, each judge of the county court, each judge of a separate juvenile court, the Lieutenant Governor, each United States Senator from Nebraska, each United States Representative from Nebraska, each clerk of the district court for the use of the district court, the clerk of the Nebraska Workers' Compensation Court, each clerk of the county court, each county attorney, each county public defender, each county law library, and the inmate library at all state penal and correctional institutions, and each member of the Legislature shall be entitled to two complete sets, and two complete sets of such volumes as are necessary to update previously issued volumes, but each member of the Legislature and each judge of any court referred to in this section shall be entitled, on request, to an additional complete set. Copies of the statutes distributed without charge, as listed in this section, shall be the property of the state or governmental subdivision of the state and not the personal property of the particular person receiving a copy. Distribution of statutes to the library of the College of Law of the University of Nebraska shall be as provided in sections 85-176 and 85-177.

Source: Laws 1943, c. 115, § 17, p. 407; R.S.1943, § 49-617; Laws 1944, Spec. Sess., c. 3, § 5, p. 100; Laws 1947, c. 185, § 5, p. 612; Laws 1951, c. 345, § 1, p. 1132; Laws 1957, c. 210, § 3, p. 743; Laws 1961, c. 242, § 2, p. 722; Laws 1961, c. 243, § 3, p. 725; Laws 1961, c. 415, § 5, p. 1247; Laws 1961, c. 416, § 8, p. 1266; Laws 1963, c. 303, § 3, p. 898; Laws 1965, c. 305, § 1, p. 858; Laws 1967, c. 325, § 1, p. 863; Laws 1967, c. 326, § 1, p. 865; Laws 1971, LB 36, § 4; Laws 1972, LB 1032, § 254; Laws 1972, LB 1174, § 1; Laws 1972, LB 1284, § 18; Laws 1973, LB 1, § 5; Laws 1973, LB 563, § 4; Laws 1973, LB 572, § 1; Laws 1974, LB 595, § 1; Laws 1975, LB 59, § 4; Laws 1978, LB 168, § 1; Laws 1984, LB 13, § 82; Laws 1985, LB 498, § 2; Laws 1987, LB 572, § 6; Laws 1991, LB 732, § 118; Laws 1992, Third Spec. Sess., LB 14, § 3; Laws 1995, LB 271, § 7; Laws 1996, LB 906, § 2; Laws 1996, LB 1044, § 278; Laws 1999, LB 36, § 4; Laws 2000, LB 692, § 9; Laws 2000, LB 900, § 241; Laws 2000, LB 1085, § 3; Laws 2007, LB296, § 223; Laws 2007, LB334, § 7; Laws 2007, LB472, § 8; Laws 2010, LB770, § 3; Laws 2011, LB384, § 1. Operative date July 1, 2011.

ARTICLE 8

DEFINITIONS, CONSTRUCTION, AND CITATION

Section
49-801.01. Internal Revenue Code; reference.

49-801.01 Internal Revenue Code; reference.

Except as provided by Article VIII, section 1B, of the Constitution of Nebraska and in sections 77-2701.01, 77-2714 to 77-27,123, 77-27,191, 77-4103,

77-4104, 77-4108, 77-5509, 77-5515, 77-5527 to 77-5529, 77-5539, 77-5717 to 77-5719, 77-5728, 77-5802, 77-5803, 77-5806, 77-5903, 77-6302, and 77-6306, any reference to the Internal Revenue Code refers to the Internal Revenue Code of 1986 as it exists on February 23, 2011.

Source: Laws 1995, LB 574, § 1; Laws 1996, LB 984, § 1; Laws 1997, LB 46, § 1; Laws 1998, LB 1015, § 2; Laws 1999, LB 33, § 1; Laws 2000, LB 944, § 1; Laws 2001, LB 122, § 1; Laws 2001, LB 620, § 45; Laws 2002, LB 989, § 8; Laws 2003, LB 281, § 1; Laws 2004, LB 1017, § 1; Laws 2005, LB 312, § 1; Laws 2005, LB 383, § 1; Laws 2006, LB 1003, § 2; Laws 2007, LB315, § 1; Laws 2008, LB896, § 1; Laws 2009, LB251, § 1; Laws 2010, LB879, § 2; Laws 2011, LB134, § 1; Laws 2011, LB389, § 11.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB134, section 1, with LB389, section 11, to reflect all amendments.

Note: Changes made by LB134 became effective February 23, 2011. Changes made by LB389 became operative September 1, 2011.

ARTICLE 14

NEBRASKA POLITICAL ACCOUNTABILITY AND DISCLOSURE ACT

(e) NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

Section

49-14,120. Commission; members; expenses.

49-14,126. Commission; violation; orders; civil penalty; costs of hearing.

49-14,140. Nebraska Accountability and Disclosure Commission Cash Fund; created; use; investment.

(e) NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

49-14,120 Commission; members; expenses.

All members of the commission shall be reimbursed for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1976, LB 987, § 120; Laws 1981, LB 204, § 88; Laws 2005, LB 242, § 55; Laws 2011, LB292, § 1.

Operative date July 1, 2011.

49-14,126 Commission; violation; orders; civil penalty; costs of hearing.

(1) The commission, upon finding that there has been a violation of the Nebraska Political Accountability and Disclosure Act or any rule or regulation promulgated thereunder, may issue an order requiring the violator to do one or more of the following:

- (a) Cease and desist violation;
- (b) File any report, statement, or other information as required;
- (c) Pay a civil penalty of not more than two thousand dollars for each violation of the act, rule, or regulation; or
- (d) Pay the costs of the hearing in a contested case if the violator did not appear at the hearing personally or by counsel.

(2) If the commission finds a violation of the Campaign Finance Limitation Act, the commission shall assess a civil penalty as required under section 32-1604, 32-1606.01, or 32-1612.

Source: Laws 1976, LB 987, § 126; Laws 1981, LB 134, § 11; Laws 1997, LB 420, § 23; Laws 1999, LB 416, § 19; Laws 2006, LB 188, § 18; Laws 2007, LB464, § 5; Laws 2011, LB176, § 1.
Effective date August 27, 2011.

Cross References

Campaign Finance Limitation Act, see section 32-1601.

49-14,140 Nebraska Accountability and Disclosure Commission Cash Fund; created; use; investment.

The Nebraska Accountability and Disclosure Commission Cash Fund is hereby created. The fund shall consist of funds received by the commission pursuant to sections 49-1449.01, 49-1470, 49-1480.01, 49-1482, 49-14,123, and 49-14,123.01 and subdivision (1)(d) of section 49-14,126. The fund shall not include late filing fees or civil penalties assessed and collected by the commission. The fund shall be used by the commission in administering the Nebraska Political Accountability and Disclosure Act. Any money in the Nebraska Accountability and Disclosure Commission Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1989, LB 815, § 4; Laws 1994, LB 872, § 13; Laws 1994, LB 1066, § 40; Laws 1994, LB 1243, § 15; Laws 2007, LB527, § 5; Laws 2009, First Spec. Sess., LB3, § 25; Laws 2011, LB176, § 2.

Effective date August 27, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

CHAPTER 50 LEGISLATURE

Article.

- 4. Legislative Council. 50-417 to 50-417.06.
- 11. Legislative Districts. 50-1101 to 50-1154.

ARTICLE 4 LEGISLATIVE COUNCIL

Section

- 50-417. Nebraska Retirement Systems Committee; public retirement systems; existing or proposed; duties.
- 50-417.02. Repealed. Laws 2011, LB 509, § 55.
- 50-417.03. Repealed. Laws 2011, LB 509, § 55.
- 50-417.04. Repealed. Laws 2011, LB 509, § 55.
- 50-417.05. Repealed. Laws 2011, LB 509, § 55.
- 50-417.06. Repealed. Laws 2011, LB 509, § 55.

50-417 Nebraska Retirement Systems Committee; public retirement systems; existing or proposed; duties.

The Nebraska Retirement Systems Committee shall study any legislative proposal, bill, or amendment, other than an amendment proposed by the Committee on Enrollment and Review, affecting any public retirement system, existing or proposed, established by the State of Nebraska or any political subdivision thereof and report the results of such study to the Legislature, which report shall, when applicable, include an actuarial analysis and cost estimate and the recommendation of the Nebraska Retirement Systems Committee regarding passage of any bill or amendment. To assist the committee in the performance of such duties, the committee may consult with and utilize the services of any officer, department, or agency of the state and may from time to time engage the services of a qualified and experienced actuary. In the absence of any report from such committee, the Legislature shall consider requests from groups seeking to have retirement plans established for them and such other proposed legislation as is pertinent to existing retirement systems.

Source: Laws 1959, c. 243, § 2, p. 832; Laws 1989, LB 189, § 2; Laws 2011, LB10, § 1.
Effective date August 27, 2011.

50-417.02 Repealed. Laws 2011, LB 509, § 55.
Operative date July 1, 2011.

50-417.03 Repealed. Laws 2011, LB 509, § 55.
Operative date July 1, 2011.

50-417.04 Repealed. Laws 2011, LB 509, § 55.
Operative date July 1, 2011.

50-417.05 Repealed. Laws 2011, LB 509, § 55.

Operative date July 1, 2011.

50-417.06 Repealed. Laws 2011, LB 509, § 55.

Operative date July 1, 2011.

ARTICLE 11

LEGISLATIVE DISTRICTS

Section

- 50-1101. Transferred to section 50-1153.
- 50-1102. Repealed. Laws 2011, LB 703, § 5.
- 50-1103. Repealed. Laws 2011, LB 703, § 5.
- 50-1104. Repealed. Laws 2011, LB 703, § 5.
- 50-1105. Repealed. Laws 2011, LB 703, § 5.
- 50-1106. Repealed. Laws 2011, LB 703, § 5.
- 50-1107. Repealed. Laws 2011, LB 703, § 5.
- 50-1108. Repealed. Laws 2011, LB 703, § 5.
- 50-1109. Repealed. Laws 2011, LB 703, § 5.
- 50-1110. Repealed. Laws 2011, LB 703, § 5.
- 50-1111. Repealed. Laws 2011, LB 703, § 5.
- 50-1112. Repealed. Laws 2011, LB 703, § 5.
- 50-1113. Repealed. Laws 2011, LB 703, § 5.
- 50-1114. Repealed. Laws 2011, LB 703, § 5.
- 50-1115. Repealed. Laws 2011, LB 703, § 5.
- 50-1116. Repealed. Laws 2011, LB 703, § 5.
- 50-1117. Repealed. Laws 2011, LB 703, § 5.
- 50-1118. Repealed. Laws 2011, LB 703, § 5.
- 50-1119.01. Repealed. Laws 2011, LB 703, § 5.
- 50-1120. Repealed. Laws 2011, LB 703, § 5.
- 50-1121. Repealed. Laws 2011, LB 703, § 5.
- 50-1122. Repealed. Laws 2011, LB 703, § 5.
- 50-1123. Repealed. Laws 2011, LB 703, § 5.
- 50-1124. Repealed. Laws 2011, LB 703, § 5.
- 50-1125. Repealed. Laws 2011, LB 703, § 5.
- 50-1126. Repealed. Laws 2011, LB 703, § 5.
- 50-1127. Repealed. Laws 2011, LB 703, § 5.
- 50-1128. Repealed. Laws 2011, LB 703, § 5.
- 50-1129. Repealed. Laws 2011, LB 703, § 5.
- 50-1130. Repealed. Laws 2011, LB 703, § 5.
- 50-1131. Repealed. Laws 2011, LB 703, § 5.
- 50-1132. Repealed. Laws 2011, LB 703, § 5.
- 50-1133. Repealed. Laws 2011, LB 703, § 5.
- 50-1134. Repealed. Laws 2011, LB 703, § 5.
- 50-1135. Repealed. Laws 2011, LB 703, § 5.
- 50-1136. Repealed. Laws 2011, LB 703, § 5.
- 50-1137. Repealed. Laws 2011, LB 703, § 5.
- 50-1138. Repealed. Laws 2011, LB 703, § 5.
- 50-1139. Repealed. Laws 2011, LB 703, § 5.
- 50-1140. Repealed. Laws 2011, LB 703, § 5.
- 50-1141.01. Repealed. Laws 2011, LB 703, § 5.
- 50-1142. Repealed. Laws 2011, LB 703, § 5.
- 50-1143. Repealed. Laws 2011, LB 703, § 5.
- 50-1144. Repealed. Laws 2011, LB 703, § 5.
- 50-1145. Repealed. Laws 2011, LB 703, § 5.
- 50-1146. Repealed. Laws 2011, LB 703, § 5.
- 50-1147. Repealed. Laws 2011, LB 703, § 5.
- 50-1148. Repealed. Laws 2011, LB 703, § 5.
- 50-1149. Repealed. Laws 2011, LB 703, § 5.
- 50-1150. Repealed. Laws 2011, LB 703, § 5.

Section	
50-1152.	Transferred to section 50-1154.
50-1153.	Legislative districts; division; population figures and maps; basis; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.
50-1154.	Legislative districts; change; when operative.

50-1101 Transferred to section 50-1153.

50-1102 Repealed. Laws 2011, LB 703, § 5.

50-1103 Repealed. Laws 2011, LB 703, § 5.

50-1104 Repealed. Laws 2011, LB 703, § 5.

50-1105 Repealed. Laws 2011, LB 703, § 5.

50-1106 Repealed. Laws 2011, LB 703, § 5.

50-1107 Repealed. Laws 2011, LB 703, § 5.

50-1108 Repealed. Laws 2011, LB 703, § 5.

50-1109 Repealed. Laws 2011, LB 703, § 5.

50-1110 Repealed. Laws 2011, LB 703, § 5.

50-1111 Repealed. Laws 2011, LB 703, § 5.

50-1112 Repealed. Laws 2011, LB 703, § 5.

50-1113 Repealed. Laws 2011, LB 703, § 5.

50-1114 Repealed. Laws 2011, LB 703, § 5.

50-1115 Repealed. Laws 2011, LB 703, § 5.

50-1116 Repealed. Laws 2011, LB 703, § 5.

50-1117 Repealed. Laws 2011, LB 703, § 5.

50-1118 Repealed. Laws 2011, LB 703, § 5.

50-1119.01 Repealed. Laws 2011, LB 703, § 5.

50-1120 Repealed. Laws 2011, LB 703, § 5.

50-1121 Repealed. Laws 2011, LB 703, § 5.

50-1122 Repealed. Laws 2011, LB 703, § 5.

50-1123 Repealed. Laws 2011, LB 703, § 5.

50-1124 Repealed. Laws 2011, LB 703, § 5.

50-1125 Repealed. Laws 2011, LB 703, § 5.

50-1126 Repealed. Laws 2011, LB 703, § 5.

50-1127 Repealed. Laws 2011, LB 703, § 5.

50-1128 Repealed. Laws 2011, LB 703, § 5.

- 50-1129 Repealed. Laws 2011, LB 703, § 5.**
- 50-1130 Repealed. Laws 2011, LB 703, § 5.**
- 50-1131 Repealed. Laws 2011, LB 703, § 5.**
- 50-1132 Repealed. Laws 2011, LB 703, § 5.**
- 50-1133 Repealed. Laws 2011, LB 703, § 5.**
- 50-1134 Repealed. Laws 2011, LB 703, § 5.**
- 50-1135 Repealed. Laws 2011, LB 703, § 5.**
- 50-1136 Repealed. Laws 2011, LB 703, § 5.**
- 50-1137 Repealed. Laws 2011, LB 703, § 5.**
- 50-1138 Repealed. Laws 2011, LB 703, § 5.**
- 50-1139 Repealed. Laws 2011, LB 703, § 5.**
- 50-1140 Repealed. Laws 2011, LB 703, § 5.**
- 50-1141.01 Repealed. Laws 2011, LB 703, § 5.**
- 50-1142 Repealed. Laws 2011, LB 703, § 5.**
- 50-1143 Repealed. Laws 2011, LB 703, § 5.**
- 50-1144 Repealed. Laws 2011, LB 703, § 5.**
- 50-1145 Repealed. Laws 2011, LB 703, § 5.**
- 50-1146 Repealed. Laws 2011, LB 703, § 5.**
- 50-1147 Repealed. Laws 2011, LB 703, § 5.**
- 50-1148 Repealed. Laws 2011, LB 703, § 5.**
- 50-1149 Repealed. Laws 2011, LB 703, § 5.**
- 50-1150 Repealed. Laws 2011, LB 703, § 5.**
- 50-1152 Transferred to section 50-1154.**

50-1153 Legislative districts; division; population figures and maps; basis; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.

(1) The State of Nebraska is hereby divided into forty-nine legislative districts. Each district shall be entitled to one member in the Legislature. The Legislature adopts the official population figures and maps from the 2010 Census Redistricting (Public Law 94-171) TIGER/Line Shapefiles published by the United States Department of Commerce, Bureau of the Census.

(2) The numbers and boundaries of the legislative districts are designated and established by maps identified and labeled as maps LEG11-1, LEG11-1A, LEG11-43002E-2, LEG11-43002E-2A, LEG11-2B, LEG11-3, LEG11-4, LEG11-5, LEG11-6, LEG11-7, LEG11-8, LEG11-9, LEG11-10, LEG11-11, LEG11-12, LEG11-13, LEG11-14, LEG11-15, LEG11-16, LEG11-17, LEG11-18,

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LEG11-19, LEG11-20, LEG11-21, LEG11-21A, LEG11-22, LEG11-23, LEG11-24, LEG11-25, LEG11-25A, LEG11-26, LEG11-27, LEG11-28, LEG11-29, LEG11-30, LEG11-30A, LEG11-31, LEG11-32, LEG11-32A, LEG11-33, LEG11-34, LEG11-34A, LEG11-35, LEG11-36, LEG11-37, LEG11-37A, LEG11-38, LEG11-38A, LEG11-39, LEG11-40, LEG11-41, LEG11-42, LEG11-43002E-43, LEG11-44, LEG11-45, LEG11-46, LEG11-43002E-47, LEG11-48, and LEG11-43002E-49, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2011, LB703.

(3)(a) The Clerk of the Legislature shall transfer possession of the maps referred to in subsection (2) of this section to the Secretary of State on May 27, 2011.

(b) When questions of interpretation of legislative district boundaries arise, the maps referred to in subsection (2) of this section in possession of the Secretary of State shall serve as the indication of the legislative intent in drawing the legislative district boundaries.

(c) Each election commissioner or county clerk shall obtain copies of the maps referred to in subsection (2) of this section for the election commissioner's or clerk's county from the Secretary of State.

(d) The Secretary of State shall also have available for viewing on his or her web site the maps referred to in subsection (2) of this section identifying the boundaries for the legislative districts.

Source: Laws 1981, LB 406, § 1; R.S.1943, (1987), § 5-201; Laws 1991, LB 614, § 1; Laws 1992, Second Spec. Sess., LB 7, § 1; Laws 2001, LB 852, § 1; R.S.1943, (2010), § 50-1101; Laws 2011, LB703, § 2.

Effective date May 27, 2011.

50-1154 Legislative districts; change; when operative.

The changes made to this section and section 50-1153 by Laws 2011, LB703 shall become operative on May 27, 2011, except that members of the Legislature from the odd-numbered districts shall be nominated at the primary election in 2012 and elected at the general election in November 2012 for the term commencing January 9, 2013. The members of the Legislature elected or appointed prior to May 27, 2011, shall represent the newly established districts for the balance of their terms, with each member representing the same numbered district as prior to May 27, 2011.

Source: Laws 1981, LB 406, § 52; R.S.1943, (1987), § 5-252; Laws 1991, LB 614, § 52; Laws 1992, LB 946, § 1; Laws 1992, Second Spec. Sess., LB 7, § 7; Laws 1992, Second Spec. Sess., LB 15, § 3; Laws 2001, LB 852, § 51; R.S.1943, (2010), § 50-1152; Laws 2011, LB703, § 3.

Effective date May 27, 2011.



CHAPTER 52
LIENS

Article.

1. Construction Lien.
 - (b) Nebraska Construction Lien Act. 52-158.

ARTICLE 1
CONSTRUCTION LIEN

(b) NEBRASKA CONSTRUCTION LIEN ACT

Section

52-158. Repealed. Laws 2011, LB 3, § 1.

(b) NEBRASKA CONSTRUCTION LIEN ACT

52-158 Repealed. Laws 2011, LB 3, § 1.



LIQUORS

CHAPTER 53
LIQUORS

Article.

1. Nebraska Liquor Control Act.
 - (a) General Provisions. 53-101.
 - (b) Nebraska Liquor Control Commission; Organization. 53-110.
 - (d) Licenses; Issuance and Revocation. 53-123.12 to 53-134.
 - (i) Prohibited Acts. 53-169.01 to 53-197.
 - (j) Penalties. 53-1,104.

ARTICLE 1

NEBRASKA LIQUOR CONTROL ACT

(a) GENERAL PROVISIONS

Section

53-101. Act, how cited.

(b) NEBRASKA LIQUOR CONTROL COMMISSION; ORGANIZATION

53-110. Commissioners and employees; qualifications; employment by licensee authorized; restrictions.

(d) LICENSES; ISSUANCE AND REVOCATION

53-123.12. Farm winery license; application requirements; renewal; fees.

53-123.15. Shipping license; when required; rights of licensee; application; contents; violation; disciplinary action.

53-124.12. Annual catering license; issuance; procedure; fee; occupation tax.

53-131. Retail, craft brewery, and microdistillery licenses; application; fees; notice of application to city, village, or county; renewal; fee.

53-133. Retail, craft brewery, and microdistillery licenses; hearing; when held; procedure.

53-134. Retail, craft brewery, and microdistillery licenses; city and village governing bodies; county boards; powers, functions, and duties.

(i) PROHIBITED ACTS

53-169.01. Manufacturer; interest in licensed wholesaler; prohibitions; exception.

53-177. Sale at retail; restrictions as to locality.

53-177.01. Sale for consumption on premises near campus of college or university; restrictions; commission; waiver; application; contents; written approval of governing body of college or university.

53-180. Prohibited acts relating to minors and incompetents.

53-180.05. Prohibited acts relating to minors and incompetents; violations; penalties; false identification; penalty; law enforcement agency; duties.

53-183. Sale on credit or for goods or services forbidden; exceptions.

53-186. Consumption of liquor on public property; forbidden; exceptions; license authorized.

53-186.01. Consumption of liquor in public places; license required; exceptions; violations; penalty.

53-197. Violations; peace officer; duties; neglect of duty; penalty.

(j) PENALTIES

53-1,104. Violations by licensee; suspension, cancellation, or revocation of license; cash penalty in lieu of suspending sales; election authorized.

(a) GENERAL PROVISIONS

53-101 Act, how cited.

Sections 53-101 to 53-1,122 shall be known and may be cited as the Nebraska Liquor Control Act.

Source: Laws 1935, c. 116, § 1, p. 373; C.S.Supp.,1941, § 53-301; R.S. 1943, § 53-101; Laws 1988, LB 490, § 3; Laws 1988, LB 901, § 1; Laws 1988, LB 1089, § 1; Laws 1989, LB 70, § 1; Laws 1989, LB 441, § 1; Laws 1989, LB 781, § 1; Laws 1991, LB 344, § 2; Laws 1991, LB 582, § 1; Laws 1993, LB 183, § 1; Laws 1993, LB 332, § 1; Laws 1994, LB 1292, § 1; Laws 2000, LB 973, § 1; Laws 2001, LB 114, § 1; Laws 2004, LB 485, § 2; Laws 2006, LB 845, § 1; Laws 2007, LB549, § 1; Laws 2007, LB578, § 1; Laws 2009, LB232, § 1; Laws 2009, LB355, § 1; Laws 2010, LB258, § 1; Laws 2010, LB861, § 7; Laws 2011, LB407, § 1. Effective date August 27, 2011.

(b) NEBRASKA LIQUOR CONTROL COMMISSION; ORGANIZATION

53-110 Commissioners and employees; qualifications; employment by licensee authorized; restrictions.

(1) No person shall be appointed as a commissioner, the executive director of the commission, or an employee of the commission who is not a citizen of the United States and who has not resided within the State of Nebraska successively for two years next preceding the date of his or her appointment.

(2) No person (a) convicted of or who has pleaded guilty to a felony or any violation of any federal or state law concerning the manufacture or sale of alcoholic liquor prior or subsequent to the passage of the Nebraska Liquor Control Act, (b) who has paid a fine or penalty in settlement of any prosecution against him or her for any violation of such laws, or (c) who has forfeited his or her bond to appear in court to answer charges for any such violation shall be appointed commissioner.

(3)(a) Except as otherwise provided in subdivision (b) of this subsection, no commissioner or employee of the commission may, directly or indirectly, individually, as a member of a partnership, as a member of a limited liability company, or as a shareholder of a corporation, have any interest whatsoever in the manufacture, sale, or distribution of alcoholic liquor, receive any compensation or profit from such manufacture, sale, or distribution, or have any interest whatsoever in the purchases or sales made by the persons authorized by the act to purchase or to sell alcoholic liquor.

(b) With the written approval of the executive director, an employee of the commission, other than the executive director or a division manager, may accept part-time or seasonal employment with a person licensed or regulated by the commission. No such employment shall be approved if the licensee receives more than fifty percent of the licensee's gross revenue from the sale or dispensing of alcoholic liquor.

(4) This section shall not prevent any commissioner, the executive director, or any employee from purchasing and keeping in his or her possession for the use

of himself, herself, or members of his or her family or guests any alcoholic liquor which may be purchased or kept by any person pursuant to the act.

Source: Laws 1935, c. 116, § 11, p. 380; C.S.Supp.,1941, § 53-311; R.S.1943, § 53-110; Laws 1989, LB 780, § 3; Laws 1991, LB 344, § 7; Laws 1993, LB 121, § 318; Laws 2011, LB407, § 2. Effective date August 27, 2011.

(d) LICENSES; ISSUANCE AND REVOCATION

53-123.12 Farm winery license; application requirements; renewal; fees.

(1) Any person desiring to obtain a new license to operate a farm winery shall:

(a) File an application with the commission in triplicate original upon such forms as the commission from time to time prescribes;

(b) Pay the license fee to the commission under sections 53-124 and 53-124.01, which fee shall be returned to the applicant if the application is denied; and

(c) Pay the nonrefundable application fee to the commission in the sum of four hundred dollars.

(2) To renew a farm winery license, a farm winery licensee shall file an application with the commission, pay the license fee under sections 53-124 and 53-124.01, and pay the renewal fee of forty-five dollars.

(3) License fees, application fees, and renewal fees may be paid to the commission by certified or cashier's check of a bank within this state, personal or business check, United States post office money order, or cash in the full amount of such fees.

(4) For a new license, the commission shall then notify the municipal clerk of the city or incorporated village where such license is sought or, if the license is not sought within a city or incorporated village, the county clerk of the county where such license is sought of the receipt of the application and shall include with such notice one copy of the application. No such license shall then be issued by the commission until the expiration of at least forty-five days from the date of receipt by mail or electronic delivery of such application from the commission. Within thirty-five days from the date of receipt of such application from the commission, the local governing bodies of nearby cities or villages or the county may make and submit to the commission recommendations relative to the granting of or refusal to grant such license to the applicant.

Source: Laws 1985, LB 279, § 7; Laws 1988, LB 1089, § 10; Laws 1991, LB 202, § 2; Laws 2000, LB 973, § 3; Laws 2010, LB861, § 53; Laws 2011, LB407, § 3. Effective date August 27, 2011.

53-123.15 Shipping license; when required; rights of licensee; application; contents; violation; disciplinary action.

(1) No person shall order or receive alcoholic liquor in this state which has been shipped directly to him or her from outside this state by any person other than a holder of a shipping license issued by the commission, except that a licensed wholesaler may receive not more than three gallons of wine in any calendar year from any person who is not a holder of a shipping license.

(2) The commission may issue a shipping license to a manufacturer. Such license shall allow the licensee to ship alcoholic liquor only to a licensed wholesaler, except that a licensed wholesaler may, without a shipping license and for the purposes of subdivision (2) of section 53-161, receive beer in this state which has been shipped from outside the state by a manufacturer in accordance with the Nebraska Liquor Control Act to the wholesaler, then transported by the wholesaler to another state for retail distribution, and then returned by the retailer to such wholesaler. A person who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a manufacturer's shipping license. Such fee shall be collected by the commission and be remitted to the State Treasurer for credit to the General Fund.

(3) The commission may issue a shipping license to any person who deals with vintage wines, which shipping license shall allow the licensee to distribute such wines to a licensed wholesaler in the state. For purposes of distributing vintage wines, a licensed shipper must utilize a designated wholesaler if the manufacturer has a designated wholesaler. For purposes of this section, vintage wine shall mean a wine verified to be ten years of age or older and not available from a primary American source of supply. A person who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a vintage wine dealer's shipping license. Such fee shall be collected by the commission and be remitted to the State Treasurer for credit to the General Fund.

(4) The commission may issue a shipping license to any person who sells and ships alcoholic liquor from another state directly to a consumer in this state. A person who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a direct sales shipping license. Such fee shall be collected by the commission and remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund.

(5) The application for a shipping license shall be in such form as the commission prescribes. The application shall contain all provisions the commission deems proper and necessary to effectuate the purpose of any section of the act and the rules and regulations of the commission that apply to manufacturers and shall include, but not be limited to, provisions that the applicant, in consideration of the issuance of such shipping license, agrees:

(a) To comply with and be bound by section 53-164.01 in making and filing reports, paying taxes, penalties, and interest, and keeping records;

(b) To permit and be subject to all of the powers granted by section 53-164.01 to the commission or its duly authorized employees or agents for inspection and examination of the applicant's premises and records and to pay the actual expenses, excluding salary, reasonably attributable to such inspections and examinations made by duly authorized employees of the commission if within the United States; and

(c) That if the applicant violates any of the provisions of the application or the license, any section of the act, or any of the rules and regulations of the commission that apply to manufacturers, the commission may revoke or suspend such shipping license for such period of time as it may determine.

Source: Laws 1991, LB 344, § 49; Laws 1994, LB 416, § 1; Laws 1995, LB 874, § 1; Laws 2001, LB 671, § 1; Laws 2004, LB 485, § 14;

Laws 2007, LB441, § 1; Laws 2010, LB861, § 55; Laws 2010, LB867, § 1; Laws 2011, LB286, § 1.
Effective date August 27, 2011.

53-124.12 Annual catering license; issuance; procedure; fee; occupation tax.

(1) The holder of a license to sell alcoholic liquor at retail issued under subsection (6) of section 53-124, a craft brewery license, a microdistillery license, or a farm winery license may obtain an annual catering license as prescribed in this section. The catering license shall be issued for the same period and may be renewed in the same manner as the retail license, craft brewery license, microdistillery license, or farm winery license.

(2) Any person desiring to obtain a catering license shall file with the commission:

(a) An application in triplicate original upon such forms as the commission prescribes; and

(b) A license fee of one hundred dollars payable to the commission, which fee shall be returned to the applicant if the application is denied.

(3) When an application for a catering license is filed, the commission shall notify the clerk of the city or incorporated village in which such applicant is located or, if the applicant is not located within a city or incorporated village, the county clerk of the county in which such applicant is located, of the receipt of the application. The commission shall include with such notice one copy of the application by mail or electronic delivery. The local governing body and the commission shall process the application in the same manner as provided in section 53-132.

(4) The local governing body with respect to catering licensees within its liquor license jurisdiction as provided in subsection (5) of this section may cancel a catering license for cause for the remainder of the period for which such catering license is issued. Any person whose catering license is canceled may appeal to the district court of the county in which the local governing body is located.

(5) For purposes of this section, local governing body means (a) the governing body of the city or village in which the catering licensee is located or (b) if such licensee is not located within a city or village, the governing body of the county in which such licensee is located.

(6) The local governing body may impose an occupation tax on the business of a catering licensee doing business within the liquor license jurisdiction of the local governing body as provided in subsection (5) of this section. Such tax may not exceed double the license fee to be paid under this section.

Source: Laws 1988, LB 490, § 1; Laws 1991, LB 344, § 28; Laws 1994, LB 1292, § 5; Laws 1996, LB 750, § 8; Laws 2001, LB 278, § 5; Laws 2004, LB 485, § 17; Laws 2006, LB 562, § 5; Laws 2007, LB549, § 9; Laws 2010, LB861, § 59; Laws 2011, LB407, § 4.
Effective date August 27, 2011.

53-131 Retail, craft brewery, and microdistillery licenses; application; fees; notice of application to city, village, or county; renewal; fee.

(1) Any person desiring to obtain a new license to sell alcoholic liquor at retail, a craft brewery license, or a microdistillery license shall file with the commission:

(a) An application in triplicate original upon forms the commission prescribes, including the information required by subsection (3) of this section for an application to operate a cigar bar;

(b) The license fee if under sections 53-124 and 53-124.01 such fee is payable to the commission, which fee shall be returned to the applicant if the application is denied; and

(c) The nonrefundable application fee in the sum of four hundred dollars, except that the nonrefundable application fee for an application for a cigar bar shall be one thousand dollars.

(2) The commission shall notify the clerk of the city or village in which such license is sought or, if the license sought is not sought within a city or village, the county clerk of the county in which such license is sought, of the receipt of the application and shall include one copy of the application with the notice. No such license shall be issued or denied by the commission until the expiration of the time allowed for the receipt of a recommendation of denial or an objection requiring a hearing under subdivision (1)(a) or (b) of section 53-133. During the period of forty-five days after the date of receipt by mail or electronic delivery of such application from the commission, the local governing body of such city, village, or county may make and submit to the commission recommendations relative to the granting or refusal to grant such license to the applicant.

(3) For an application to operate a cigar bar, the application shall include proof of the cigar bar's annual gross revenue as requested by the commission and such other information as requested by the commission to establish the intent to operate as a cigar bar. The commission may adopt and promulgate rules and regulations to regulate cigar bars.

(4) For renewal of a license under this section, a licensee shall file with the commission an application, the license fee as provided in subdivision (1)(b) of this section, and a renewal fee of forty-five dollars.

Source: Laws 1935, c. 116, § 82, p. 417; C.S.Supp.,1941, § 53-382; R.S.1943, § 53-131; Laws 1955, c. 203, § 1, p. 580; Laws 1959, c. 249, § 6, p. 866; Laws 1976, LB 413, § 1; Laws 1980, LB 848, § 7; Laws 1982, LB 928, § 42; Laws 1983, LB 213, § 12; Laws 1984, LB 947, § 2; Laws 1986, LB 911, § 3; Laws 1988, LB 550, § 1; Laws 1988, LB 1089, § 13; Laws 1989, LB 781, § 9; Laws 1991, LB 202, § 4; Laws 1991, LB 344, § 34; Laws 1993, LB 183, § 11; Laws 1996, LB 750, § 9; Laws 1999, LB 267, § 8; Laws 2000, LB 973, § 6; Laws 2001, LB 278, § 7; Laws 2004, LB 485, § 20; Laws 2007, LB549, § 11; Laws 2009, LB355, § 4; Laws 2010, LB861, § 65; Laws 2011, LB407, § 5.
Effective date August 27, 2011.

53-133 Retail, craft brewery, and microdistillery licenses; hearing; when held; procedure.

(1) The commission shall set for hearing before it any application for a retail license, craft brewery license, or microdistillery license relative to which it has received:

(a) Within forty-five days after the date of receipt of such application by the city, village, or county clerk, a recommendation of denial from the city, village, or county;

(b) Within ten days after the receipt of a recommendation from the city, village, or county, or, if no recommendation is received, within forty-five days after the date of receipt of such application by the city, village, or county clerk, objections in writing by not less than three persons residing within such city, village, or county, protesting the issuance of the license. Withdrawal of the protest does not prohibit the commission from conducting a hearing based upon the protest as originally filed and making an independent finding as to whether the license should or should not be issued;

(c) Within forty-five days after the date of receipt of such application by the city, village, or county clerk, objections by the commission or any duly appointed employee of the commission, protesting the issuance of the license; or

(d) An indication on the application that the location of a proposed retail establishment is within one hundred fifty feet of a church as described in subsection (2) of section 53-177.

(2) Hearings upon such applications shall be in the following manner: Notice indicating the time and place of such hearing shall be mailed or electronically delivered to the applicant, the local governing body, each individual protesting a license pursuant to subdivision (1)(b) of this section, and any church affected as described in subdivision (1)(d) of this section, at least fifteen days prior to such hearing. The notice shall state that the commission will receive evidence for the purpose of determining whether to approve or deny the application. Mailing or electronic delivery to the attorney of record of a party shall be deemed to fulfill the purposes of this section. The commission may receive evidence, including testimony and documentary evidence, and may hear and question witnesses concerning the application. The commission shall not use electronic delivery with respect to an applicant, a protestor, or a church under this section without the consent of the recipient to electronic delivery.

Source: Laws 1935, c. 116, § 84, p. 420; C.S.Supp.,1941, § 53-384; R.S.1943, § 53-133; Laws 1959, c. 249, § 8, p. 868; Laws 1961, c. 260, § 1, p. 774; Laws 1976, LB 413, § 3; Laws 1979, LB 224, § 2; Laws 1983, LB 213, § 13; Laws 1986, LB 911, § 5; Laws 1988, LB 550, § 2; Laws 1989, LB 781, § 11; Laws 1993, LB 183, § 13; Laws 1999, LB 267, § 10; Laws 2004, LB 485, § 22; Laws 2007, LB549, § 13; Laws 2010, LB861, § 67; Laws 2011, LB407, § 6.

Effective date August 27, 2011.

53-134 Retail, craft brewery, and microdistillery licenses; city and village governing bodies; county boards; powers, functions, and duties.

The local governing body of any city or village with respect to licenses within its corporate limits and the local governing body of any county with respect to licenses not within the corporate limits of any city or village but within the county shall have the following powers, functions, and duties with respect to retail, craft brewery, and microdistillery licenses:

(1) To cancel or revoke for cause retail, craft brewery, or microdistillery licenses to sell or dispense alcoholic liquor issued to persons for premises within its jurisdiction, subject to the right of appeal to the commission;

(2) To enter or to authorize any law enforcement officer to enter at any time upon any premises licensed under the Nebraska Liquor Control Act to determine whether any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation adopted by the local governing body has been or is being violated and at such time examine the premises of such licensee in connection with such determination. Any law enforcement officer who determines that any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation adopted by the local governing body has been or is being violated shall report such violation in writing to the executive director of the commission (a) within thirty days after determining that such violation has occurred, (b) within thirty days after the conclusion of an ongoing police investigation, or (c) within thirty days after the verdict in a prosecution related to such an ongoing police investigation if the prosecuting attorney determines that reporting such violation prior to the verdict would jeopardize such prosecution, whichever is later;

(3) To receive a signed complaint from any citizen within its jurisdiction that any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation relating to alcoholic liquor has been or is being violated and to act upon such complaints in the manner provided in the act;

(4) To receive retail license fees, craft brewery license fees, and microdistillery license fees as provided in sections 53-124 and 53-124.01 and pay the same, after the license has been delivered to the applicant, to the city, village, or county treasurer;

(5) To examine or cause to be examined any applicant or any retail licensee, craft brewery licensee, or microdistillery licensee upon whom notice of cancellation or revocation has been served as provided in the act, to examine or cause to be examined the books and records of any applicant or licensee, and to hear testimony and to take proof for its information in the performance of its duties. For purposes of obtaining any of the information desired, the local governing body may authorize its agent or attorney to act on its behalf;

(6) To cancel or revoke on its own motion any license if, upon the same notice and hearing as provided in section 53-134.04, it determines that the licensee has violated any of the provisions of the act or any valid and subsisting ordinance, resolution, rule, or regulation duly enacted, adopted, and promulgated relating to alcoholic liquor. Such order of cancellation or revocation may be appealed to the commission within thirty days after the date of the order by filing a notice of appeal with the commission. The commission shall handle the appeal in the manner provided for hearing on an application in section 53-133; and

(7) Upon receipt from the commission of the notice and copy of application as provided in section 53-131, to fix a time and place for a hearing at which the local governing body shall receive evidence, either orally or by affidavit from the applicant and any other person, bearing upon the propriety of the issuance of a license. Notice of the time and place of such hearing shall be published in a legal newspaper in or of general circulation in such city, village, or county one

time not less than seven and not more than fourteen days before the time of the hearing. Such notice shall include, but not be limited to, a statement that all persons desiring to give evidence before the local governing body in support of or in protest against the issuance of such license may do so at the time of the hearing. Such hearing shall be held not more than forty-five days after the date of receipt of the notice from the commission, and after such hearing the local governing body shall cause to be recorded in the minute record of their proceedings a resolution recommending either issuance or refusal of such license. The clerk of such city, village, or county shall mail to the commission by first-class mail, postage prepaid, a copy of the resolution which shall state the cost of the published notice, except that failure to comply with this provision shall not void any license issued by the commission. If the commission refuses to issue such a license, the cost of publication of notice shall be paid by the commission from the security for costs.

Source: Laws 1935, c. 116, § 85, p. 421; C.S.Supp.,1941, § 53-385; R.S.1943, § 53-134; Laws 1949, c. 169, § 1(1), p. 447; Laws 1959, c. 249, § 9, p. 868; Laws 1967, c. 332, § 9, p. 888; Laws 1983, LB 213, § 14; Laws 1984, LB 947, § 4; Laws 1986, LB 911, § 6; Laws 1988, LB 352, § 92; Laws 1988, LB 550, § 3; Laws 1988, LB 1089, § 15; Laws 1989, LB 780, § 10; Laws 1989, LB 781, § 12; Laws 1991, LB 344, § 37; Laws 1993, LB 183, § 14; Laws 1999, LB 267, § 11; Laws 2001, LB 278, § 8; Laws 2004, LB 485, § 23; Laws 2007, LB549, § 14; Laws 2010, LB861, § 68; Laws 2011, LB641, § 1.

Effective date August 27, 2011.

(i) PROHIBITED ACTS

53-169.01 Manufacturer; interest in licensed wholesaler; prohibitions; exception.

(1)(a) Except as otherwise provided in subsection (2) of this section, no manufacturer of alcoholic liquor holding a manufacturer's license under section 53-123.01 and no manufacturer of alcoholic liquor outside this state manufacturing alcoholic liquor for distribution and sale within this state shall, directly or indirectly, as owner or part owner, or through a subsidiary or affiliate, or by any officer, director, or employee thereof, or by stock ownership, interlocking directors, trusteeship, loan, mortgage, or lien on any personal or real property, or as guarantor, endorser, or surety, be interested in the ownership, conduct, operation, or management of any wholesaler holding an alcoholic liquor wholesale license under section 53-123.02 or a beer wholesale license under section 53-123.03.

(b) Except as otherwise provided in subsection (2) of this section, no manufacturer of alcoholic liquor holding a manufacturer's license under section 53-123.01 and no manufacturer of alcoholic liquor outside this state manufacturing alcoholic liquor for distribution and sale within this state shall be interested directly or indirectly, as lessor or lessee, as owner or part owner, or through a subsidiary or affiliate, or by any officer, director, or employee thereof, or by stock ownership, interlocking directors, or trusteeship in the premises upon which the place of business of a wholesaler holding an alcoholic liquor wholesale license under section 53-123.02 or a beer wholesale license under section 53-123.03 is located, established, conducted, or operated in

whole or in part unless such interest was acquired or became effective prior to April 17, 1947.

(2) A manufacturer of beer may acquire an ownership interest in a beer wholesaler, for a period not to exceed two years, upon the death or bankruptcy of the beer wholesaler with which the manufacturer is doing business or upon the beer wholesaler with which the manufacturer is doing business becoming ineligible to hold a license under section 53-125.

Source: Laws 1935, c. 116, § 30, p. 396; C.S.Supp.,1941, § 53-330; R.S.1943, § 53-169; Laws 1947, c. 187, § 2, p. 619; Laws 1953, c. 182, § 4, p. 575; Laws 1959, c. 250, § 2, p. 876; Laws 1969, c. 441, § 3, p. 1477; Laws 1991, LB 344, § 55; Laws 2007, LB578, § 3; Laws 2010, LB861, § 74; Laws 2011, LB279, § 1.
Effective date August 27, 2011.

53-177 Sale at retail; restrictions as to locality.

(1) Except as otherwise provided in subsection (2) of this section, no license shall be issued for the sale at retail of any alcoholic liquor within one hundred fifty feet of any church, school, hospital, or home for aged or indigent persons or for veterans, their wives or children. This prohibition does not apply (a) to any location within such distance of one hundred fifty feet for which a license to sell alcoholic liquor at retail has been granted by the commission for two years continuously prior to making of application for license, (b) to hotels offering restaurant service, to regularly organized clubs, or to restaurants, food shops, or other places where sale of alcoholic liquor is not the principal business carried on, if such place of business so exempted was established for such purposes prior to May 24, 1935, or (c) to a college or university in the state which is subject to section 53-177.01.

(2) If a proposed location for the sale at retail of any alcoholic liquor is within one hundred fifty feet of any church, a license may be issued if the commission gives notice to the affected church and holds a hearing as prescribed in section 53-133.

Source: Laws 1935, c. 116, § 35, p. 399; C.S.Supp.,1941, § 53-335; R.S.1943, § 53-177; Laws 1947, c. 189, § 2, p. 626; Laws 1965, c. 322, § 1, p. 914; Laws 1999, LB 267, § 13; Laws 2009, LB232, § 3; Laws 2010, LB861, § 76; Laws 2011, LB407, § 7.
Effective date August 27, 2011.

53-177.01 Sale for consumption on premises near campus of college or university; restrictions; commission; waiver; application; contents; written approval of governing body of college or university.

(1) No alcoholic liquor shall be sold for consumption on the premises within three hundred feet from the campus of any college or university in the state, except that this section:

(a) Does not prohibit a nonpublic college or university from contracting with an individual or corporation holding a license to sell alcoholic liquor at retail for the purpose of selling alcoholic liquor at retail on the campus of such college or university at events sanctioned by such college or university but does prohibit the sale of alcoholic liquor at retail by such licensee on the campus of such nonpublic college or university at student activities or events; and

(b) Does not prohibit sales of alcoholic liquor by a community college culinary education program pursuant to section 53-124.15.

(2) Except as otherwise provided in subsection (4) of this section, the commission may waive the three-hundred-foot restriction in subsection (1) of this section taking into consideration one or more of the following:

(a) The impact of retail sales of alcoholic liquor for consumption on the premises on the academic mission of the college or university;

(b) The impact on students and prospective students if such sales were permitted on or near campus;

(c) The impact on economic development opportunities located within or in proximity to the campus; and

(d) The waiver would likely reduce the number of applications for special designated licenses requested by the college or university or its designee.

(3) To apply for a waiver under this section, the applicant shall submit a written application to the commission. The commission shall notify the governing body of the affected college or university when the commission receives an application for a waiver. The application shall include:

(a) The address of the location for which the waiver is requested;

(b) The name and type of business for which the waiver is requested; and

(c) A description of the justification for the waiver explaining how the proposed location complies with the findings prescribed in subsection (2) of this section.

(4) The commission shall not waive the three-hundred-foot restriction in subsection (1) of this section without written approval from the governing body of the college or university or its designee if the physical location of the property which is the subject of the requested waiver is (a) surrounded by property owned by the college or university including any public or private easement, street, or right-of-way adjacent to the property owned by the college or university or (b) adjacent to property on two or more sides owned by the college or university including any public or private easement, street, or right-of-way adjacent to the property owned by the college or university.

Source: Laws 2011, LB407, § 8.

Effective date August 27, 2011.

53-180 Prohibited acts relating to minors and incompetents.

No person shall sell, furnish, give away, exchange, or deliver, or permit the sale, gift, or procuring of, any alcoholic liquors to or for any minor or to any person who is mentally incompetent.

Source: Laws 1935, c. 116, § 38, p. 400; Laws 1937, c. 125, § 1, p. 437; C.S.Supp.,1941, § 53-338; Laws 1943, c. 121, § 1, p. 419; R.S. 1943,§ 53-180; Laws 1951, c. 174, § 1(1), p. 664; Laws 1980, LB 848, § 17; Laws 2011, LB667, § 21.

Operative date January 1, 2012.

Cross References

City of the second class may prohibit sale to minors, see section 17-135.
Minor Alcoholic Liquor Liability Act, see section 53-401.

53-180.05 Prohibited acts relating to minors and incompetents; violations; penalties; false identification; penalty; law enforcement agency; duties.

(1) Except as provided in subsection (2) of this section, any person who violates section 53-180 shall be guilty of a Class I misdemeanor.

(2) Any person who knowingly and intentionally violates section 53-180 shall be guilty of a Class IIIA felony and serve a mandatory minimum of at least thirty days' imprisonment as part of any sentence he or she receives if serious bodily injury or death to any person resulted and was proximately caused by a minor's (a) consumption of the alcoholic liquor provided or (b) impaired condition which, in whole or in part, can be attributed to the alcoholic liquor provided.

(3) Any person who violates any of the provisions of section 53-180.01 or 53-180.03 shall be guilty of a Class III misdemeanor.

(4) Any person older than eighteen years of age and under the age of twenty-one years violating section 53-180.02 is guilty of a Class III misdemeanor.

(5) Any person eighteen years of age or younger violating section 53-180.02 is guilty of a misdemeanor as provided in section 53-181 and shall be punished as provided in such section.

(6) Any person who knowingly manufactures, creates, or alters any form of identification for the purpose of sale or delivery of such form of identification to a person under the age of twenty-one years shall be guilty of a Class I misdemeanor. For purposes of this subsection, form of identification means any card, paper, or legal document that may be used to establish the age of the person named thereon for the purpose of purchasing alcoholic liquor.

(7) When a minor is arrested for a violation of sections 53-180 to 53-180.02 or subsection (6) of this section, the law enforcement agency employing the arresting peace officer shall make a reasonable attempt to notify such minor's parent or guardian of the arrest.

Source: Laws 1935, c. 116, § 38, p. 400; Laws 1937, c. 125, § 1, p. 437; C.S.Supp.,1941, § 53-338; Laws 1943, c. 121, § 1, p. 419; R.S. 1943, § 53-180; Laws 1951, c. 174, § 1(6), p. 664; Laws 1963, c. 313, § 2, p. 943; Laws 1969, c. 444, § 1, p. 1482; Laws 1973, LB 25, § 3; Laws 1977, LB 40, § 315; Laws 1982, LB 869, § 1; Laws 1984, LB 56, § 4; Laws 1985, LB 493, § 2; Laws 1989, LB 440, § 1; Laws 1991, LB 454, § 1; Laws 2001, LB 114, § 6; Laws 2010, LB258, § 2; Laws 2011, LB667, § 22.

Operative date January 1, 2012.

53-183 Sale on credit or for goods or services forbidden; exceptions.

(1) No person shall sell or furnish alcoholic liquor at retail to any person on credit, on a passbook, on an order on a store, in exchange for any goods, wares, or merchandise, or in payment for any services rendered, and if any person extends credit for any such purpose, the debt thereby attempted to be created shall not be recoverable at law.

(2) Nothing in this section shall prevent:

(a) Any club holding a Class C license from permitting checks or statements for alcoholic liquor to be signed by members or bona fide guests of members and charged to the account of such members or guests in accordance with the bylaws of such club;

(b) Any hotel or restaurant holding a retail license from permitting checks or statements for liquor to be signed by regular guests residing at such hotel or eating at such restaurant and charged to the accounts of such guests; or

(c) Any licensed retailer engaged in the sale of wine from issuing wine-tasting cards to customers.

Source: Laws 1935, c. 116, § 40, p. 401; C.S.Supp.,1941, § 53-340; R.S.1943, § 53-183; Laws 1959, c. 252, § 1, p. 883; Laws 1978, LB 386, § 10; Laws 1991, LB 344, § 64; Laws 2011, LB314, § 1. Effective date August 27, 2011.

53-186 Consumption of liquor on public property; forbidden; exceptions; license authorized.

(1) Except as provided in subsection (2) of this section or section 60-6,211.08, it shall be unlawful for any person to consume alcoholic liquor upon property owned or controlled by the state or any governmental subdivision thereof unless authorized by the governing bodies having jurisdiction over such property.

(2) The commission may issue licenses for the sale of alcoholic liquor at retail (a) on lands owned by public power districts, public power and irrigation districts, the Bureau of Reclamation, or the Corps of Army Engineers or (b) for locations within or on structures on land owned by the state, cities, or villages or on lands controlled by airport authorities. The issuance of a license under this subsection shall be subject to the consent of the local governing body having jurisdiction over the site for which the license is requested as provided in the Nebraska Liquor Control Act.

Source: Laws 1935, c. 116, § 44, p. 402; C.S.Supp.,1941, § 53-344; R.S.1943, § 53-186; Laws 1953, c. 182, § 5, p. 576; Laws 1967, c. 332, § 12, p. 891; Laws 1993, LB 235, § 45; Laws 1999, LB 585, § 1; Laws 2011, LB281, § 1. Effective date August 27, 2011.

53-186.01 Consumption of liquor in public places; license required; exceptions; violations; penalty.

(1) It shall be unlawful for any person owning, operating, managing, or conducting any dance hall, restaurant, cafe, or club or any place open to the general public to permit or allow any person to consume alcoholic liquor upon the premises except as permitted by a license issued for such premises pursuant to the Nebraska Liquor Control Act.

(2) It shall be unlawful for any person to consume alcoholic liquor in any dance hall, restaurant, cafe, or club or any place open to the general public except as permitted by a license issued for such premises pursuant to the act.

(3) This section shall not apply to a retail licensee while lawfully engaged in the catering of alcoholic beverages or to limousines or buses operated under section 60-6,211.08.

(4) Any person violating subsection (1) of this section shall, upon conviction thereof, be subject to the penalties contained in section 53-1,100.

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

Source: Laws 1965, c. 318, § 1, p. 885; Laws 1978, LB 386, § 11; Laws 1991, LB 344, § 67; Laws 1991, LB 454, § 3; Laws 2011, LB281, § 2.
Effective date August 27, 2011.

53-197 Violations; peace officer; duties; neglect of duty; penalty.

(1) Every sheriff, deputy sheriff, police officer, marshal, or deputy marshal who knows or who is credibly informed that any offense has been committed against any law of this state relating to the sale of alcoholic liquor shall make complaint against the person so offending within their respective jurisdictions to the proper court, and for every neglect or refusal so to do, every such officer shall be guilty of a Class V misdemeanor.

(2) Every sheriff, deputy sheriff, police officer, marshal, or deputy marshal who knows or who is credibly informed that any offense has been committed against any law of this state relating to the sale of alcoholic liquor shall report such offense in writing to the executive director of the commission (a) within thirty days after such offense is committed, (b) within thirty days after such sheriff, deputy sheriff, police officer, marshal, or deputy marshal is informed of such offense, (c) within thirty days after the conclusion of an ongoing police investigation, or (d) within thirty days after the verdict in a prosecution related to such an ongoing police investigation if the prosecuting attorney determines that reporting such violation prior to the verdict would jeopardize such prosecution, whichever is later.

Source: Laws 1935, c. 116, § 75, p. 412; C.S.Supp.,1941, § 53-375; R.S.1943, § 53-197; Laws 1972, LB 1032, § 257; Laws 1977, LB 40, § 318; Laws 1988, LB 1030, § 44; Laws 2011, LB641, § 2.
Effective date August 27, 2011.

(j) PENALTIES

53-1,104 Violations by licensee; suspension, cancellation, or revocation of license; cash penalty in lieu of suspending sales; election authorized.

(1) Any licensee which sells or permits the sale of any alcoholic liquor not authorized under the terms of such license on the licensed premises or in connection with such licensee's business or otherwise shall be subject to suspension, cancellation, or revocation of such license by the commission.

(2) When an order suspending a license to sell alcoholic liquor becomes final, the licensee may elect to pay a cash penalty to the commission in lieu of suspending sales of alcoholic liquor for the designated period if such election is not prohibited by order of the commission. Except as otherwise provided in subsection (3) of this section, for the first such suspension for any licensee, the penalty shall be fifty dollars per day, and for a second or any subsequent suspension, the penalty shall be one hundred dollars per day.

(3)(a) For a second suspension for violation of section 53-180 or 53-180.02 occurring within four years after the date of the first suspension, the commission, in its discretion, may order that the licensee be required to suspend sales of alcoholic liquor for a period of time not to exceed forty-eight hours and that the licensee may not elect to pay a cash penalty. The commission may use the

required suspension of sales of alcoholic liquor penalty either alone or in conjunction with suspension periods for which the licensee may elect to pay a cash penalty. For purposes of this subsection, second suspension for violation of section 53-180 shall include suspension for a violation of section 53-180.02 following suspension for a violation of section 53-180 and second suspension for violation of section 53-180.02 shall include suspension for a violation of section 53-180 following suspension for a violation of section 53-180.02;

(b) For a third or subsequent suspension for violation of section 53-180 or 53-180.02 occurring within four years after the date of the first suspension, the commission, in its discretion, may order that the licensee be required to suspend sales of alcoholic liquor for a period of time not to exceed fifteen days and that the licensee may not elect to pay a cash penalty. The commission may use the required suspension of sales of alcoholic liquor penalty either alone or in conjunction with suspension periods for which the licensee may elect to pay a cash penalty. For purposes of this subsection, third or subsequent suspension for violation of section 53-180 shall include suspension for a violation of section 53-180.02 following suspension for a violation of section 53-180 and third or subsequent suspension for violation of section 53-180.02 shall include suspension for a violation of section 53-180 following suspension for a violation of section 53-180.02; and

(c) For a first suspension based upon a finding that a licensee or an employee or agent of the licensee has been convicted of possession of a gambling device on a licensee's premises in violation of sections 28-1107 to 28-1111, the commission, in its discretion, may order that the licensee be required to suspend sales of alcoholic liquor for thirty days and that the licensee may not elect to pay a cash penalty. For a second or subsequent suspension for such a violation of sections 28-1107 to 28-1111 occurring within four years after the date of the first suspension, the commission shall order that the license be canceled.

(4) For any licensee which has no violation for a period of four years consecutively, any suspension shall be treated as a new first suspension.

(5) The election provided for in subsection (2) of this section shall be filed with the commission in writing one week before the suspension is ordered to commence and shall be accompanied by payment in full of the sum required by this section. If such election has not been received by the commission by the close of business one week before the day such suspension is ordered to commence, it shall be conclusively presumed that the licensee has elected to close for the period of the suspension and any election received later shall be absolutely void and the payment made shall be returned to the licensee. The election shall be made on a form prescribed by the commission. The commission shall remit all funds collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(6) Recognizing that suspension of the license of a licensee domiciled outside of the state poses unique enforcement difficulties, the commission may, at its discretion, mandate that a licensee domiciled outside of the state pay the cash penalty found in subsection (2) of this section rather than serve the suspension.

Source: Laws 1935, c. 116, § 105, p. 429; C.S.Supp.,1941, § 53-3,105; R.S.1943, § 53-1,104; Laws 1977, LB 40, § 320; Laws 1980, LB 848, § 20; Laws 1991, LB 344, § 71; Laws 1991, LB 586, § 2;

LIQUORS

Laws 1999, LB 267, § 15; Laws 2000, LB 973, § 9; Laws 2003, LB 205, § 3; Laws 2010, LB861, § 78; Laws 2011, LB311, § 1.
Effective date August 27, 2011.

CHAPTER 54 LIVESTOCK

Article.

1. Livestock Brand Act. 54-1,108 to 54-1,122.02.
8. Commercial Feed. 54-857.
19. Meat and Poultry Inspection.
 - (b) State Program of Meat and Poultry Inspection. 54-1916.

ARTICLE 1

LIVESTOCK BRAND ACT

Section

- | | |
|--------------|---|
| 54-1,108. | Brand inspections; when; inspection fee; surcharge; reinspection; when. |
| 54-1,121. | Registered feedlot; cattle shipment; requirements. |
| 54-1,122. | Registered feedlot; cattle received; requirements. |
| 54-1,122.02. | Registered dairy; cattle shipment or receipt; requirements. |

54-1,108 Brand inspections; when; inspection fee; surcharge; reinspection; when.

(1) All brand inspections provided for in the Livestock Brand Act or section 54-415 shall be from sunrise to sundown or during such other hours and under such conditions as the Nebraska Brand Committee determines.

(2)(a) An inspection fee, established by the Nebraska Brand Committee, of not more than seventy-five cents per head shall be charged for all cattle inspected in accordance with the Livestock Brand Act or section 54-415 or inspected within the brand inspection area by court order or at the request of any bank, credit agency, or lending institution with a legal or financial interest in such cattle. Such fee may vary to encourage inspection to be performed at times and locations that reduce the cost of performing the inspection but shall otherwise be uniform. The inspection fee for court-ordered inspections shall be paid from the proceeds of the sale of such cattle if ordered by the court or by either party as the court directs. For other inspections, the person requesting the inspection of such cattle is responsible for the inspection fee. If stray cattle are identified as a result of the inspection, such cattle shall be processed in the manner provided by section 54-415.

(b) A surcharge of not more than twenty dollars, as established by the brand committee, may be charged to cover travel expenses incurred by the brand inspector per inspection location when performing brand inspections. The surcharge shall be collected by the brand inspector and paid by the person requesting the inspection or the person required by law to have the inspection.

(3) Any person who has reason to believe that cattle were shipped erroneously due to an inspection error during a brand inspection may request a reinspection. The person making such request shall be responsible for the expenses incurred as a result of the reinspection unless the results of the reinspection

substantiate the claim of inspection error, in which case the brand committee shall be responsible for the reinspection expenses.

Source: Laws 1999, LB 778, § 39; Laws 2002, LB 589, § 7; Laws 2005, LB 441, § 2; Laws 2011, LB181, § 1.
Effective date August 27, 2011.

54-1,121 Registered feedlot; cattle shipment; requirements.

Cattle sold or shipped from a registered feedlot, for purposes other than direct slaughter or sale on any terminal market, are subject to the brand inspection under sections 54-1,110 to 54-1,119, and the seller or shipper shall bear the cost of such inspection at the regular fee.

Any other cattle shipped from a registered feedlot are not subject to brand inspection at origin or destination, but the shipper must have a shipping certificate from the registered feedlot. The shipping certificate form shall be prescribed by the Nebraska Brand Committee and shall show the registered feedlot operator's name and registration number, date shipped, destination, agency receiving the cattle, number of head in the shipment, and sex of the cattle. The shipping certificate shall be completed in triplicate by the registered feedlot operator at the time of shipment. One copy thereof shall be delivered to the brand inspector at the market along with shipment, if applicable, one copy shall be sent to the brand committee by the tenth day of the following month, and one copy shall be retained by the registered feedlot operator. If a shipping certificate does not accompany a shipment of cattle from a registered feedlot to any destination where brand inspection is maintained by the brand committee, all such cattle shall be subject to a brand inspection and the inspection fees and surcharge provided under section 54-1,108 shall be charged for the service.

Source: Laws 1999, LB 778, § 52; Laws 2000, LB 213, § 10; Laws 2011, LB181, § 2.
Effective date August 27, 2011.

54-1,122 Registered feedlot; cattle received; requirements.

Any cattle originating in a state that has a brand inspection agency and which are accompanied by a certificate of inspection or brand clearance issued by such agency may be moved directly from the point of origin into a registered feedlot. Any cattle not accompanied by such a certificate of inspection or brand clearance or by satisfactory evidence of ownership from states or portions of states not having brand inspection shall be inspected for brands by the Nebraska Brand Committee within a reasonable time after arrival at a registered feedlot, and the inspection fee and surcharge provided under section 54-1,108 shall be collected by the brand inspector at the time the inspection is performed.

Source: Laws 1999, LB 778, § 53; Laws 2011, LB181, § 3.
Effective date August 27, 2011.

54-1,122.02 Registered dairy; cattle shipment or receipt; requirements.

(1) Cattle sold or shipped from a registered dairy, for purposes other than direct slaughter or sale on any terminal market, are subject to the brand inspection under sections 54-1,110 to 54-1,119 and the seller or shipper shall bear the cost of such inspection at the regular fee.

(2) Any other cattle shipped from a registered dairy are not subject to brand inspection at origin or destination, but the shipper must have a shipping certificate from the registered dairy. The shipping certificate form shall be prescribed by the Nebraska Brand Committee and shall show the registered dairy operator's name and registration number, date shipped, destination, agency receiving the cattle, number of head in the shipment, and sex of the cattle. The shipping certificate shall be completed in triplicate by the registered dairy operator at the time of shipment. One copy thereof shall be delivered to the brand inspector at the market along with shipment, if applicable, one copy shall be sent to the brand committee by the tenth day of the following month, and one copy shall be retained by the registered dairy operator. If a shipping certificate does not accompany a shipment of cattle from a registered dairy to any destination where brand inspection is maintained by the brand committee, all such cattle are subject to a brand inspection and the inspection fees and surcharge provided under section 54-1,108 shall be charged for the service.

(3) Any cattle originating in a state that has a brand inspection agency and which are accompanied by a certificate of inspection or brand clearance issued by such agency may be moved directly from the point of origin into a registered dairy. Any cattle not accompanied by such a certificate of inspection or brand clearance or by satisfactory evidence of ownership from states or portions of states not having brand inspection shall be inspected for brands by the Nebraska Brand Committee within a reasonable time after arrival at a registered dairy, and the inspection fee and surcharge provided under section 54-1,108 shall be collected by the brand inspector at the time the inspection is performed.

Source: Laws 2000, LB 213, § 2; Laws 2011, LB181, § 4.
Effective date August 27, 2011.

ARTICLE 8 COMMERCIAL FEED

Section
54-857. Commercial Feed Administration Cash Fund; created; use; investment.

54-857 Commercial Feed Administration Cash Fund; created; use; investment.

All money received pursuant to the Commercial Feed Act shall be remitted by the director to the State Treasurer for credit to the Commercial Feed Administration Cash Fund which is hereby created. Such fund shall be used by the department to aid in defraying the expenses of administering the act, to aid in defraying the expenses related to a cooperative agreement with the United States Department of Agriculture Market News reporting program, and to provide resources to conduct the investigation and feasibility study for implementing a state meat and poultry inspection program as identified in section 54-1916. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Commercial Feed Administration Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1986, LB 322, § 11; Laws 1995, LB 7, § 57; Laws 2008, LB961, § 3; Laws 2009, First Spec. Sess., LB3, § 29; Laws 2011, LB305, § 1.
Effective date August 27, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 19

MEAT AND POULTRY INSPECTION

(b) STATE PROGRAM OF MEAT AND POULTRY INSPECTION

Section

54-1916. Director of Agriculture; state program of meat and poultry inspection; report; contents.

(b) STATE PROGRAM OF MEAT AND POULTRY INSPECTION

54-1916 Director of Agriculture; state program of meat and poultry inspection; report; contents.

On or before November 15, 2011, the Director of Agriculture shall provide a report to the Legislature which enumerates and describes any actions necessary to implement a state program of meat and poultry inspection at establishments which process meat, poultry, or meat and poultry products for human consumption that qualifies as a cooperative state inspection program under the Federal Meat Inspection Act, 21 U.S.C. 661, and the Poultry Products Inspection Act, 21 U.S.C. 454. The report shall identify necessary revisions of the Nebraska Meat and Poultry Inspection Law, other revisions to statutory authority of the Department of Agriculture, and any rules and regulations promulgated thereto in order to effect the purposes of this section. The report shall include a detailed description of anticipated resources required to develop and maintain such program of meat and poultry inspection. The report shall recommend a fee schedule that ensures revenue produced from the licensure and inspection of establishments which process meat, poultry, or meat and poultry products for human consumption sufficient to fund the state program of meat and poultry inspection, including the implementation of a fee-for-service system in conducting inspections.

Source: Laws 2011, LB305, § 2.
Effective date August 27, 2011.

Cross References

Nebraska Meat and Poultry Inspection Law, see section 54-1901.

CHAPTER 57

MINERALS, OIL, AND GAS

Article.

9. Oil and Gas Conservation. 57-909.

ARTICLE 9

OIL AND GAS CONSERVATION

Section

57-909. Spacing unit; pooling of interests; order of commission; provisions for drilling and operation; costs; determination; recording.

57-909 Spacing unit; pooling of interests; order of commission; provisions for drilling and operation; costs; determination; recording.

(1) When two or more separately owned tracts are embraced within a spacing unit or when there are separately owned interests in all or part of the spacing unit, then the owners and royalty owners thereof may pool their interests for the development and operation of the spacing unit. In the absence of voluntary pooling, the commission, upon the application of any interested person, or upon its own motion, may enter an order pooling all interests in the spacing unit for the development and operation thereof. Each such pooling order shall be made only after notice and hearing and shall be upon terms and conditions that are just and reasonable and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive, without unnecessary expense, his or her just and equitable share. Operations incident to the drilling of a well upon any portion of a spacing unit covered by a pooling order shall be deemed, for all purposes, the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon.

(2) Each such pooling order shall make provision for the drilling and operation of the authorized well on the spacing unit and for the payment of the reasonable actual cost thereof, including a reasonable charge for supervision. As to each owner who refuses to agree upon the terms for drilling and operating the well, the order shall provide for reimbursement for his or her share of the costs out of, and only out of, production from the unit representing his or her interest, excluding royalty or other interest not obligated to pay any part of the cost thereof. In the event of any dispute as to such cost, the commission shall determine the proper cost. The order shall determine the interest of each owner in the unit and may provide in substance that, as to each owner who agrees with the person or persons drilling and operating the well for the payment by the owner of his or her share of the costs, such owner, unless he or she has agreed otherwise, shall be entitled to receive, subject to royalty or similar obligations, the share of the production of the well applicable to the tract of the consenting owner; and as to each owner who does not agree, he or she shall be entitled to receive from the person or persons drilling and

operating such well on the unit his or her share of the production applicable to his or her interest, after the person or persons drilling and operating such well have recovered, depending on the total measured depth of the well, three hundred percent for wells less than five thousand feet deep, four hundred percent for wells five thousand feet deep but less than six thousand five hundred feet deep, and five hundred percent for wells six thousand five hundred feet deep or deeper, of that portion of the costs and expenses of staking, well site preparation, drilling, reworking, deepening or plugging back, testing, completing, and other intangible expenses approved by the commission chargeable to each owner who does not agree, and, depending on the total measured depth of the well, two hundred percent for wells less than five thousand feet deep, three hundred percent for wells five thousand feet deep but less than six thousand five hundred feet deep, and five hundred percent for wells six thousand five hundred feet deep or deeper, of all equipment including wellhead connections, casing, tubing, packers, and other downhole equipment and surface equipment, including, but not limited to, stock tanks, separators, treaters, pumping equipment, and piping, plus one hundred percent of the nonconsenting owner's share of the cost of operation and a reasonable rate of interest on the unpaid balance. For the purpose of this section, the owner or owners of oil and gas rights in and under an unleased tract of land shall be regarded as a lessee to the extent of a seven-eighths interest in and to such rights and a lessor to the extent of the remaining one-eighth interest therein.

(3) A certified copy of the order may be filed for record with the county clerk or register of deeds of the county, as the case may be, where the property involved is located, which recording shall constitute constructive notice thereof. The county clerk, or register of deeds, as the case may be, shall record the same in the real property records of the county and shall index the same against the property affected.

Source: Laws 1959, c. 262, § 9, p. 907; Laws 1978, LB 447, § 1; Laws 2011, LB458, § 1.
Effective date August 27, 2011.

CHAPTER 58

MONEY AND FINANCING

Article.

3. Small Business Development. 58-326.
4. Research and Development Authority. 58-443.
7. Nebraska Affordable Housing Act. 58-702 to 58-711.

ARTICLE 3

SMALL BUSINESS DEVELOPMENT

Section

58-326. Repealed. Laws 2011, LB 4, § 1.

58-326 Repealed. Laws 2011, LB 4, § 1.

ARTICLE 4

RESEARCH AND DEVELOPMENT AUTHORITY

Section

58-443. Repealed. Laws 2011, LB 5, § 1.

58-443 Repealed. Laws 2011, LB 5, § 1.

ARTICLE 7

NEBRASKA AFFORDABLE HOUSING ACT

Section

- 58-702. Legislative findings.
- 58-703. Affordable Housing Trust Fund; created; use.
- 58-706. Affordable Housing Trust Fund; eligible activities.
- 58-708. Department of Economic Development; selection of projects to receive assistance; duties; recapture funds; when.
- 58-711. Information on status of Affordable Housing Trust Fund; report.

58-702 Legislative findings.

The Legislature finds that current economic conditions, lack of available affordable housing, federal housing policies that have placed an increasing burden on the state, and declining resources at all levels of government adversely affect the ability of Nebraska's citizens to obtain safe, decent, and affordable housing. Lack of affordable housing also affects the ability of communities to maintain and develop viable and stable economies.

Furthermore, the Legislature finds that impediments exist to the construction and rehabilitation of affordable housing. Local codes and state statutes have an important effect on housing's affordability by placing increased costs on developers. Financing affordable housing, especially in rural areas and smaller communities, is becoming increasingly difficult. In addition, existing dilapidated housing stock and industrial buildings are detrimental to new affordable housing development and the general health and safety of people living and

working in or around such places. An affordable housing trust fund would assist all Nebraska communities in financing affordable housing projects and other projects which make the community safer for residents.

To enhance the economic development of the state and to provide for the general prosperity of all of Nebraska's citizens, it is in the public interest to assist in the provision of safe, decent, and affordable housing in all areas of the state. The establishment of the Nebraska Affordable Housing Act will assist in creating conditions favorable to meeting the affordable housing needs of the state.

Source: Laws 1996, LB 1322, § 12; Laws 2011, LB388, § 10.
Operative date October 1, 2011.

58-703 Affordable Housing Trust Fund; created; use.

The Affordable Housing Trust Fund is created. The fund shall receive money pursuant to sections 8-1120 and 76-903 and may include revenue from sources recommended by the housing advisory committee established in section 58-704, appropriations from the Legislature, grants, private contributions, repayment of loans, and all other sources, except that before appropriations from the General Fund may be used as a revenue source for the Affordable Housing Trust Fund or for administrative costs of the Department of Economic Development in administering the fund, such use must be specifically authorized by a separate legislative bill passed in a legislative session subsequent to the Ninety-fourth Legislature, Second Session, 1996. Any initial appropriation from the General Fund which is used as a revenue source for the Affordable Housing Trust Fund or for administrative costs shall be in an appropriations bill which does not contain appropriations for other programs. The department as part of its comprehensive housing affordability strategy shall administer the Affordable Housing Trust Fund.

Transfers may be made from the Affordable Housing Trust Fund to the General Fund, the Behavioral Health Services Fund, and the Site and Building Development Fund at the direction of the Legislature.

Source: Laws 1996, LB 1322, § 13; Laws 1997, LB 864, § 9; Laws 2004, LB 1083, § 100; Laws 2005, LB 40, § 1; Laws 2011, LB388, § 11.
Operative date October 1, 2011.

58-706 Affordable Housing Trust Fund; eligible activities.

The following activities are eligible for assistance from the Affordable Housing Trust Fund:

- (1) New construction, rehabilitation, or acquisition of housing to assist low-income and very low-income families;
- (2) Matching funds for new construction, rehabilitation, or acquisition of housing units to assist low-income and very low-income families;
- (3) Technical assistance, design and finance services, and consultation for eligible nonprofit community or neighborhood-based organizations involved in the creation of affordable housing;
- (4) Matching funds for operating costs for housing assistance groups or organizations when such grant or loan will substantially increase the recipient's ability to produce affordable housing;
- (5) Mortgage insurance guarantees for eligible projects;

- (6) Acquisition of housing units for the purpose of preservation of housing to assist low-income or very low-income families;
- (7) Projects making affordable housing more accessible to families with elderly members or members who have disabilities;
- (8) Projects providing housing in areas determined by the Department of Economic Development to be of critical importance for the continued economic development and economic well-being of the community and where, as determined by the department, a shortage of affordable housing exists;
- (9) Infrastructure projects necessary for the development of affordable housing;
- (10) Downpayment and closing cost assistance;
- (11) Demolition of existing vacant, condemned, or obsolete housing or industrial buildings or infrastructure;
- (12) Housing education programs developed in conjunction with affordable housing projects. The education programs must be directed toward:
 - (a) Preparing potential home buyers to purchase affordable housing and postpurchase education;
 - (b) Target audiences eligible to utilize the services of housing assistance groups or organizations; and
 - (c) Developers interested in the rehabilitation, acquisition, or construction of affordable housing; and
- (13) Support for efforts to improve programs benefiting homeless youth.

Source: Laws 1996, LB 1322, § 16; Laws 2004, LB 1083, § 101; Laws 2005, LB 40, § 2; Laws 2011, LB388, § 12; Laws 2011, LB413, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB388, section 12, with LB413, section 1, to reflect all amendments.

Note: Changes made by LB413 became effective August 27, 2011. Changes made by LB388 became operative October 1, 2011.

58-708 Department of Economic Development; selection of projects to receive assistance; duties; recapture funds; when.

(1) During each calendar year in which funds are available from the Affordable Housing Trust Fund for use by the Department of Economic Development, the department shall allocate a specific amount of funds, not less than twenty-five percent, to each congressional district. Entitlement area funds allocated under this section that are not awarded to an eligible project from within the entitlement area within one year shall be made available for distribution to eligible projects elsewhere in the state. The department shall announce a grant and loan application period of at least ninety days duration for all nonentitlement areas. In selecting projects to receive trust fund assistance, the department shall develop a qualified allocation plan and give first priority to financially viable projects that serve the lowest income occupants for the longest period of time. The qualified allocation plan shall:

- (a) Set forth selection criteria to be used to determine housing priorities of the housing trust fund which are appropriate to local conditions, including the community's immediate need for affordable housing, proposed increases in home ownership, private dollars leveraged, level of local government support and participation, and repayment, in part or in whole, of financial assistance awarded by the fund; and

(b) Give first priority in allocating trust fund assistance among selected projects to those projects which serve the lowest income occupant and are obligated to serve qualified occupants for the longest period of time.

(2) The department shall fund in order of priority as many applications as will utilize available funds less actual administrative costs of the department in administering the program. In administering the program the department may contract for services or directly provide funds to other governmental entities or instrumentalities.

(3) The department may recapture any funds which were allocated to a qualified recipient for an eligible project through an award agreement if such funds were not utilized for eligible costs within the time of performance under the agreement and are therefor no longer obligated to the project. The recaptured funds shall be credited to the Industrial Recovery Fund except as provided in section 81-1213.

Source: Laws 1996, LB 1322, § 18; Laws 2005, LB 40, § 3; Laws 2011, LB388, § 13.

Operative date October 1, 2011.

58-711 Information on status of Affordable Housing Trust Fund; report.

The Department of Economic Development shall submit, as part of the department's annual status report under section 81-1201.11, information detailing the status of the Affordable Housing Trust Fund. The status report shall list (1) the applications funded during the previous calendar year, (2) the applications funded in previous years, (3) the identity of the organizations receiving funds, (4) the location of each project, (5) the amount of funding provided to the project, (6) the amount of funding leveraged as a result of the project, (7) the number of units of housing created by the project and the occupancy rate, (8) the expected cost of rent or monthly payment of those units, (9) the projected number of new employees and community investment as a result of the project, and (10) the amount of revenue deposited into the Affordable Housing Trust Fund pursuant to sections 8-1120 and 76-903. The status report shall contain no information that is protected by state or federal confidentiality laws.

Source: Laws 1997, LB 864, § 7; Laws 2011, LB404, § 3.

Operative date January 1, 2012.

CHAPTER 59

MONOPOLIES AND UNLAWFUL COMBINATIONS

Article.

15. Cigarette Sales.
 (b) Grey Market Sales. 59-1520, 59-1523.
 16. Consumer Protection Act. 59-1608.04.

ARTICLE 15

CIGARETTE SALES

(b) GREY MARKET SALES

Section

- 59-1520. Prohibited acts.
 59-1523. Disciplinary actions; contraband.

(b) GREY MARKET SALES

59-1520 Prohibited acts.

It is unlawful for any person to:

(1) Sell or distribute in this state, acquire, hold, own, possess, or transport for sale or distribution in this state, or import or cause to be imported into this state for sale or distribution in this state, any cigarettes that do not comply with all requirements imposed by or pursuant to federal law and regulations, including, but not limited to:

(a) The filing of ingredients lists pursuant to the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1335a, as such section existed on January 1, 2011;

(b) The permanent imprinting on the primary packaging of the precise package warning labels in the precise format specified in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333, as such section existed on January 1, 2011;

(c) The rotation of label statements pursuant to the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333(c), as such section existed on January 1, 2011;

(d) The restrictions on the importation, transfer, and sale of previously exported tobacco products pursuant to 19 U.S.C. 1681 et seq. and Chapter 52 of the Internal Revenue Code, 26 U.S.C. 5701 et seq., as such sections existed on January 1, 2011; and

(e) The federal trademark and copyright laws;

(2) Alter a package of cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal, or obscure:

(a) Any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including, but not limited to, labels stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording; or

(b) Any health warning that is not the precise package warning statement in the precise format specified in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333, as such section existed on January 1, 2011;

(3) Affix any stamps or meter impression required pursuant to sections 77-2601 to 77-2615 to the package of any cigarettes that does not comply with the requirements of subdivision (1) of this section or that is altered in violation of subdivision (2) of this section; and

(4) Import or reimport into the United States for sale or distribution under any trade name, trade dress, or trademark that is the same as, or is confusingly similar to, any trade name, trade dress, or trademark used for cigarettes manufactured in the United States for sale or distribution in the United States.

Source: Laws 2001, LB 358, § 2; Laws 2011, LB590, § 1.
Operative date January 1, 2013.

59-1523 Disciplinary actions; contraband.

(1) The cigarette tax division of the Tax Commissioner may, after notice and hearing, revoke or suspend for any violation of section 59-1520 the license or licenses of any person licensed under sections 28-1418 to 28-1429 or sections 77-2601 to 77-2622.

(2) Cigarettes that are acquired, held, owned, possessed, transported, sold, or distributed in or imported into this state in violation of section 59-1520 are declared to be contraband goods and are subject to seizure and forfeiture. Any cigarettes so seized and forfeited shall be destroyed. Such cigarettes shall be declared to be contraband goods whether the violation of section 59-1520 is knowing or otherwise.

Source: Laws 2001, LB 358, § 5; Laws 2011, LB590, § 2.
Operative date January 1, 2013.

ARTICLE 16

CONSUMER PROTECTION ACT

Section

59-1608.04. State Settlement Cash Fund; created; use; investment.

59-1608.04 State Settlement Cash Fund; created; use; investment.

The State Settlement Cash Fund is created. The fund shall be maintained by the Department of Justice and administered by the Attorney General. Except as otherwise provided by law, the fund shall consist of all recoveries received pursuant to the Consumer Protection Act, including any money, funds, securities, or other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, or any other payments received on behalf of the state by the Department of Justice and administered by the Attorney General for the benefit of the state or the general welfare of its citizens, but excluding all funds held in a trust capacity where specific benefits accrue to specific individuals, organizations, or governments. The fund may be expended for any allowable legal purposes as determined by the Attorney General. To provide necessary financial accountability and management oversight, revenue from individual settlement agreements or other separate sources credited to the State Settle-

ment Cash Fund may be tracked and accounted for within the state accounting system through the use of separate and distinct funds, subfunds, or any other available accounting mechanism specifically approved by the Accounting Administrator for use by the Department of Justice. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2006, LB 1061, § 4; Laws 2009, First Spec. Sess., LB3, § 34; Laws 2010, LB190, § 7; Laws 2011, LB549, § 8.
Effective date May 18, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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



MOTOR VEHICLES

**CHAPTER 60
MOTOR VEHICLES**

Article.

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 - (y) Size, Weight, and Load. 60-6,288.01 to 60-6,298.
 - (ee) Special Rules for Minibikes and Other Off-Road Vehicles. 60-6,348, 60-6,349.
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14. Motor Vehicle Industry Licensing. 60-1401 to 60-1438.01.
21. Minibikes or Motorcycles.
 - (b) Motorcycle Safety Education. 60-2120 to 60-2139.
29. Uniform Motor Vehicle Records Disclosure Act. 60-2909.01.

ARTICLE 1

MOTOR VEHICLE CERTIFICATE OF TITLE ACT

Section

- 60-101. Act, how cited.
- 60-119.01. Low-speed vehicle, defined.
- 60-123. Motor vehicle, defined.
- 60-126. Parts vehicle, defined.
- 60-137. Act; applicability.
- 60-139. Certificate of title; vehicle identification number; required; when.
- 60-140. Acquisition of vehicle; proof of ownership; effect.
- 60-142. Historical vehicle or parts vehicle; sale or transfer; parts vehicle; bill of sale; prohibited act; violation; penalty.
- 60-142.08. Low-speed vehicle; application for certificate of title indicating year and make; procedure.
- 60-144. Certificate of title; issuance; filing; application; form.
- 60-151. Certificate of title obtained in name of purchaser; exceptions.
- 60-153. Certificate of title; form; contents; secure power-of-attorney form.
- 60-161. County clerk or designated official; remit funds; when.
- 60-165. Security interest in all-terrain vehicle, minibike, utility-type vehicle, or low-speed vehicle; perfection; priority; notation of lien; when.

60-101 Act, how cited.

Sections 60-101 to 60-197 shall be known and may be cited as the Motor Vehicle Certificate of Title Act.

Source: Laws 2005, LB 276, § 1; Laws 2006, LB 663, § 1; Laws 2006, LB 1061, § 6; Laws 2007, LB286, § 1; Laws 2009, LB49, § 5; Laws 2009, LB202, § 10; Laws 2010, LB650, § 3; Laws 2011, LB289, § 6.

Operative date January 1, 2012.

60-119.01 Low-speed vehicle, defined.

Low-speed vehicle means a four-wheeled motor vehicle (1) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (2) whose gross vehicle weight rating is less than three thousand pounds, and (3) that complies with 49 C.F.R. part 571, as such part existed on January 1, 2011.

Source: Laws 2007, LB286, § 5; Laws 2011, LB289, § 7.

Operative date January 1, 2012.

60-123 Motor vehicle, defined.

Motor vehicle means any vehicle propelled by any power other than muscular power. Motor vehicle does not include (1) mopeds, (2) farm tractors, (3) self-propelled equipment designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops, agricultural floater-spreader implements, and other implements of husbandry designed for and used primarily for tilling the soil and harvesting crops or feeding livestock, (4) power unit hay grinders or a combination which includes a power unit and a hay grinder when operated without cargo, (5) vehicles which run only on rails or tracks, (6) off-road designed vehicles not authorized by law for use on a highway, including, but not limited to, golf carts, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles, utility-type vehicles, snowmobiles registered or exempt from registration under sections 60-3,207 to 60-3,219, and minibikes, (7) road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors, (8) self-propelled chairs used by persons who are disabled, and (9) electric personal assistive mobility devices.

Source: Laws 2005, LB 276, § 23; Laws 2006, LB 765, § 1; Laws 2007, LB286, § 6; Laws 2010, LB650, § 6; Laws 2011, LB289, § 8.

Operative date January 1, 2012.

60-126 Parts vehicle, defined.

Parts vehicle means a vehicle the title to which has been surrendered (1) in accordance with subdivision (1)(a) of section 60-169 or (2) to any other state by the owner of the vehicle or an insurance company to render the vehicle fit for sale for scrap and parts only.

Source: Laws 2005, LB 276, § 26; Laws 2011, LB241, § 1.

Effective date February 23, 2011.

60-137 Act; applicability.

(1) The Motor Vehicle Certificate of Title Act applies to all vehicles as defined in the act, except:

- (a) Farm trailers;
- (b) Well-boring apparatus, backhoes, bulldozers, and front-end loaders; and
- (c) Trucks and buses from other jurisdictions required to pay registration fees under the Motor Vehicle Registration Act, except a vehicle registered or eligible to be registered as part of a fleet of apportionable vehicles under section 60-3,198.

(2)(a) All new all-terrain vehicles and minibikes sold on or after January 1, 2004, shall be required to have a certificate of title. An owner of an all-terrain vehicle or minibike sold prior to such date may apply for a certificate of title for such all-terrain vehicle or minibike as provided in rules and regulations of the department.

(b) All new low-speed vehicles sold on or after January 1, 2012, shall be required to have a certificate of title. An owner of a low-speed vehicle sold prior to such date may apply for a certificate of title for such low-speed vehicle as provided in rules and regulations of the department.

(3) An owner of a utility trailer may apply for a certificate of title upon compliance with the Motor Vehicle Certificate of Title Act.

(4)(a) Every owner of a manufactured home or mobile home shall obtain a certificate of title for the manufactured home or mobile home prior to affixing it to real estate.

(b) If a manufactured home or mobile home has been affixed to real estate and a certificate of title was not issued before it was so affixed, the owner of such manufactured home or mobile home shall apply for and be issued a certificate of title at any time for surrender and cancellation as provided in section 60-169.

(5) All new utility-type vehicles sold on or after January 1, 2011, shall be required to have a certificate of title. An owner of a utility-type vehicle sold prior to such date may apply for a certificate of title for such utility-type vehicle as provided in rules and regulations of the department.

Source: Laws 2005, LB 276, § 37; Laws 2006, LB 765, § 2; Laws 2007, LB286, § 9; Laws 2008, LB953, § 2; Laws 2010, LB650, § 9; Laws 2011, LB289, § 9.

Operative date January 1, 2012.

Cross References

Motor Vehicle Registration Act, see section 60-301.

60-139 Certificate of title; vehicle identification number; required; when.

Except as provided in section 60-137, 60-138, 60-142, or 60-142.01, no person shall sell or otherwise dispose of a vehicle without (1) delivering to the purchaser or transferee of such vehicle a certificate of title with such assignments thereon as are necessary to show title in the purchaser and (2) having affixed to the vehicle its vehicle identification number if it is not already affixed. No person shall bring into this state a vehicle for which a certificate of title is required in Nebraska, except for temporary use, without complying with the Motor Vehicle Certificate of Title Act.

No purchaser or transferee shall receive a certificate of title which does not contain such assignments as are necessary to show title in the purchaser or transferee. Possession of a certificate of title which does not comply with this requirement shall be prima facie evidence of a violation of this section, and such purchaser or transferee, upon conviction, shall be subject to the penalty provided by section 60-180.

Source: Laws 2005, LB 276, § 39; Laws 2006, LB 663, § 3; Laws 2011, LB241, § 2.
Effective date February 23, 2011.

60-140 Acquisition of vehicle; proof of ownership; effect.

(1) Except as provided in section 60-164, no person acquiring a vehicle from the owner thereof, whether such owner is a manufacturer, importer, dealer, or entity or person, shall acquire any right, title, claim, or interest in or to such vehicle until the acquiring person has had delivered to him or her physical possession of such vehicle and (a) a certificate of title or a duly executed manufacturer's or importer's certificate with such assignments as are necessary to show title in the purchaser, (b) a written instrument as required by section 60-1417, (c) an affidavit and notarized bill of sale as provided in section 60-142.01, or (d) a bill of sale for a parts vehicle as required by section 60-142.

(2) No waiver or estoppel shall operate in favor of such person against a person having physical possession of such vehicle and such documentation. No court shall recognize the right, title, claim, or interest of any person in or to a vehicle, for which a certificate of title has been issued in Nebraska, sold, disposed of, mortgaged, or encumbered, unless there is compliance with this section. Beginning on the implementation date of the electronic title and lien system designated by the director pursuant to section 60-164, an electronic certificate of title record shall be evidence of an owner's right, title, claim, or interest in a vehicle.

Source: Laws 2005, LB 276, § 40; Laws 2006, LB 663, § 4; Laws 2009, LB202, § 11; Laws 2011, LB241, § 3.
Effective date February 23, 2011.

60-142 Historical vehicle or parts vehicle; sale or transfer; parts vehicle; bill of sale; prohibited act; violation; penalty.

(1) The sale or trade and subsequent legal transfer of ownership of a historical vehicle or parts vehicle shall not be contingent upon any condition that would require the historical vehicle or parts vehicle to be in operating condition at the time of the sale or transfer of ownership.

(2) No owner of a parts vehicle shall sell or otherwise dispose of the parts vehicle without delivering to the purchaser a bill of sale for the parts vehicle prescribed by the department. The bill of sale may include, but shall not be limited to, the vehicle identification number, the year, make, and model of the vehicle, the name and residential and mailing addresses of the owner and purchaser, the acquisition date, and the odometer statement provided for in section 60-192. A person who uses a bill of sale for a parts vehicle to transfer ownership of any vehicle that does not meet the definition of a parts vehicle shall be guilty of a Class III misdemeanor.

Source: Laws 2005, LB 276, § 42; Laws 2006, LB 663, § 5; Laws 2011, LB241, § 4.
Effective date February 23, 2011.

60-142.08 Low-speed vehicle; application for certificate of title indicating year and make; procedure.

If a low-speed vehicle does not have a manufacturer's vehicle identification number, the owner of the low-speed vehicle may apply for a certificate of title by presenting a manufacturer's statement of origin for the low-speed vehicle, a statement that an inspection has been conducted on the low-speed vehicle, and a vehicle identification number as described in section 60-148. The certificate of title shall indicate the year of the low-speed vehicle as the year application for title was made and the make of the low-speed vehicle.

Source: Laws 2011, LB289, § 10.

Operative date January 1, 2012.

60-144 Certificate of title; issuance; filing; application; form.

(1)(a) Except as provided in subdivisions (b), (c), and (d) of this subsection, the county clerk or designated county official shall be responsible for issuing and filing certificates of title for vehicles, and each county shall issue and file such certificates of title using the vehicle titling and registration computer system prescribed by the department. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(b) The department shall issue and file certificates of title for Nebraska-based fleet vehicles. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(c) The department shall issue and file certificates of title for state-owned vehicles. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(d) The department shall issue certificates of title pursuant to section 60-142.06. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(2) If the owner of an all-terrain vehicle, a utility-type vehicle, or a minibike resides in Nebraska, the application shall be filed with the county clerk or designated county official of the county in which the owner resides.

(3)(a) Except as otherwise provided in subdivision (b) of this subsection, if a vehicle, other than an all-terrain vehicle, a utility-type vehicle, or a minibike, has situs in Nebraska, the application shall be filed with the county clerk or designated county official of the county in which the vehicle has situs.

(b) If a motor vehicle dealer licensed under the Motor Vehicle Industry Regulation Act, applies for a certificate of title for a vehicle, the application may be filed with the county clerk or designated county official of any county.

(4) If the owner of a vehicle is a nonresident, the application shall be filed in the county in which the transaction is consummated.

(5) The application shall be filed within thirty days after the delivery of the vehicle.

(6) All applicants registering a vehicle pursuant to section 60-3,198 shall file the application for a certificate of title with the Division of Motor Carrier

Services of the department. The division shall deliver the certificate to the applicant if there are no liens on the vehicle. If there are one or more liens on the vehicle, the certificate of title shall be handled as provided in section 60-164. All certificates of title issued by the division shall be issued in the manner prescribed for the county clerk or designated county official in section 60-152.

Source: Laws 2005, LB 276, § 44; Laws 2006, LB 663, § 13; Laws 2006, LB 765, § 3; Laws 2009, LB202, § 12; Laws 2010, LB650, § 11; Laws 2010, LB816, § 4; Laws 2011, LB212, § 2.
Effective date February 23, 2011.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

60-151 Certificate of title obtained in name of purchaser; exceptions.

The certificate of title for a vehicle shall be obtained in the name of the purchaser upon application signed by the purchaser, except that (1) for titles to be held by husband and wife, applications may be accepted upon the signature of either one as a signature for himself or herself and as agent for his or her spouse and (2) for an applicant providing proof that he or she is a handicapped or disabled person as defined in section 60-331.02, applications may be accepted upon the signature of the applicant's parent, legal guardian, foster parent, or agent.

Source: Laws 2005, LB 276, § 51; Laws 2011, LB163, § 14.
Effective date August 27, 2011.

60-153 Certificate of title; form; contents; secure power-of-attorney form.

(1) A certificate of title shall be printed upon safety security paper to be selected by the department. The certificate of title, manufacturer's statement of origin, and assignment of manufacturer's certificate shall be upon forms prescribed by the department and may include, but shall not be limited to, county of issuance, date of issuance, certificate of title number, previous certificate of title number, vehicle identification number, year, make, model, and body type of the vehicle, name and residential and mailing address of the owner, acquisition date, issuing county clerk's or designated county official's signature and official seal, and sufficient space for the notation and release of liens, mortgages, or encumbrances, if any. A certificate of title issued on or after September 1, 2007, shall include the words "void if altered". A certificate of title that is altered shall be deemed a mutilated certificate of title. The certificate of title of an all-terrain vehicle, utility-type vehicle, or minibike shall include the words "not to be registered for road use".

(2) An assignment of certificate of title shall appear on each certificate of title and shall include, but not be limited to, a statement that the owner of the vehicle assigns all his or her right, title, and interest in the vehicle, the name and address of the assignee, the name and address of the lienholder or secured party, if any, and the signature of the owner or the owner's parent, legal guardian, foster parent, or agent in the case of an owner who is a handicapped or disabled person as defined in section 60-331.02.

(3) A reassignment by a dealer shall appear on each certificate of title and shall include, but not be limited to, a statement that the dealer assigns all his or

her right, title, and interest in the vehicle, the name and address of the assignee, the name and address of the lienholder or secured party, if any, and the signature of the dealer or designated representative. Reassignments shall be printed on the reverse side of each certificate of title as many times as convenient.

(4) The department may prescribe a secure power-of-attorney form and may contract with one or more persons to develop, provide, sell, and distribute secure power-of-attorney forms in the manner authorized or required by the federal Truth in Mileage Act of 1986 and any other federal law or regulation. Any secure power-of-attorney form authorized pursuant to a contract shall conform to the terms of the contract and be in strict compliance with the requirements of the department.

Source: Laws 2005, LB 276, § 53; Laws 2007, LB286, § 13; Laws 2010, LB650, § 14; Laws 2011, LB163, § 15.
Effective date August 27, 2011.

60-161 County clerk or designated official; remit funds; when.

The county clerk or designated county official shall remit all funds due the State Treasurer under sections 60-154 to 60-160 monthly and not later than the fifteenth day of the month following collection. The county clerk or designated county official shall remit fees not due the State of Nebraska to the respective county treasurer who shall credit the fees to the county general fund.

Source: Laws 2005, LB 276, § 61; Laws 2011, LB135, § 2.
Effective date August 27, 2011.

60-165 Security interest in all-terrain vehicle, minibike, utility-type vehicle, or low-speed vehicle; perfection; priority; notation of lien; when.

(1) Any security interest in an all-terrain vehicle or minibike perfected pursuant to article 9, Uniform Commercial Code, before, on, or after January 1, 2004, in a utility-type vehicle so perfected before, on, or after January 1, 2011, or in a low-speed vehicle so perfected before, on, or after January 1, 2012, shall continue to be perfected until (a) the financing statement perfecting such security interest is terminated or lapses in the absence of the filing of a continuation statement pursuant to article 9, Uniform Commercial Code, or (b) an all-terrain vehicle, utility-type vehicle, minibike, or low-speed vehicle certificate of title is issued and a notation of lien is made as provided in section 60-164.

(2) Any lien noted on the face of an all-terrain vehicle, utility-type vehicle, minibike, or low-speed vehicle certificate of title or on an electronic certificate of title record pursuant to subsection (1), (3), (4), (5), or (6) of this section, on behalf of the holder of a security interest in the all-terrain vehicle, utility-type vehicle, minibike, or low-speed vehicle which was previously perfected pursuant to article 9, Uniform Commercial Code, shall have priority as of the date such security interest was originally perfected.

(3) The holder of a certificate of title for an all-terrain vehicle, utility-type vehicle, minibike, or low-speed vehicle shall, upon request, surrender the certificate of title to a holder of a previously perfected security interest in the all-terrain vehicle, utility-type vehicle, minibike, or low-speed vehicle to permit notation of a lien on the certificate of title or on an electronic certificate of title record and shall do such other acts as may be required to permit such notation.

(4) If the owner of an all-terrain vehicle or minibike subject to a security interest perfected pursuant to article 9, Uniform Commercial Code, fails or refuses to obtain a certificate of title after January 1, 2004, the security interest holder may obtain a certificate of title in the name of the owner of the all-terrain vehicle or minibike following the procedures of section 60-144 and may have a lien noted on the certificate of title or on an electronic certificate of title record pursuant to section 60-164.

(5) If the owner of a utility-type vehicle subject to a security interest perfected pursuant to article 9, Uniform Commercial Code, fails or refuses to obtain a certificate of title after January 1, 2011, the security interest holder may obtain a certificate of title in the name of the owner of the utility-type vehicle following the procedures of section 60-144 and may have a lien noted on the certificate of title or on an electronic certificate of title record pursuant to section 60-164.

(6) If the owner of a low-speed vehicle subject to a security interest perfected pursuant to article 9, Uniform Commercial Code, fails or refuses to obtain a certificate of title after January 1, 2012, the security interest holder may obtain a certificate of title in the name of the owner of the low-speed vehicle following the procedures of section 60-144 and may have a lien noted on the certificate of title or on an electronic certificate of title record pursuant to section 60-164.

(7) The assignment, release, or satisfaction of a security interest in an all-terrain vehicle, utility-type vehicle, minibike, or low-speed vehicle shall be governed by the laws under which it was perfected.

Source: Laws 2005, LB 276, § 65; Laws 2009, LB202, § 16; Laws 2010, LB650, § 18; Laws 2011, LB289, § 11.
Operative date January 1, 2012.

ARTICLE 3

MOTOR VEHICLE REGISTRATION

Section	
60-301.	Act, how cited.
60-302.	Definitions, where found.
60-302.01.	Access aisle, defined.
60-306.	Alternative fuel, defined.
60-331.01.	Handicapped or disabled parking permit, defined.
60-331.02.	Handicapped or disabled person, defined.
60-336.01.	Low-speed vehicle, defined.
60-339.	Motor vehicle, defined.
60-344.	Parts vehicle, defined.
60-352.01.	Temporarily handicapped or disabled person, defined.
60-383.02.	Low-speed vehicle; registration; fee.
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60-393.	Multiple vehicle registration.
60-395.	Refund or credit of fees; when authorized.
60-3,100.	License plates; issuance.
60-3,113.	Handicapped or disabled person; plates; department; compile and maintain registry.
60-3,113.01.	Handicapped or disabled person; parking permits; electronic system; department; duties; designation of implementation date.
60-3,113.02.	Handicapped or disabled person; parking permit; issuance; procedure; renewal; notice; identification card.
60-3,113.03.	Handicapped or disabled person; parking permit; permit for specific motor vehicle; application; issuance; procedure; renewal; notice; identification card.

Section

- 60-3,113.04. Handicapped or disabled person; parking permit; contents; issuance; duplicate permit.
- 60-3,113.05. Handicapped or disabled persons; parking permit; expiration date; permit for temporarily handicapped or disabled person; period valid; renewal.
- 60-3,113.06. Handicapped or disabled persons; parking permit; use; display; prohibited acts; violation; penalty.
- 60-3,113.07. Handicapped or disabled persons; parking permit; prohibited acts; violation; penalty; powers of director.
- 60-3,113.08. Handicapped or disabled persons; parking permit; rules and regulations.
- 60-3,187. Motor vehicle tax schedules; calculation of tax.
- 60-3,190. Motor vehicle fee; fee schedules; Motor Vehicle Fee Fund; created; use; investment.
- 60-3,191. Alternative fuel; fee.
- 60-3,193.01. International Registration Plan; adopted.
- 60-3,221. Towing of trailers; restrictions; section; how construed.

60-301 Act, how cited.

Sections 60-301 to 60-3,222 shall be known and may be cited as the Motor Vehicle Registration Act.

Source: Laws 2005, LB 274, § 1; Laws 2006, LB 663, § 21; Laws 2007, LB286, § 20; Laws 2007, LB349, § 1; Laws 2007, LB570, § 1; Laws 2008, LB756, § 5; Laws 2009, LB110, § 1; Laws 2009, LB129, § 1; Laws 2010, LB650, § 20; Laws 2011, LB163, § 16; Laws 2011, LB289, § 12.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB163, section 16, with LB289, section 12, to reflect all amendments.

Note: Changes made by LB163 became effective August 27, 2011. Changes made by LB289 became operative January 1, 2012.

60-302 Definitions, where found.

For purposes of the Motor Vehicle Registration Act, unless the context otherwise requires, the definitions found in sections 60-302.01 to 60-360 shall be used.

Source: Laws 2005, LB 274, § 2; Laws 2007, LB286, § 21; Laws 2008, LB756, § 6; Laws 2010, LB650, § 21; Laws 2011, LB163, § 17.
Effective date August 27, 2011.

60-302.01 Access aisle, defined.

Access aisle means a space adjacent to a handicapped parking space or passenger loading zone which is constructed and designed in compliance with the federal Americans with Disabilities Act of 1990 and the federal regulations adopted in response to the act, as the act and the regulations existed on January 1, 2011.

Source: Laws 2011, LB163, § 18.
Effective date August 27, 2011.

60-306 Alternative fuel, defined.

Alternative fuel includes electricity, solar power, and any other source of energy not otherwise taxed under the motor fuel laws as defined in section 66-712 which is used to power a motor vehicle. Alternative fuel does not

include motor vehicle fuel as defined in section 66-482, diesel fuel as defined in section 66-482, or compressed fuel as defined in section 66-6,100.

Source: Laws 2005, LB 274, § 6; Laws 2011, LB289, § 13.
Operative date January 1, 2012.

60-331.01 Handicapped or disabled parking permit, defined.

Handicapped or disabled parking permit means:

(1) A permit issued under section 18-1738 or 18-1738.01 prior to the implementation date designated by the director under section 60-3,113.01; or

(2) A permit issued under section 60-3,113.02 or 60-3,113.03 on or after the implementation date designated by the director under section 60-3,113.01.

Source: Laws 2011, LB163, § 19.
Effective date August 27, 2011.

60-331.02 Handicapped or disabled person, defined.

Handicapped or disabled person means any individual with a severe visual or 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, or prosthetic, orthotic, or other assistant device, any individual whose personal mobility is limited as a result of respiratory problems, any individual who has a cardiac condition to the extent that his or her functional limitations are classified in severity as being Class III or Class IV, according to standards set by the American Heart Association, and any individual who has permanently lost all or substantially all the use of one or more limbs.

Source: Laws 2011, LB163, § 20.
Effective date August 27, 2011.

60-336.01 Low-speed vehicle, defined.

Low-speed vehicle means a four-wheeled motor vehicle (1) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (2) whose gross vehicle weight rating is less than three thousand pounds, and (3) that complies with 49 C.F.R. part 571, as such part existed on January 1, 2011.

Source: Laws 2007, LB286, § 26; Laws 2011, LB289, § 14.
Operative date January 1, 2012.

60-339 Motor vehicle, defined.

Motor vehicle means any vehicle propelled by any power other than muscular power. Motor vehicle does not include (1) mopeds, (2) farm tractors, (3) self-propelled equipment designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops, agricultural floater-spreader implements, and other implements of husbandry designed for and used primarily for tilling the soil and harvesting crops or feeding livestock, (4) power unit hay grinders or a combination which includes a power unit and a hay grinder when operated without cargo, (5) vehicles which run only on rails or tracks, (6) off-road designed vehicles not authorized by law for use on a highway, including, but not limited to, golf carts, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles, utility-type vehicles, snowmobiles regis-

tered or exempt from registration under sections 60-3,207 to 60-3,219, and minibikes, (7) road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors, (8) self-propelled chairs used by persons who are disabled, and (9) electric personal assistive mobility devices.

Source: Laws 2005, LB 274, § 39; Laws 2007, LB286, § 27; Laws 2010, LB650, § 23; Laws 2011, LB289, § 15.
Operative date January 1, 2012.

60-344 Parts vehicle, defined.

Parts vehicle means a vehicle or trailer the title to which has been surrendered (1) in accordance with subdivision (1)(a) of section 60-169 or (2) to any other state by the owner of the vehicle or an insurance company to render the vehicle fit for sale for scrap and parts only.

Source: Laws 2005, LB 274, § 44; Laws 2011, LB241, § 5.
Effective date February 23, 2011.

60-352.01 Temporarily handicapped or disabled person, defined.

Temporarily handicapped or disabled person means any handicapped or disabled person whose personal mobility is expected to be limited as described in section 60-331.02 for no longer than one year.

Source: Laws 2011, LB163, § 21.
Effective date August 27, 2011.

60-383.02 Low-speed vehicle; registration; fee.

For the registration of every low-speed vehicle, the fee shall be fifteen dollars.

Source: Laws 2011, LB289, § 16.
Operative date January 1, 2012.

60-386 Application; contents.

Each new application shall contain, in addition to other information as may be required by the department, the name and residential and mailing address of the applicant and a description of the motor vehicle or trailer, including the color, the manufacturer, the identification number, and the weight of the motor vehicle or trailer required by the Motor Vehicle Registration Act. With the application the applicant shall pay the proper registration fee and shall state whether the motor vehicle is propelled by alternative fuel and, if alternative fuel, the type of fuel. The form shall also contain a notice that bulk fuel purchasers may be subject to federal excise tax liability. The department shall prescribe a form, containing the notice, for supplying the information for motor vehicles to be registered. The county treasurer or designated county official shall include the form in each mailing made pursuant to section 60-3,186.

Source: Laws 2005, LB 274, § 86; Laws 2011, LB289, § 17.
Operative date January 1, 2012.

60-393 Multiple vehicle registration.

Any owner who has two or more motor vehicles or trailers required to be registered under the Motor Vehicle Registration Act may register all such motor vehicles or trailers on a calendar-year basis or on an annual basis for the same registration period beginning in a month chosen by the owner. When electing to establish the same registration period for all such motor vehicles or trailers, the owner shall pay the registration fee, the motor vehicle tax imposed in section 60-3,185, the motor vehicle fee imposed in section 60-3,190, and the alternative fuel fee imposed in section 60-3,191 on each motor vehicle for the number of months necessary to extend its current registration period to the registration period under which all such motor vehicles or trailers will be registered. Credit shall be given for registration paid on each motor vehicle or trailer when the motor vehicle or trailer has a later expiration date than that chosen by the owner except as otherwise provided in sections 60-3,121, 60-3,122.02, and 60-3,128. Thereafter all such motor vehicles or trailers shall be registered on an annual basis starting in the month chosen by the owner.

Source: Laws 2005, LB 274, § 93; Laws 2007, LB570, § 4; Laws 2011, LB289, § 18.

Operative date January 1, 2012.

60-395 Refund or credit of fees; when authorized.

(1) Except as otherwise provided in subsection (2) of this section and sections 60-3,121, 60-3,122.02, and 60-3,128, the registration shall expire and the registered owner or lessee may, by returning the registration certificate, the license plates, and, when appropriate, the validation decals and by either making application on a form prescribed by the department to the county treasurer or designated county official of the occurrence of an event described in subdivisions (a) through (e) of this subsection or, in the case of a change in situs, displaying to the county treasurer or designated county official the registration certificate of such other state as evidence of a change in situs, receive a refund of that part of the unused fees and taxes on motor vehicles or trailers based on the number of unexpired months remaining in the registration period from the date of any of the following events:

- (a) Upon transfer of ownership of any motor vehicle or trailer;
- (b) In case of loss of possession because of fire, theft, dismantlement, or junking;
- (c) When a salvage branded certificate of title is issued;
- (d) Whenever a type or class of motor vehicle or trailer previously registered is subsequently declared by legislative act or court decision to be illegal or ineligible to be operated or towed on the public roads and no longer subject to registration fees, the motor vehicle tax imposed in section 60-3,185, the motor vehicle fee imposed in section 60-3,190, and the alternative fuel fee imposed in section 60-3,191;
- (e) Upon a trade-in or surrender of a motor vehicle under a lease; or
- (f) In case of a change in the situs of a motor vehicle or trailer to a location outside of this state.

(2) If the date of the event falls within the same calendar month in which the motor vehicle or trailer is acquired, no refund shall be allowed for such month.

(3) If the transferor or lessee acquires another motor vehicle at the time of the transfer, trade-in, or surrender, the transferor or lessee shall have the credit

provided for in this section applied toward payment of the motor vehicle fees and taxes then owing. Otherwise, the transferor or lessee shall file a claim for refund with the county treasurer or designated county official upon an application form prescribed by the department.

(4) The registered owner or lessee shall make a claim for refund or credit of the fees and taxes for the unexpired months in the registration period within sixty days after the date of the event or shall be deemed to have forfeited his or her right to such refund or credit.

(5) For purposes of this section, the date of the event shall be: (a) In the case of a transfer or loss, the date of the transfer or loss; (b) in the case of a change in the situs, the date of registration in another state; (c) in the case of a trade-in or surrender under a lease, the date of trade-in or surrender; (d) in the case of a legislative act, the effective date of the act; and (e) in the case of a court decision, the date the decision is rendered.

(6) Application for registration or for reassignment of license plates and, when appropriate, validation decals to another motor vehicle or trailer shall be made within thirty days of the date of purchase.

(7) If a motor vehicle or trailer was reported stolen under section 60-178, a refund under this section shall not be reduced for a lost plate charge and a credit under this section may be reduced for a lost plate charge but the applicant shall not be required to pay the plate fee for new plates.

(8) The county treasurer or designated county official shall refund the motor vehicle fee and registration fee from the fees which have not been transferred to the State Treasurer. The county treasurer shall make payment to the claimant from the undistributed motor vehicle taxes of the taxing unit where the tax money was originally distributed. No refund of less than two dollars shall be paid.

Source: Laws 2005, LB 274, § 95; Laws 2007, LB286, § 35; Laws 2007, LB570, § 5; Laws 2009, LB175, § 1; Laws 2011, LB289, § 19.
Operative date January 1, 2012.

60-3,100 License plates; issuance.

(1) The department shall issue to every person whose motor vehicle or trailer is registered fully reflectorized license plates upon which shall be displayed (a) the registration number consisting of letters and numerals assigned to such motor vehicle or trailer in figures not less than two and one-half inches nor more than three inches in height and (b) also the word Nebraska suitably lettered so as to be attractive. Two license plates shall be issued for every motor vehicle, except that one plate shall be issued for dealers, motorcycles, minitrucks, truck-tractors, trailers, buses, and apportionable vehicles. The license plates shall be of a color designated by the director. The color of the plates shall be changed each time the license plates are changed. Each time the license plates are changed, the director shall secure competitive bids for materials pursuant to sections 81-145 to 81-162. Motorcycle, minitruck, low-speed vehicle, and trailer license plate letters and numerals may be one-half the size of those required in this section.

(2) When two license plates are issued, one shall be prominently displayed at all times on the front and one on the rear of the registered motor vehicle or trailer. When only one plate is issued, it shall be prominently displayed on the

rear of the registered motor vehicle or trailer. When only one plate is issued for motor vehicles registered pursuant to section 60-3,198 and truck-tractors, it shall be prominently displayed on the front of the apportionable vehicle.

Source: Laws 2005, LB 274, § 100; Laws 2010, LB650, § 25; Laws 2011, LB289, § 20.
Operative date January 1, 2012.

60-3,113 Handicapped or disabled person; plates; department; compile and maintain registry.

(1) The department shall, without the payment of any fee except the taxes and fees required by sections 60-3,102, 60-3,185, 60-3,190, and 60-3,191, issue license plates for one motor vehicle not used for hire and a license plate for one motorcycle not used for hire to:

(a) Any permanently handicapped or disabled person or his or her parent, legal guardian, foster parent, or agent upon application and proof of a permanent handicap or disability; or

(b) A trust which owns the motor vehicle or motorcycle if a designated beneficiary of the trust qualifies under subdivision (a) of this subsection.

An application and proof of disability in the form and with the information required by section 18-1738 or 60-3,113.02 shall be submitted before license plates are issued or reissued.

(2) The license plate or plates shall carry the internationally accepted wheelchair symbol, which symbol is a representation of a person seated in a wheelchair surrounded by a border six units wide by seven units high, and such other letters or numbers as the director prescribes. Such license plate or plates shall be used by such person in lieu of the usual license plate or plates.

(3) The department shall compile and maintain a registry of the names, addresses, and license numbers of all persons who obtain special license plates pursuant to this section and all persons who obtain a handicapped or disabled parking permit.

Source: Laws 2005, LB 274, § 113; Laws 2011, LB163, § 22; Laws 2011, LB289, § 21.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB163, section 22, with LB289, section 21, to reflect all amendments.

Note: Changes made by LB163 became effective August 27, 2011. Changes made by LB289 became operative January 1, 2012.

60-3,113.01 Handicapped or disabled person; parking permits; electronic system; department; duties; designation of implementation date.

The department shall develop and implement an electronic system for accepting and processing applications for handicapped or disabled parking permits. The director shall designate an implementation date for such system, which date shall be on or before January 1, 2013.

Source: Laws 2011, LB163, § 23.
Effective date August 27, 2011.

60-3,113.02 Handicapped or disabled person; parking permit; issuance; procedure; renewal; notice; identification card.

(1) This section applies beginning on the implementation date designated by the director under section 60-3,113.01.

(2) A handicapped or disabled person or temporarily handicapped or disabled person or his or her parent, legal guardian, foster parent, or certifying health care provider may apply for a handicapped or disabled parking permit to the department or through a health care provider using a secure online process developed by the department which will entitle the holder of a permit or a person driving a motor vehicle for the purpose of transporting such holder to park in those spaces or access aisles provided for by sections 18-1736 and 18-1737 when the holder of the permit will enter or exit the motor vehicle while it is parked in such spaces or access aisles. For purposes of this section, (a) the handicapped or disabled person or temporarily handicapped or disabled person is considered the holder of the permit and (b) certifying health care provider means the physician, physician assistant, or advanced practice registered nurse who makes the certification required in subsection (3) of this section or his or her designee.

(3) The application process for a handicapped or disabled parking permit or for the renewal of a permit under this section shall include presentation of proof of identity by the handicapped or disabled person or temporarily handicapped or disabled person and certification by a physician, a physician assistant, or an advanced practice registered nurse practicing under and in accordance with his or her certification act that the person who will be the holder meets the statutory criteria for qualification. An application for the renewal of a permit under this section may be submitted within one hundred eighty days prior to the expiration of the permit. No applicant shall be required to provide his or her social security number. In the case of a temporarily handicapped or disabled person, the certifying physician, physician assistant, or advanced practice registered nurse shall indicate the estimated date of recovery or that the temporary handicap or disability will continue for a period of six months, whichever is less.

(4) The department, upon receipt of a completed application for a handicapped or disabled parking permit under this section, shall verify that the applicant qualifies for such permit and, if so, shall deliver the permit to the applicant. In issuing renewed permits, the department shall deliver each individual renewed permit to the applicant. The renewed permit shall not be issued sooner than ten days prior to the date of expiration, and the existing permit shall be invalid upon receipt of the renewed permit. A person may hold up to two permits under this section. If a person holds a permit under this section, such person may not hold a permit under section 60-3,113.03.

(5) In issuing any handicapped or disabled parking permit under this section, the department shall include a notice and an identification card. The notice shall contain information listing the legal uses of the permit and that the permit is not transferable, is to be used by the party to whom issued, is not to be altered or reproduced, and is to be used only when a handicapped or disabled person or a temporarily handicapped or disabled person will enter or exit the motor vehicle while it is parked in a designated parking space or access aisle. The notice shall also indicate that those convicted of handicapped parking infractions shall be subject to suspension of the permit for six months. The identification card shall show the expiration date of the permit and such identifying information with regard to the handicapped or disabled person or temporarily handicapped or disabled person to whom the permit is issued as is

necessary to the enforcement of sections 18-1736 to 18-1741.07 as determined by the department.

Source: Laws 2011, LB163, § 24.
Effective date August 27, 2011.

60-3,113.03 Handicapped or disabled person; parking permit; permit for specific motor vehicle; application; issuance; procedure; renewal; notice; identification card.

(1) This section applies beginning on the implementation date designated by the director under section 60-3,113.01.

(2) The department shall take an application from any person for a handicapped or disabled parking permit that is issued for a specific motor vehicle and entitles the holder thereof or a person driving the motor vehicle for the purpose of transporting handicapped or disabled persons or temporarily handicapped or disabled persons to park in those spaces or access aisles provided for by sections 18-1736 and 18-1737 if the motor vehicle is used primarily for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons. Such permit shall be used only when the motor vehicle for which it was issued is being used for the transportation of a handicapped or disabled person or temporarily handicapped or disabled person and such person will enter or exit the motor vehicle while it is parked in such designated spaces or access aisles.

(3) A person applying for a handicapped or disabled parking permit or for the renewal of a permit pursuant to this section shall apply for a permit for each motor vehicle used for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons and shall include such information as is required by the department, including a demonstration to the department that each such motor vehicle is used primarily for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons. An application for the renewal of a permit under this section may be submitted within one hundred eighty days prior to the expiration of the permit.

(4) The department, upon receipt of a completed application, shall verify that the applicant qualifies for a handicapped or disabled parking permit under this section and, if so, shall deliver the permit to the applicant. In issuing renewed permits, the department shall deliver each individual renewed permit to the applicant. The renewed permit shall not be issued sooner than ten days prior to the date of expiration, and the existing permit shall be invalid upon receipt of the renewed permit. No more than one such permit shall be issued for each motor vehicle under this section.

(5) In issuing any handicapped or disabled parking permit under this section, the department shall include a notice and an identification card to the registered owner of the motor vehicle or the applicant. The notice shall contain information listing the legal uses of the permit and that the permit is not transferable, is to be used for the motor vehicle for which it is issued, is not to be altered or reproduced, and is to be used only when a handicapped or disabled person or a temporarily handicapped or disabled person will enter or exit the motor vehicle while it is parked in a designated parking space or access aisle. The notice shall also indicate that those convicted of handicapped parking infractions shall be subject to suspension of the permit for six months. The

identification card shall identify the motor vehicle for which the permit is issued as is necessary to the enforcement of sections 18-1736 to 18-1741.07 as determined by the department.

Source: Laws 2011, LB163, § 25.
Effective date August 27, 2011.

60-3,113.04 Handicapped or disabled person; parking permit; contents; issuance; duplicate permit.

(1) This section applies beginning on the implementation date designated by the director under section 60-3,113.01.

(2) A handicapped or disabled parking permit shall be of a design, size, configuration, color, and construction and contain such information as specified in the regulations adopted by the United States Department of Transportation in the Uniform System for Parking for Persons with Disabilities, 23 C.F.R. part 1235, as such regulations existed on January 1, 2011.

(3) No handicapped or disabled parking permit shall be issued to any person or for any motor vehicle if any permit has been issued to such person or for such motor vehicle and such permit has been suspended pursuant to section 18-1741.02. At the expiration of such suspension, a permit may be renewed in the manner provided for renewal in sections 60-3,113.02, 60-3,113.03, and 60-3,113.05.

(4) A duplicate handicapped or disabled parking permit may be provided up to two times during any single permit period if a permit is destroyed, lost, or stolen. Such duplicate permit shall be issued as provided in section 60-3,113.02 or 60-3,113.03, whichever is applicable, except that a new certification by a physician, a physician assistant, or an advanced practice registered nurse need not be provided. A duplicate permit shall be valid for the remainder of the period for which the original permit was issued. If a person has been issued two duplicate permits under this subsection and needs another permit, such person shall reapply for a new permit under section 60-3,113.02 or 60-3,113.03, whichever is applicable.

Source: Laws 2011, LB163, § 26.
Effective date August 27, 2011.

60-3,113.05 Handicapped or disabled persons; parking permit; expiration date; permit for temporarily handicapped or disabled person; period valid; renewal.

(1) This section applies beginning on the implementation date designated by the director under section 60-3,113.01.

(2) Permanently issued handicapped or disabled parking permits issued prior to October 1, 2011, shall be valid for a period ending on the last day of the month of the applicant's birthday in the third year after issuance and shall expire on that day. Permanently issued handicapped or disabled parking permits issued on or after October 1, 2011, shall be valid for a period ending on the last day of the month of the applicant's birthday in the sixth year after issuance and shall expire on that day.

(3) All handicapped or disabled parking permits for temporarily handicapped or disabled persons shall be issued for a period ending not more than six months after the date of issuance but may be renewed one time for a period not

to exceed six months. For the renewal period, there shall be submitted an additional application with proof of a handicap or disability.

Source: Laws 2011, LB163, § 27.
Effective date August 27, 2011.

60-3,113.06 Handicapped or disabled persons; parking permit; use; display; prohibited acts; violation; penalty.

(1) This section applies beginning on the implementation date designated by the director under section 60-3,113.01.

(2) A handicapped or disabled parking permit shall not be transferable and shall be used only by the party to whom issued or for the motor vehicle for which issued and only for the purpose for which the permit is issued. A handicapped or disabled parking permit shall be displayed by hanging the permit from the motor vehicle's rearview mirror so as to be clearly visible through the front windshield. A handicapped or disabled parking permit shall be displayed on the dashboard only when there is no rearview mirror. No person shall alter or reproduce in any manner a handicapped or disabled parking permit. No person shall knowingly hold more than the allowed number of handicapped or disabled parking permits. No person shall display a handicapped or disabled parking permit issued under section 60-3,113.02 and park in a space or access aisle designated for the exclusive use of a handicapped or disabled person unless the holder of the permit will enter or exit the motor vehicle while it is parked in a designated space or access aisle. No person shall display a handicapped or disabled parking permit issued under section 60-3,113.03 and park in a space or access aisle designated for the exclusive use of a handicapped or disabled person unless the person displaying the permit is driving the motor vehicle for which the permit was issued and a handicapped or disabled person will enter or exit the motor vehicle while it is parked in a designated space or access aisle. Any violation of this subsection shall constitute a handicapped parking infraction as defined in section 18-1741.01 and shall be subject to the penalties and procedures set forth in sections 18-1741.01 to 18-1741.07.

Source: Laws 2011, LB163, § 28.
Effective date August 27, 2011.

60-3,113.07 Handicapped or disabled persons; parking permit; prohibited acts; violation; penalty; powers of director.

(1) This section applies beginning on the implementation date designated by the director under section 60-3,113.01.

(2) No person shall knowingly provide false information on an application for a handicapped or disabled parking permit. Any person who violates this subsection shall be guilty of a Class III misdemeanor.

(3) If the director discovers evidence of fraud in an application for a handicapped or disabled parking permit or a license plate issued under section 60-3,113, the director may summarily cancel such permit or license plate and send notice of cancellation to the applicant.

Source: Laws 2011, LB163, § 29.
Effective date August 27, 2011.

60-3,113.08 Handicapped or disabled persons; parking permit; rules and regulations.

(1) This section applies beginning on the implementation date designated by the director under section 60-3,113.01.

(2) The department may adopt and promulgate rules and regulations necessary to fulfill any duties and obligations as provided in sections 60-3,113.01 to 60-3,113.08. All rules and regulations of the department adopted pursuant to section 18-1742 prior to the implementation date designated by the director under section 60-3,113.01 shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

Source: Laws 2011, LB163, § 30.
Effective date August 27, 2011.

60-3,187 Motor vehicle tax schedules; calculation of tax.

(1) The motor vehicle tax schedules are set out in this section.

(2) The motor vehicle tax shall be calculated by multiplying the base tax times the fraction which corresponds to the age category of the vehicle as shown in the following table:

YEAR	FRACTION
First	1.00
Second	0.90
Third	0.80
Fourth	0.70
Fifth	0.60
Sixth	0.51
Seventh	0.42
Eighth	0.33
Ninth	0.24
Tenth and Eleventh	0.15
Twelfth and Thirteenth	0.07
Fourteenth and older	0.00

(3) The base tax shall be:

(a) Automobiles and motorcycles - An amount determined using the following table:

Value when new	Base tax
Up to \$3,999	\$ 25
\$4,000 to \$5,999	35
\$6,000 to \$7,999	45
\$8,000 to \$9,999	60
\$10,000 to \$11,999	100
\$12,000 to \$13,999	140
\$14,000 to \$15,999	180
\$16,000 to \$17,999	220
\$18,000 to \$19,999	260
\$20,000 to \$21,999	300
\$22,000 to \$23,999	340
\$24,000 to \$25,999	380
\$26,000 to \$27,999	420
\$28,000 to \$29,999	460

MOTOR VEHICLES

\$30,000 to \$31,999	500
\$32,000 to \$33,999	540
\$34,000 to \$35,999	580
\$36,000 to \$37,999	620
\$38,000 to \$39,999	660
\$40,000 to \$41,999	700
\$42,000 to \$43,999	740
\$44,000 to \$45,999	780
\$46,000 to \$47,999	820
\$48,000 to \$49,999	860
\$50,000 to \$51,999	900
\$52,000 to \$53,999	940
\$54,000 to \$55,999	980
\$56,000 to \$57,999	1,020
\$58,000 to \$59,999	1,060
\$60,000 to \$61,999	1,100
\$62,000 to \$63,999	1,140
\$64,000 to \$65,999	1,180
\$66,000 to \$67,999	1,220
\$68,000 to \$69,999	1,260
\$70,000 to \$71,999	1,300
\$72,000 to \$73,999	1,340
\$74,000 to \$75,999	1,380
\$76,000 to \$77,999	1,420
\$78,000 to \$79,999	1,460
\$80,000 to \$81,999	1,500
\$82,000 to \$83,999	1,540
\$84,000 to \$85,999	1,580
\$86,000 to \$87,999	1,620
\$88,000 to \$89,999	1,660
\$90,000 to \$91,999	1,700
\$92,000 to \$93,999	1,740
\$94,000 to \$95,999	1,780
\$96,000 to \$97,999	1,820
\$98,000 to \$99,999	1,860
\$100,000 and over	1,900

(b) Assembled automobiles — \$60

(c) Assembled motorcycles — \$25

(d) Cabin trailers, up to one thousand pounds — \$10

(e) Cabin trailers, one thousand pounds and over and less than two thousand pounds — \$25

(f) Cabin trailers, two thousand pounds and over — \$40

(g) Recreational vehicles, less than eight thousand pounds — \$160

(h) Recreational vehicles, eight thousand pounds and over and less than twelve thousand pounds — \$410

(i) Recreational vehicles, twelve thousand pounds and over — \$860

(j) Assembled recreational vehicles and buses shall follow the schedules for body type and registered weight

(k) Trucks - Over seven tons and less than ten tons — \$360

(l) Trucks - Ten tons and over and less than thirteen tons — \$560

(m) Trucks - Thirteen tons and over and less than sixteen tons — \$760

(n) Trucks - Sixteen tons and over and less than twenty-five tons — \$960

(o) Trucks - Twenty-five tons and over — \$1,160

(p) Buses — \$360

(q) Trailers other than semitrailers — \$10

(r) Semitrailers — \$110

(s) Minitrucks — \$50

(t) Low-speed vehicles — \$50

(4) For purposes of subsection (3) of this section, truck means all trucks and combinations of trucks except those trucks, trailers, or combinations thereof registered under section 60-3,198, and the tax is based on the gross vehicle weight rating as reported by the manufacturer.

(5) Current model year vehicles are designated as first-year motor vehicles for purposes of the schedules.

(6) When a motor vehicle is registered which is newer than the current model year by the manufacturer's designation, the motor vehicle is subject to the initial motor vehicle tax in the first registration period and ninety-five percent of the initial motor vehicle tax in the second registration period.

(7) Assembled cabin trailers, assembled recreational vehicles, and assembled buses shall be designated as sixth-year motor vehicles in their first year of registration for purposes of the schedules.

(8) When a motor vehicle is registered which is required to have a title branded as previous salvage pursuant to section 60-175, the motor vehicle tax shall be reduced by twenty-five percent.

Source: Laws 2005, LB 274, § 187; Laws 2006, LB 248, § 2; Laws 2006, LB 765, § 7; Laws 2010, LB650, § 28; Laws 2011, LB289, § 22.
Operative date January 1, 2012.

60-3,190 Motor vehicle fee; fee schedules; Motor Vehicle Fee Fund; created; use; investment.

(1) A motor vehicle fee is imposed on all motor vehicles registered for operation in this state. An owner of a motor vehicle which is exempt from the imposition of a motor vehicle tax pursuant to section 60-3,185 shall also be exempt from the imposition of the motor vehicle fee imposed pursuant to this section.

(2) The county treasurer or designated county official shall annually determine the motor vehicle fee on each motor vehicle registered in the county based on the age of the motor vehicle pursuant to this section and cause a notice of the amount of the fee to be mailed to the registrant at the address shown upon his or her registration certificate. The notice shall be printed on a form prescribed by the department, shall be combined with the notice of the motor vehicle tax, and shall be mailed on or before the first day of the last month of the registration period.

(3) The motor vehicle fee schedules are set out in this subsection and subsection (4) of this section. Except for automobiles with a value when new of less than \$20,000, and for assembled automobiles, the fee shall be calculated by multiplying the base fee times the fraction which corresponds to the age category of the automobile as shown in the following table:

YEAR	FRACTION
First through fifth	1.00
Sixth through tenth	.70
Eleventh and over	.35

(4) The base fee shall be:

(a) Automobiles, with a value when new of less than \$20,000, and assembled automobiles — \$5

(b) Automobiles, with a value when new of \$20,000 through \$39,999 — \$20

(c) Automobiles, with a value when new of \$40,000 or more — \$30

(d) Motorcycles — \$10

(e) Recreational vehicles and cabin trailers — \$10

(f) Trucks over seven tons and buses — \$30

(g) Trailers other than semitrailers — \$10

(h) Semitrailers — \$30

(i) Minitrucks — \$10

(j) Low-speed vehicles — \$10.

(5) The motor vehicle tax, motor vehicle fee, and registration fee shall be paid to the county treasurer or designated official prior to the registration of the motor vehicle for the following registration period. After retaining one percent of the motor vehicle fee collected for costs, the remaining proceeds shall be remitted to the State Treasurer for credit to the Motor Vehicle Fee Fund. The State Treasurer shall return funds from the Motor Vehicle Fee Fund remitted by a county treasurer or designated county official which are needed for refunds or credits authorized by law.

(6)(a) The Motor Vehicle Fee Fund is created. On or before the last day of each calendar quarter, the State Treasurer shall distribute all funds in the Motor Vehicle Fee Fund as follows: (i) Fifty percent to the county treasurer of each county, amounts in the same proportion as the most recent allocation received by each county from the Highway Allocation Fund; and (ii) fifty percent to the treasurer of each municipality, amounts in the same proportion as the most recent allocation received by each municipality from the Highway Allocation Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(b) Funds from the Motor Vehicle Fee Fund shall be considered local revenue available for matching state sources.

(c) All receipts by counties and municipalities from the Motor Vehicle Fee Fund shall be used for road, bridge, and street purposes.

(7) For purposes of subdivisions (4)(a), (b), (c), and (f) of this section, automobiles or trucks includes all trucks and combinations of trucks or truck-tractors, except those trucks, trailers, or semitrailers registered under section 60-3,198, and the fee is based on the gross vehicle weight rating as reported by the manufacturer.

(8) Current model year vehicles are designated as first-year motor vehicles for purposes of the schedules.

(9) When a motor vehicle is registered which is newer than the current model year by the manufacturer's designation, the motor vehicle is subject to the initial motor vehicle fee for six registration periods.

(10) Assembled vehicles other than assembled automobiles shall follow the schedules for the motor vehicle body type.

Source: Laws 2005, LB 274, § 190; Laws 2007, LB286, § 55; Laws 2010, LB650, § 29; Laws 2011, LB289, § 23.
Operative date January 1, 2012.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

60-3,191 Alternative fuel; fee.

In addition to any other fee required under the Motor Vehicle Registration Act, a fee for registration of each motor vehicle powered by an alternative fuel shall be charged. The fee shall be seventy-five dollars. The fee shall be collected by the county treasurer and remitted to the State Treasurer for credit to the Highway Trust Fund.

Source: Laws 2011, LB289, § 24.
Operative date January 1, 2012.

60-3,193.01 International Registration Plan; adopted.

For purposes of the Motor Vehicle Registration Act, the International Registration Plan is adopted and incorporated by reference as the plan existed on January 1, 2011.

Source: Laws 2008, LB756, § 10; Laws 2009, LB331, § 4; Laws 2010, LB805, § 2; Laws 2011, LB212, § 3.
Effective date February 23, 2011.

60-3,221 Towing of trailers; restrictions; section; how construed.

(1) Except as otherwise provided in the Motor Vehicle Registration Act:

(a) A cabin trailer shall only be towed by a properly registered:

- (i) Passenger car;
- (ii) Commercial motor vehicle or apportionable vehicle;
- (iii) Farm truck;
- (iv) Local truck;
- (v) Minitruck;
- (vi) Recreational vehicle; or
- (vii) Bus;

(b) A utility trailer shall only be towed by:

- (i) A properly registered passenger car;
- (ii) A properly registered commercial motor vehicle or apportionable vehicle;
- (iii) A properly registered farm truck;
- (iv) A properly registered local truck;
- (v) A properly registered minitruck;
- (vi) A properly registered recreational vehicle;

- (vii) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;
- (viii) A properly registered well-boring apparatus;
- (ix) A dealer-plated vehicle;
- (x) A personal-use dealer-plated vehicle; or
- (xi) A properly registered bus;
- (c) A farm trailer shall only be towed by a properly registered:
 - (i) Passenger car;
 - (ii) Commercial motor vehicle;
 - (iii) Farm truck; or
 - (iv) Minitruck;
- (d) A commercial trailer shall only be towed by:
 - (i) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;
 - (ii) A properly registered local truck;
 - (iii) A properly registered well-boring apparatus;
 - (iv) A properly registered commercial motor vehicle or apportionable vehicle;
 - (v) A dealer-plated vehicle;
 - (vi) A personal-use dealer-plated vehicle;
 - (vii) A properly registered bus; or
 - (viii) A properly registered farm truck;
- (e) A fertilizer trailer shall only be towed by a properly registered:
 - (i) Passenger car;
 - (ii) Commercial motor vehicle or apportionable vehicle;
 - (iii) Farm truck; or
 - (iv) Local truck;
- (f) A pole and cable reel trailer shall only be towed by a properly registered:
 - (i) Commercial motor vehicle or apportionable vehicle; or
 - (ii) Local truck;
- (g) A dealer-plated trailer shall only be towed by:
 - (i) A dealer-plated vehicle;
 - (ii) A properly registered passenger car;
 - (iii) A properly registered commercial motor vehicle or apportionable vehicle;
 - (iv) A properly registered farm truck;
 - (v) A properly registered minitruck; or
 - (vi) A personal-use dealer-plated vehicle; and
- (h) Trailers registered pursuant to section 60-3,198 as part of an apportioned fleet shall only be towed by:
 - (i) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;
 - (ii) A properly registered local truck;
 - (iii) A properly registered well-boring apparatus;

- (iv) A properly registered commercial motor vehicle or apportionable vehicle;
- (v) A dealer-plated vehicle;
- (vi) A personal-use dealer-plated vehicle;
- (vii) A properly registered bus; or
- (viii) A properly registered farm truck.

(2) Nothing in this section shall be construed to waive compliance with the Nebraska Rules of the Road or Chapter 75.

(3) Nothing in this section shall be construed to prohibit any motor vehicle or trailer from displaying dealer license plates or In Transit stickers authorized by section 60-376.

Source: Laws 2007, LB349, § 2; Laws 2011, LB212, § 4.
Effective date February 23, 2011.

Cross References

Nebraska Rules of the Road, see section 60-601.

ARTICLE 4

MOTOR VEHICLE OPERATORS' LICENSES

(e) GENERAL PROVISIONS

Section

- 60-462. Act, how cited.
- 60-462.01. Federal regulations; adopted.
- 60-462.02. Legislative intent; director; department; powers and duties.
- 60-471. Motor vehicle, defined.

(f) PROVISIONS APPLICABLE TO ALL OPERATORS' LICENSES

- 60-479. Sections; applicability.
- 60-479.01. Fraudulent document recognition training; criminal history record information check; lawful status check; cost.
- 60-484. Operator's license required, when; state identification card; application.
- 60-484.03. Operators' licenses; state identification cards; department; retain copies of source documents.
- 60-484.04. Operators' licenses; state identification cards; applicant present evidence of lawful status.
- 60-484.05. Operators' licenses; state identification cards; temporary; when issued; period valid; special notation; renewal.
- 60-484.06. Operators' licenses; state identification cards; department; power to verify documents.
- 60-487. Cancellation of operator's license or commercial driver's license; when.
- 60-497.01. Conviction and probation records; abstract of court record; transmission to director; duties.
- 60-498.01. Driving under influence of alcohol; operator's license; confiscation and revocation; application for ignition interlock permit; procedures; appeal; restrictions relating to ignition interlock permit; prohibited acts relating to ignition interlock devices; additional revocation period.
- 60-498.02. Driving under influence of alcohol; revocation of operator's license; reinstatement; procedure; ignition interlock permit; restrictions on operation of motor vehicle.
- 60-498.03. Operator's license revocation decision; notice; contents.
- 60-498.04. License revocation; appeal; notice of judgment.
- 60-4,111.01. Storage or compilation of information; retailer; seller; authorized acts; sign posted; use of stored information; approval of negotiable instrument or certain payments; authorized acts; violations; penalty.

MOTOR VEHICLES

Section

(g) PROVISIONS APPLICABLE TO OPERATION OF MOTOR VEHICLES OTHER THAN COMMERCIAL

- 60-4,112. Sections; applicability.
- 60-4,113. Examining personnel; appointment; duties; examinations; issuance of certificate; license; state identification card; county treasurer; duties; delivery of license or card.
- 60-4,114. County treasurer; personnel; examination of applicant; denial or refusal of certificate; appeal; medical opinion.
- 60-4,114.01. Applicant for Class O or Class M license; issuance of LPD-learner's permit; restriction on reapplication for license.
- 60-4,115. Fees; allocation; identity security surcharge.
- 60-4,116. Applicant; department; duties.
- 60-4,117. Operator's license or state identification card; form; county treasurer; duties.
- 60-4,118.06. Ignition interlock permit; issued; when; operation restrictions; revocation of permit by director; when.
- 60-4,120. Operator's license; state identification card; duplicate or replacement.
- 60-4,121. Military service; renewal of operator's license; period valid.
- 60-4,122. Operator's license; state identification card; renewal procedure; law examination; exceptions; department; powers.
- 60-4,127. Motorcycle operation; Class M license required; issuance; examination.
- 60-4,129. Employment driving permit; issuance; conditions; violations; penalty; revocation.

(h) PROVISIONS APPLICABLE TO OPERATION OF COMMERCIAL MOTOR VEHICLES

- 60-4,131. Sections; applicability; terms, defined.
- 60-4,131.01. Individuals operating commercial motor vehicles for military purposes; applicability of sections.
- 60-4,132. Purposes of sections.
- 60-4,137. Operation of commercial motor vehicle; commercial driver's license or LPC-learner's permit required.
- 60-4,138. Commercial drivers' licenses and restricted commercial drivers' licenses; classification.
- 60-4,139. Commercial motor vehicle; nonresident; operating privilege.
- 60-4,143. Commercial driver's license; LPC-learner's permit; issuance; restriction; surrender of other licenses.
- 60-4,144. Commercial drivers' licenses; applications; contents; application; demonstration of knowledge and skills; information and documentation required.
- 60-4,144.01. Commercial drivers' licenses; certification required; medical examiner's certificate.
- 60-4,144.02. Commercial drivers' licenses; medical examiner's certificate; department; duties; failure of driver to comply; department; duties.
- 60-4,145. Application; operation in interstate or foreign commerce; certification required.
- 60-4,146. Application; operation in intrastate commerce; certification; restrictions.
- 60-4,147.02. Hazardous materials endorsement; USA PATRIOT Act requirements.
- 60-4,149. Commercial drivers' licenses; examination; issuance; delivery.
- 60-4,150. Commercial drivers' licenses; duplicate and replacement licenses; delivery.
- 60-4,151. Commercial driver's license; restricted commercial driver's license; seasonal permit; form.
- 60-4,153. Issuance of license; department; duties.
- 60-4,154. Issuance of license; director notify Commercial Driver License Information System; department; post information.
- 60-4,164. Alcoholic liquor; implied consent to submit to chemical tests; refusal or failure; penalty; officer; report.
- 60-4,171. Issuance of Class O or M operator's license; reinstatement of commercial driver's license; when.

Section

(j) STATE IDENTIFICATION CARDS

60-4,181. State identification cards; issuance; requirements; form; delivery; cancellation.

(k) POINT SYSTEM

60-4,182. Point system; offenses enumerated.

(e) GENERAL PROVISIONS

60-462 Act, how cited.

Sections 60-462 to 60-4,188 shall be known and may be cited as the Motor Vehicle Operator's License Act.

Source: Laws 1937, c. 141, § 31, p. 523; C.S.Supp.,1941, § 60-434; R.S.1943, § 60-402; R.S.1943, (1988), § 60-402; Laws 1989, LB 284, § 2; Laws 1989, LB 285, § 12; Laws 1990, LB 980, § 6; Laws 1991, LB 44, § 1; Laws 1993, LB 105, § 4; Laws 1993, LB 370, § 65; Laws 1993, LB 420, § 1; Laws 1994, LB 211, § 1; Laws 1995, LB 467, § 6; Laws 1996, LB 323, § 1; Laws 1997, LB 210, § 2; Laws 1997, LB 256, § 4; Laws 1998, LB 320, § 1; Laws 2001, LB 38, § 5; Laws 2001, LB 574, § 1; Laws 2003, LB 209, § 1; Laws 2003, LB 562, § 2; Laws 2005, LB 76, § 2; Laws 2006, LB 853, § 6; Laws 2007, LB415, § 1; Laws 2008, LB911, § 1; Laws 2011, LB158, § 1; Laws 2011, LB178, § 2; Laws 2011, LB215, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB158, section 1, with LB178, section 2, and LB215, section 1, to reflect all amendments.

Note: Changes made by LB215 became effective March 11, 2011. Changes made by LB158 became effective August 27, 2011. Changes made by LB178 became effective August 27, 2011.

60-462.01 Federal regulations; adopted.

For purposes of the Motor Vehicle Operator's License Act, the following federal regulations are adopted as Nebraska law as they existed on January 1, 2011:

The parts, subparts, and sections of Title 49 of the Code of Federal Regulations, as referenced in the Motor Vehicle Operator's License Act.

Source: Laws 2003, LB 562, § 20; Laws 2004, LB 560, § 36; Laws 2005, LB 76, § 3; Laws 2006, LB 853, § 7; Laws 2006, LB 1007, § 4; Laws 2007, LB239, § 4; Laws 2008, LB756, § 16; Laws 2009, LB331, § 7; Laws 2010, LB805, § 3; Laws 2011, LB178, § 3; Laws 2011, LB212, § 5.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB178, section 3, with LB212, section 5, to reflect all amendments.

Note: Changes made by LB212 became effective February 23, 2011. Changes made by LB178 became effective August 27, 2011.

60-462.02 Legislative intent; director; department; powers and duties.

It is the intent of the Legislature that the department develop, implement, and maintain processes for the issuance of operators' licenses and state identification cards designed to protect the identity of applicants for and holders of such licenses and cards and reduce identity theft, fraud, forgery, and counterfeiting to the maximum extent possible with respect to such licenses and cards. The department shall adopt security and technology practices to enhance the

enrollment, production, data storage, and credentialing system of such licenses and cards in order to maximize the integrity of the process.

Source: Laws 2008, LB911, § 2; Laws 2009, LB331, § 8; Laws 2011, LB215, § 2.

Effective date March 11, 2011.

60-471 Motor vehicle, defined.

Motor vehicle means all vehicles propelled by any power other than muscular power. Motor vehicle does not include (1) self-propelled chairs used by persons who are disabled, (2) farm tractors, (3) farm tractors used occasionally outside general farm usage, (4) road rollers, (5) vehicles which run only on rails or tracks, (6) electric personal assistive mobility devices as defined in section 60-618.02, and (7) off-road designed vehicles not authorized by law for use on a highway, including, but not limited to, golf carts, go-carts, riding lawn mowers, garden tractors, all-terrain vehicles and utility-type vehicles as defined in section 60-6,355, minibikes as defined in section 60-636, and snowmobiles as defined in section 60-663.

Source: Laws 1989, LB 285, § 21; Laws 1993, LB 370, § 68; Laws 2002, LB 1105, § 445; Laws 2010, LB650, § 30; Laws 2011, LB289, § 25.

Operative date January 1, 2012.

(f) PROVISIONS APPLICABLE TO ALL OPERATORS' LICENSES

60-479 Sections; applicability.

Sections 60-479.01 to 60-4,111.01 and 60-4,182 to 60-4,188 shall apply to any operator's license subject to the Motor Vehicle Operator's License Act.

Source: Laws 1989, LB 285, § 29; Laws 1993, LB 370, § 72; Laws 1995, LB 467, § 7; Laws 1997, LB 210, § 3; Laws 1997, LB 256, § 5; Laws 2001, LB 38, § 10; Laws 2001, LB 574, § 2; Laws 2003, LB 209, § 2; Laws 2008, LB911, § 7; Laws 2011, LB215, § 3.

Effective date March 11, 2011.

60-479.01 Fraudulent document recognition training; criminal history record information check; lawful status check; cost.

(1) All persons handling source documents or engaged in the issuance of new, renewed, or reissued operators' licenses or state identification cards shall have periodic fraudulent document recognition training.

(2) This subsection applies beginning on an implementation date designated by the director on or before January 1, 2014. All persons and agents of the department involved in the recording of verified application information or verified operator's license and state identification card information, involved in the manufacture or production of licenses or cards, or who have the ability to affect information on such licenses or cards shall be subject to a criminal history record information check, including a check of prior employment references, and a lawful status check. The cost of any background check shall be borne by the employer of the person or agent. Any person convicted of any disqualifying offense as provided in 6 C.F.R. part 37, as such part existed on January 1, 2011, shall not be involved in the recording of verified application information or verified operator's license and state identification card informa-

tion, involved in the manufacture or production of licenses or cards, or involved in any capacity in which such person would have the ability to affect information on such licenses or cards. Any employee or prospective employee of the department shall be provided notice that he or she will undergo such criminal history record information check prior to employment or prior to any involvement with the issuance of operators' licenses or state identification cards.

Source: Laws 2008, LB911, § 8; Laws 2011, LB215, § 4.
Effective date March 11, 2011.

60-484 Operator's license required, when; state identification card; application.

(1)(a) This subsection applies until the implementation date designated by the director on or before January 1, 2014. Except as otherwise provided in the Motor Vehicle Operator's License Act, no resident of the State of Nebraska shall operate a motor vehicle upon the alleys or highways of this state until the person has obtained an operator's license for that purpose.

(b) Application for an operator's license or a state identification card shall be made in a manner prescribed by the department. Such application may be made to department personnel in any county. Department personnel shall conduct the examination of the applicant and deliver to each successful applicant an issuance certificate containing the statements made pursuant to subdivision (c) of this subsection.

(c) The applicant (i) shall provide his or her full legal name, date of birth, mailing address, gender, race or ethnicity, and social security number, two forms of proof of address of his or her principal residence unless the applicant is a program participant under the Address Confidentiality Act, evidence of identity as required by subdivision (1)(f) of this subsection, and a brief physical description of himself or herself, (ii) may complete the voter registration portion pursuant to section 32-308, (iii) shall be provided the advisement language required by subsection (5) of section 60-6,197, (iv) shall answer the following:

(A) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(I) lost voluntary control or consciousness ... yes ... no

(II) experienced vertigo or multiple episodes of dizziness or fainting ... yes ... no

(III) experienced disorientation ... yes ... no

(IV) experienced seizures ... yes ... no

(V) experienced impairment of memory, memory loss ... yes ... no

Please explain:

(B) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of, or impairment of, foot, leg, hand, arm; neurological or neuromuscular disease, etc.) ... yes ... no

Please explain:

(C) Since the issuance of your last driver's license/permit, has your health or medical condition changed or worsened? ... yes ... no

Please explain, including how the above affects your ability to drive:, and (v) may answer the following:

(A) Do you wish to register to vote as part of this application process?

OPTIONAL - YOU ARE NOT REQUIRED TO ANSWER ANY OF THE FOLLOWING QUESTIONS:

(B) Do you wish to be an organ and tissue donor?

(C) Do you wish to receive any additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska?

(D) Do you wish to donate \$1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(d) Application for an operator's license or state identification card shall include a signed oath, affirmation, or declaration of the applicant that the information provided on the application for the license or card is true and correct.

(e) The social security number shall not be printed on the operator's license or state identification card and shall be used only (i) to furnish information to the United States Selective Service System under section 60-483, (ii) with the permission of the director in connection with the verification of the status of an individual's driving record in this state or any other state, (iii) for purposes of child support enforcement pursuant to section 42-358.08 or 43-512.06, (iv) to furnish information regarding an applicant for or holder of a commercial driver's license with a hazardous materials endorsement to the Transportation Security Administration of the United States Department of Homeland Security or its agent, or (v) to furnish information to the Department of Revenue under section 77-362.02.

(f)(i) Each individual applying for an operator's license or a state identification card shall furnish proof of date of birth and identity with documents containing a photograph or with nonphoto identity documents which include his or her full legal name and date of birth. Such documents shall include, but not be limited to, any valid Nebraska operator's license or Nebraska state identification card, a valid operator's license or identification card from another state or jurisdiction of the United States, a certified birth certificate, a valid United States passport, or any other United States-based identification as approved by the director.

(ii) Any individual under the age of eighteen years applying for an operator's license or a state identification card shall provide a certified copy of his or her birth certificate or, if such individual is unable to provide a certified copy of his or her birth certificate, other reliable proof of his or her identity and age, as required in subdivision (1)(f)(i) of this section, accompanied by a certification signed by a parent or guardian explaining the inability to produce a copy of such birth certificate. The applicant also may be required to furnish proof to department personnel that the parent or guardian signing the certification is in fact the parent or guardian of such applicant.

(iii) An applicant may present other documents as proof of identification and age designated by the director. Any documents accepted shall be recorded according to a written exceptions process established by the director.

(2)(a) This subsection applies beginning on an implementation date designated by the director on or before January 1, 2014. Except as otherwise provided in the Motor Vehicle Operator's License Act, no resident of the State of

Nebraska shall operate a motor vehicle upon the alleys or highways of this state until the person has obtained an operator's license for that purpose.

(b) Application for an operator's license or a state identification card shall be made in a manner prescribed by the department. Such application may be made to department personnel in any county. Department personnel shall conduct the examination of the applicant and deliver to each successful applicant an issuance certificate containing the statements made pursuant to subdivision (c) of this subsection.

(c) The applicant shall provide his or her full legal name, date of birth, mailing address, gender, race or ethnicity, and social security number, two forms of proof of address of his or her principal residence unless the applicant is a program participant under the Address Confidentiality Act, evidence of identity as required by subdivision (2)(f) of this subsection, and a brief physical description of himself or herself. The applicant (i) may also complete the voter registration portion pursuant to section 32-308, (ii) shall be provided the advisement language required by subsection (5) of section 60-6,197, (iii) shall answer the following:

(A) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(I) lost voluntary control or consciousness ... yes ... no

(II) experienced vertigo or multiple episodes of dizziness or fainting ... yes ... no

(III) experienced disorientation ... yes ... no

(IV) experienced seizures ... yes ... no

(V) experienced impairment of memory, memory loss ... yes ... no

Please explain:

(B) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of, or impairment of, foot, leg, hand, arm; neurological or neuromuscular disease, etc.) ... yes ... no

Please explain:

(C) Since the issuance of your last driver's license/permit, has your health or medical condition changed or worsened? ... yes ... no

Please explain, including how the above affects your ability to drive:, and (iv) may answer the following:

(A) Do you wish to register to vote as part of this application process?

OPTIONAL - YOU ARE NOT REQUIRED TO ANSWER ANY OF THE FOLLOWING QUESTIONS:

(B) Do you wish to be an organ and tissue donor?

(C) Do you wish to receive any additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska?

(D) Do you wish to donate \$1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(d) Application for an operator's license or state identification card shall include a signed oath, affirmation, or declaration of the applicant that the information provided on the application for the license or card is true and correct.

(e) The social security number shall not be printed on the operator's license or state identification card and shall be used only (i) to furnish information to the United States Selective Service System under section 60-483, (ii) with the permission of the director in connection with the verification of the status of an individual's driving record in this state or any other state, (iii) for purposes of child support enforcement pursuant to section 42-358.08 or 43-512.06, (iv) to furnish information regarding an applicant for or holder of a commercial driver's license with a hazardous materials endorsement to the Transportation Security Administration of the United States Department of Homeland Security or its agent, or (v) to furnish information to the Department of Revenue under section 77-362.02.

(f)(i) Each individual applying for an operator's license or a state identification card shall furnish proof of date of birth and identity with documents containing a photograph or with nonphoto identity documents which include his or her full legal name and date of birth. Such documents shall be those provided in subsection (2) of section 60-484.04.

(ii) Any individual under the age of eighteen years applying for an operator's license or a state identification card shall provide a certified copy of his or her birth certificate or, if such individual is unable to provide a certified copy of his or her birth certificate, other reliable proof of his or her identity and age, as required in subdivision (2)(f)(i) of this section, accompanied by a certification signed by a parent or guardian explaining the inability to produce a copy of such birth certificate. The applicant also may be required to furnish proof to department personnel that the parent or guardian signing the certification is in fact the parent or guardian of such applicant.

(iii) An applicant may present other documents as proof of identification and age designated by the director. Any documents accepted shall be recorded according to a written exceptions process established by the director.

(g) No person shall be a holder of an operator's license and a state identification card at the same time.

Source: Laws 1929, c. 148, § 1, p. 512; C.S.1929, § 60-401; Laws 1937, c. 141, § 11, p. 510; C.S.Supp.,1941, § 60-401; R.S.1943, § 60-403; Laws 1945, c. 141, § 1, p. 446; Laws 1947, c. 207, § 1, p. 675; Laws 1957, c. 366, § 35, p. 1269; Laws 1961, c. 315, § 2, p. 998; Laws 1961, c. 316, § 2, p. 1007; Laws 1984, LB 811, § 2; Laws 1986, LB 153, § 9; Laws 1986, LB 878, § 1; Laws 1987, LB 300, § 1; R.S.1943, (1988), § 60-403; Laws 1989, LB 285, § 35; Laws 1991, LB 457, § 44; Laws 1992, LB 1178, § 1; Laws 1994, LB 76, § 571; Laws 1994, LB 211, § 2; Laws 1995, LB 467, § 10; Laws 1996, LB 939, § 1; Laws 1996, LB 1073, § 1; Laws 1997, LB 635, § 20; Laws 1999, LB 147, § 1; Laws 1999, LB 704, § 5; Laws 2000, LB 1317, § 7; Laws 2001, LB 34, § 1; Laws 2001, LB 387, § 4; Laws 2001, LB 574, § 5; Laws 2003, LB 228, § 12; Laws 2004, LB 208, § 4; Laws 2004, LB 559, § 1; Laws 2005, LB 1, § 1; Laws 2005, LB 76, § 5; Laws 2008, LB911, § 9; Laws 2010, LB879, § 3; Laws 2011, LB215, § 5.
Effective date March 11, 2011.

Cross References

Address Confidentiality Act, see section 42-1201.

60-484.03 Operators' licenses; state identification cards; department; retain copies of source documents.

This section applies beginning on an implementation date designated by the director on or before January 1, 2014. The department shall retain copies of source documents presented by all individuals applying for or holding operators' licenses or state identification cards. Copies retained by the department shall be held in secured storage and managed to meet the requirements of the Uniform Motor Vehicle Records Disclosure Act and sections 60-484 and 60-484.02.

Source: Laws 2011, LB215, § 6.
Effective date March 11, 2011.

Cross References

Uniform Motor Vehicle Records Disclosure Act, see section 60-2901.

60-484.04 Operators' licenses; state identification cards; applicant present evidence of lawful status.

(1) This section applies beginning on an implementation date designated by the director on or before January 1, 2014.

(2) Before being issued any type of operator's license or a state identification card under the Motor Vehicle Operator's License Act, the department shall require an applicant to present valid documentary evidence that he or she has lawful status in the United States. Lawful status may be shown by:

- (a) A valid, unexpired United States passport;
- (b) A certified copy of a birth certificate filed with a state office of vital statistics or equivalent agency in the individual's state of birth;
- (c) A Consular Report of Birth Abroad (CRBA) issued by the United States Department of State, Form FS-240, DS-1350, or FS-545;
- (d) A valid, unexpired Permanent Resident Card (Form I-551) issued by the United States Department of Homeland Security or Bureau of United States Citizenship and Immigration Services;
- (e) An unexpired employment authorization document (EAD) issued by the United States Department of Homeland Security, Form I-766 or Form I-688B;
- (f) An unexpired foreign passport with a valid, unexpired United States visa affixed accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States;
- (g) A Certificate of Naturalization issued by the United States Department of Homeland Security, Form N-550 or Form N-570;
- (h) A Certificate of Citizenship, Form N-560 or Form N-561, issued by the United States Department of Homeland Security;
- (i) A driver's license or identification card issued in compliance with the standards established by the REAL ID Act of 2005, Public Law 109-13, division B, section 1, 119 Stat. 302; or
- (j) Such other documents as the director may approve.

(3)(a) If an applicant presents one of the documents listed under subdivision (2)(a), (b), (c), (d), (g), or (h) of this section, the verification of the applicant's identity in the manner prescribed in section 60-484 will also provide satisfactory evidence of lawful status.

(b) If the applicant presents one of the identity documents listed under subdivision (2)(e), (f), or (i) of this section, the verification of the identity documents does not provide satisfactory evidence of lawful status. The applicant must also present a second document from subsection (2) of this section or documentation issued by the United States Department of Homeland Security or other federal agencies demonstrating lawful status as determined by the Bureau of United States Citizenship and Immigration Services.

(4) An applicant may present other documents as designated by the director as proof of lawful status. Any documents accepted shall be recorded according to a written exceptions process established by the director.

Source: Laws 2011, LB215, § 7.

Effective date March 11, 2011.

60-484.05 Operators' licenses; state identification cards; temporary; when issued; period valid; special notation; renewal.

(1) The department shall only issue an operator's license or a state identification card that is temporary to any applicant who presents documentation under section 60-484 and subsection (2) of section 60-484.04 that shows his or her lawful presence in the United States is temporary. An operator's license or a state identification card that is temporary shall be valid only during the period of time of the applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year.

(2) An operator's license or state identification card that is temporary shall clearly indicate that it is temporary with a special notation on the front of the license or card and shall state the date on which it expires.

(3) An operator's license or state identification card that is temporary may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the operator's license or state identification card that is temporary has been extended by the United States Department of Homeland Security.

Source: Laws 2011, LB215, § 8.

Effective date March 11, 2011.

60-484.06 Operators' licenses; state identification cards; department; power to verify documents.

This section applies beginning on an implementation date designated by the director on or before January 1, 2014. Before issuing any operator's license or state identification card under the Motor Vehicle Operator's License Act, the department may verify, with the issuing agency, the issuance, validity, and completeness of each document required to be presented by a person pursuant to sections 60-484 and 60-484.04.

Source: Laws 2011, LB215, § 9.

Effective date March 11, 2011.

60-487 Cancellation of operator's license or commercial driver's license; when.

(1) If any magistrate or judge finds in his or her judgment of conviction that the application or issuance certificate pursuant to which the director has issued an operator's license under the Motor Vehicle Operator's License Act contains

any false or fraudulent statement deliberately and knowingly made to any officer as to any matter material to the issuance of such license or does not contain required or correct information or that the person to whom the license was issued was not eligible to receive such license, then the license shall be absolutely void from the date of issue and such motor vehicle operator shall be deemed to be not licensed to operate a motor vehicle. Such license shall be at once canceled of record in his or her office by the director upon receipt of a copy of such judgment of conviction. The director may, upon his or her own motion, summarily cancel any license for any of the reasons set forth in this section if such reason or reasons affirmatively appear on his or her official records.

(2) If the director determines, in a check of an applicant's license status and record prior to issuing a commercial driver's license, or at any time after the commercial driver's license is issued, that the applicant falsified information contained in the application, the director may summarily cancel the person's commercial driver's license or his or her pending application as provided in subsection (1) of this section and disqualify the person from operating a commercial motor vehicle for sixty days.

Source: Laws 1929, c. 148, § 10, p. 517; C.S.1929, § 60-410; Laws 1937, c. 141, § 20, p. 517; Laws 1941, c. 124, § 1, p. 469; C.S.Supp.,1941, § 60-410; R.S.1943, § 60-416; R.S.1943, (1988), § 60-416; Laws 1989, LB 285, § 38; Laws 1991, LB 420, § 7; Laws 1999, LB 704, § 7; Laws 2001, LB 38, § 14; Laws 2003, LB 562, § 4; Laws 2011, LB215, § 10.
Effective date March 11, 2011.

60-497.01 Conviction and probation records; abstract of court record; transmission to director; duties.

(1) An abstract of the court record of every case in which a person is convicted of violating any provision of the Motor Vehicle Operator's License Act, the Motor Vehicle Safety Responsibility Act, the Nebraska Rules of the Road, or section 28-524, as from time to time amended by the Legislature, or any traffic regulations in city or village ordinances shall be transmitted within thirty days of sentencing or other disposition by the court to the director. Any abstract received by the director more than thirty days after the date of sentencing or other disposition shall be reported by the director to the State Court Administrator.

(2) Any person violating section 28-306, 28-394, 28-1254, 60-696, 60-697, 60-6,196, 60-6,197, 60-6,213, or 60-6,214 who is placed on probation shall be assessed the same points under section 60-4,182 as if such person were not placed on probation unless a court has ordered that such person must obtain an ignition interlock permit in order to operate a motor vehicle with an ignition interlock device pursuant to section 60-6,211.05 and sufficient evidence is presented to the department that such a device is installed. For any other violation, the director shall not assess such person with any points under section 60-4,182 for such violation when the person is placed on probation until the director is advised by the court that such person previously placed on probation has violated the terms of his or her probation and such probation has been revoked. Upon receiving notice of revocation of probation, the director shall assess to such person the points which such person would have been

assessed had the person not been placed on probation. When a person fails to successfully complete probation, the court shall notify the director immediately.

Source: Laws 1931, c. 110, § 58, p. 326; Laws 1941, c. 124, § 9, p. 476; C.S.Supp.,1941, § 39-1189; R.S.1943, § 39-794; Laws 1953, c. 219, § 7, p. 771; Laws 1957, c. 164, § 1, p. 579; Laws 1957, c. 165, § 1, p. 582; Laws 1957, c. 366, § 15, p. 1255; Laws 1972, LB 1032, § 247; Laws 1972, LB 1058, § 2; Laws 1973, LB 226, § 25; Laws 1973, LB 317, § 1; R.S.Supp.,1973, § 39-794; Laws 1975, LB 379, § 1; Laws 1987, LB 79, § 1; Laws 1991, LB 420, § 2; R.S.Supp.,1992, § 39-669.22; Laws 1993, LB 370, § 75; Laws 1993, LB 564, § 13; Laws 1993, LB 575, § 15; Laws 2001, LB 38, § 18; Laws 2006, LB 925, § 2; Laws 2008, LB736, § 2; Laws 2009, LB63, § 32; Laws 2011, LB667, § 23.
Operative date January 1, 2012.

Cross References

Motor Vehicle Safety Responsibility Act, see section 60-569.
Nebraska Rules of the Road, see section 60-601.

60-498.01 Driving under influence of alcohol; operator's license; confiscation and revocation; application for ignition interlock permit; procedures; appeal; restrictions relating to ignition interlock permit; prohibited acts relating to ignition interlock devices; additional revocation period.

(1) Because persons who drive while under the influence of alcohol present a hazard to the health and safety of all persons using the highways, a procedure is needed for the swift and certain revocation of the operator's license of any person who has shown himself or herself to be a health and safety hazard (a) by driving with an excessive concentration of alcohol in his or her body or (b) by driving while under the influence of alcohol.

(2) If a person arrested as described in subsection (2) of section 60-6,197 refuses to submit to the chemical test of blood, breath, or urine required by section 60-6,197, the test shall not be given except as provided in section 60-6,210 for the purpose of medical treatment and the arresting peace officer, as agent for the director, shall verbally serve notice to the arrested person of the intention to immediately confiscate and revoke the operator's license of such person and that the revocation will be automatic fifteen days after the date of arrest. The arresting peace officer shall within ten days forward to the director a sworn report stating (a) that the person was arrested as described in subsection (2) of section 60-6,197 and the reasons for such arrest, (b) that the person was requested to submit to the required test, and (c) that the person refused to submit to the required test. The director may accept a sworn report submitted electronically.

(3) If a person arrested as described in subsection (2) of section 60-6,197 submits to the chemical test of blood or breath required by section 60-6,197, the test discloses the presence of alcohol in any of the concentrations specified in section 60-6,196, and the test results are available to the arresting peace officer while the arrested person is still in custody, the arresting peace officer, as agent for the director, shall verbally serve notice to the arrested person of the intention to immediately confiscate and revoke the operator's license of such person and that the revocation will be automatic fifteen days after the date of arrest. The arresting peace officer shall within ten days forward to the director

a sworn report stating (a) that the person was arrested as described in subsection (2) of section 60-6,197 and the reasons for such arrest, (b) that the person was requested to submit to the required test, and (c) that the person submitted to a test, the type of test to which he or she submitted, and that such test revealed the presence of alcohol in a concentration specified in section 60-6,196. The director may accept a sworn report submitted electronically.

(4) On behalf of the director, the arresting peace officer submitting a sworn report under subsection (2) or (3) of this section shall serve notice of the revocation on the arrested person, and the revocation shall be effective fifteen days after the date of arrest. The notice of revocation shall contain a statement explaining the operation of the administrative license revocation procedure. The peace officer shall also provide to the arrested person information prepared and approved by the director describing how to request an administrative license revocation hearing or apply for an ignition interlock permit from the department. A petition for an administrative license revocation hearing must be completed and delivered to the department or postmarked within ten days after the person's arrest or the person's right to an administrative license revocation hearing to contest the revocation will be foreclosed. The director shall prepare and approve the information form, the application for an ignition interlock permit, and the notice of revocation and shall provide them to law enforcement agencies.

If the person has an operator's license, the arresting peace officer shall take possession of the license and issue a temporary operator's license valid for fifteen days. The arresting peace officer shall forward the operator's license to the department along with the sworn report made under subsection (2) or (3) of this section.

(5)(a) If the results of a chemical test indicate the presence of alcohol in a concentration specified in section 60-6,196, the results are not available to the arresting peace officer while the arrested person is in custody, and the notice of revocation has not been served as required by subsection (4) of this section, the peace officer shall forward to the director a sworn report containing the information prescribed by subsection (3) of this section within ten days after receipt of the results of the chemical test. If the sworn report is not received within ten days, the revocation shall not take effect. The director may accept a sworn report submitted electronically.

(b) Upon receipt of the report, the director shall serve the notice of revocation on the arrested person by mail to the address appearing on the records of the director. If the address on the director's records differs from the address on the arresting peace officer's report, the notice shall be sent to both addresses. The notice of revocation shall contain a statement explaining the operation of the administrative license revocation procedure. The director shall also provide to the arrested person information prepared and approved by the director describing how to request an administrative license revocation hearing and an application for an ignition interlock permit. A petition for an administrative license revocation hearing must be completed and delivered to the department or postmarked within ten days after the mailing of the notice of revocation or the person's right to an administrative license revocation hearing to contest the revocation will be foreclosed. The director shall prepare and approve the ignition interlock permit application and the notice of revocation. The revocation shall be effective fifteen days after the date of mailing.

(c) If the records of the director indicate that the arrested person possesses an operator's license, the director shall include with the notice of revocation a temporary operator's license which expires fifteen days after the date of mailing. Any arrested person who desires an administrative license revocation hearing and has been served a notice of revocation pursuant to this subsection shall return his or her operator's license with the petition requesting the hearing. If the operator's license is not included with the petition requesting the hearing, the director shall deny the petition.

(6)(a) An arrested person's operator's license confiscated pursuant to subsection (4) of this section shall be automatically revoked upon the expiration of fifteen days after the date of arrest, and the petition requesting the hearing shall be completed and delivered to the department or postmarked within ten days after the person's arrest. An arrested person's operator's license confiscated pursuant to subsection (5) of this section shall be automatically revoked upon the expiration of fifteen days after the date of mailing of the notice of revocation by the director, and the arrested person shall postmark or return to the director a petition within ten days after the mailing of the notice of revocation if the arrested person desires an administrative license revocation hearing. The petition shall be in writing and shall state the grounds on which the person is relying to prevent the revocation from becoming effective. The hearing and any prehearing conference may be conducted in person or by telephone, television, or other electronic means at the discretion of the director, and all parties may participate by such means at the discretion of the director.

(b) The director shall conduct the hearing within twenty days after a petition is received by the director. Upon receipt of a petition, the director shall notify the petitioner of the date and location for the hearing by mail postmarked at least seven days prior to the hearing date. The filing of the petition shall not prevent the automatic revocation of the petitioner's operator's license at the expiration of the fifteen-day period. A continuance of the hearing to a date beyond the expiration of the temporary operator's license shall stay the expiration of the temporary license when the request for continuance is made by the director.

(c) At hearing the issues under dispute shall be limited to:

(i) In the case of a refusal to submit to a chemical test of blood, breath, or urine:

(A) Did the peace officer have probable cause to believe the person was operating or in the actual physical control of a motor vehicle in violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section; and

(B) Did the person refuse to submit to or fail to complete a chemical test after being requested to do so by the peace officer; or

(ii) If the chemical test discloses the presence of alcohol in a concentration specified in section 60-6,196:

(A) Did the peace officer have probable cause to believe the person was operating or in the actual physical control of a motor vehicle in violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section; and

(B) Was the person operating or in the actual physical control of a motor vehicle while having an alcohol concentration in violation of subsection (1) of section 60-6,196.

(7)(a) Any arrested person who submits an application for an ignition interlock permit in lieu of a petition for an administrative license revocation hearing regarding the revocation of his or her operator's license pursuant to this section shall complete the application for an ignition interlock permit in which such person acknowledges that he or she understands that he or she will have his or her license administratively revoked pursuant to this section, that he or she waives his or her right to a hearing to contest the revocation, and that he or she understands that he or she is required to have an ignition interlock permit in order to operate a motor vehicle for the period of the revocation and shall include sufficient evidence that an ignition interlock device is installed on one or more vehicles that will be operated by the arrested person. Upon the arrested person's completion of the ignition interlock permit application process, the department shall issue the person an ignition interlock permit, subject to any applicable requirements and any applicable no-drive period if the person is otherwise eligible.

(b) An arrested person who is issued an ignition interlock permit pursuant to this section shall receive day-for-day credit for the period he or she has a valid ignition interlock permit against the license revocation period imposed by the court arising from the same incident.

(c) If a person files a completed application for an ignition interlock permit, the person waives his or her right to contest the revocation of his or her operator's license.

(8) Any person who has not petitioned for an administrative license revocation hearing and is subject to an administrative license revocation may immediately apply for an ignition interlock permit to use during the applicable period of revocation set forth in section 60-498.02, subject to the following additional restrictions:

(a) If such person submitted to a chemical test which disclosed the presence of a concentration of alcohol in violation of section 60-6,196 and has no prior administrative license revocations on which final orders have been issued during the immediately preceding fifteen-year period at the time the order of revocation is issued, the ignition interlock permit will be immediately available fifteen days after the date of arrest or the date notice of revocation was provided to the arrested person, as long as he or she is otherwise eligible for an ignition interlock permit, upon completion of an application process for an ignition interlock permit;

(b) If such person submitted to a chemical test which disclosed the presence of a concentration of alcohol in violation of section 60-6,196 and has one or more prior administrative license revocations on which final orders have been issued during the immediately preceding fifteen-year period at the time the order of revocation is issued, the ignition interlock permit will be available beginning fifteen days after the date of arrest or the date notice of revocation was provided to the arrested person plus forty-five additional days of no driving, as long as he or she is otherwise eligible for an ignition interlock permit, upon completion of an application process for an ignition interlock permit;

(c) If such person refused to submit to a chemical test of blood, breath, or urine as required by section 60-6,197, the ignition interlock permit will be available beginning fifteen days after the date of arrest plus ninety additional days of no driving, as long as he or she is otherwise eligible for an ignition interlock permit, upon completion of an application process for an ignition interlock permit; and

(d) Any person who petitions for an administrative license revocation hearing shall not be eligible for an ignition interlock permit unless ordered by the court at the time of sentencing for the related criminal proceeding.

(9) The director shall adopt and promulgate rules and regulations to govern the conduct of the administrative license revocation hearing and insure that the hearing will proceed in an orderly manner. The director may appoint a hearing officer to preside at the hearing, administer oaths, examine witnesses, take testimony, and report to the director. Any motion for discovery filed by the petitioner shall entitle the prosecutor to receive full statutory discovery from the petitioner upon a prosecutor's request to the relevant court pursuant to section 29-1912 in any criminal proceeding arising from the same arrest. A copy of the motion for discovery shall be filed with the department and a copy provided to the prosecutor in the jurisdiction in which the petitioner was arrested. Incomplete discovery shall not stay the hearing unless the petitioner requests a continuance. All proceedings before the hearing officer shall be recorded. Upon receipt of the arresting peace officer's sworn report, the director's order of revocation has prima facie validity and it becomes the petitioner's burden to establish by a preponderance of the evidence grounds upon which the operator's license revocation should not take effect. The director shall make a determination of the issue within seven days after the conclusion of the hearing. A person whose operator's license is revoked following a hearing requested pursuant to this section may appeal the order of revocation as provided in section 60-498.04.

(10) Any person who tampers with or circumvents an ignition interlock device installed pursuant to sections 60-498.01 to 60-498.04 or who operates a motor vehicle not equipped with a functioning ignition interlock device required pursuant to such sections or otherwise is in violation of the purposes for operation indicated on the ignition interlock permit under such sections shall, in addition to any possible criminal charges, have his or her revocation period and ignition interlock permit extended for six months beyond the end of the original revocation period.

Source: Laws 1972, LB 1095, § 5; C.S.Supp.,1972, § 39-727.16; Laws 1992, LB 872, § 4; Laws 1992, LB 291, § 9; R.S.Supp.,1992, § 39-669.15; Laws 1993, LB 370, § 300; Laws 1996, LB 939, § 3; Laws 1998, LB 309, § 15; Laws 2001, LB 38, § 51; R.S.Supp.,2002, § 60-6,205; Laws 2003, LB 209, § 4; Laws 2004, LB 208, § 5; Laws 2011, LB667, § 24.

Operative date January 1, 2012.

60-498.02 Driving under influence of alcohol; revocation of operator's license; reinstatement; procedure; ignition interlock permit; restrictions on operation of motor vehicle.

(1) At the expiration of fifteen days after the date of arrest as described in subsection (2) of section 60-6,197 or if after a hearing pursuant to section

60-498.01 the director finds that the operator's license should be revoked, the director shall (a) revoke the operator's license of a person arrested for refusal to submit to a chemical test of blood, breath, or urine as required by section 60-6,197 for a period of one year and (b) revoke the operator's license of a person who submits to a chemical test pursuant to such section which discloses the presence of a concentration of alcohol specified in section 60-6,196 for a period of one hundred eighty days unless the person's driving record abstract maintained in the department's computerized records shows one or more prior administrative license revocations on which final orders have been issued during the immediately preceding fifteen-year period at the time the order of revocation is issued, in which case the period of revocation shall be one year. Except as otherwise provided in section 60-6,211.05, a new operator's license shall not be issued to such person until the period of revocation has elapsed. If the person subject to the revocation is a nonresident of this state, the director shall revoke only the nonresident's operating privilege as defined in section 60-474 of such person and shall immediately forward the operator's license and a statement of the order of revocation to the person's state of residence.

(2) A person operating a motor vehicle under an ignition interlock permit issued pursuant to sections 60-498.01 to 60-498.04 who has no previous convictions under section 60-6,196, 60-6,197, or 60-6,197.06 and no previous administrative license revocation shall only operate the motor vehicle to and from his or her residence for purposes of his or her employment, his or her school, a substance abuse treatment program, his or her parole or probation officer, his or her continuing health care or the continuing health care of another person who is dependent upon the person, his or her court-ordered community service responsibilities, or an ignition interlock service facility. A person operating a motor vehicle under an ignition interlock permit issued pursuant to sections 60-498.01 to 60-498.04 who has a previous conviction under section 60-6,196, 60-6,197, or 60-6,197.06 or a previous administrative license revocation shall only operate the motor vehicle to and from his or her residence for purposes of his or her employment, his or her school, or a substance abuse treatment program. Such permit shall indicate for which purposes the permit may be used. All permits issued pursuant to this subsection shall indicate that the permit is not valid for the operation of any commercial motor vehicle.

(3) A person may have his or her eligibility for a license reinstated upon payment of a reinstatement fee as required by section 60-694.01.

(4)(a) A person whose operator's license is subject to revocation pursuant to subsection (3) of section 60-498.01 shall have all proceedings dismissed or his or her operator's license immediately reinstated without payment of the reinstatement fee upon receipt of suitable evidence by the director that:

(i) The prosecuting attorney responsible for the matter declined to file a complaint alleging a violation of section 60-6,196;

(ii) The defendant, after trial, was found not guilty of violating section 60-6,196 or such charge was dismissed on the merits by the court; or

(iii) In the criminal action on the charge of a violation of section 60-6,196 arising from the same incident, the court held one of the following:

(A) The peace officer did not have probable cause to believe the person was operating or in the actual physical control of a motor vehicle in violation of

section 60-6,196 or a city or village ordinance enacted in conformance with such section; or

(B) The person was not operating or in the actual physical control of a motor vehicle while having an alcohol concentration in violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section.

(b) The director shall adopt and promulgate rules and regulations establishing standards for the presentation of suitable evidence of compliance with subdivision (a) of this subsection.

(c) If a criminal charge is filed or refiled for a violation of section 60-6,196 pursuant to an arrest for which all administrative license revocation proceedings were dismissed under this subsection, the director, upon notification or discovery, may reinstate an administrative license revocation under this section as of the date that the director receives notification of the filing or refiled of the charge, except that a revocation shall not be reinstated if it was dismissed pursuant to section 60-498.01.

Source: Laws 1972, LB 1095, § 6; C.S.Supp.,1972, § 39-727.17; Laws 1974, LB 679, § 3; Laws 1982, LB 568, § 7; Laws 1986, LB 153, § 8; Laws 1988, LB 377, § 3; Laws 1992, LB 291, § 11; R.S.Supp.,1992, § 39-669.16; Laws 1993, LB 370, § 301; Laws 1993, LB 491, § 1; Laws 1993, LB 564, § 12; Laws 1998, LB 309, § 16; Laws 2001, LB 38, § 52; R.S.Supp.,2002, § 60-6,206; Laws 2003, LB 209, § 5; Laws 2004, LB 208, § 6; Laws 2008, LB736, § 3; Laws 2009, LB497, § 2; Laws 2010, LB924, § 1; Laws 2011, LB667, § 25; Laws 2011, LB675, § 2.

Operative date January 1, 2012.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB675, section 2, with LB667, section 25, to reflect all amendments.

60-498.03 Operator's license revocation decision; notice; contents.

(1) The director shall reduce the decision revoking an operator's license under sections 60-498.01 to 60-498.04 to writing, and the director shall notify the person in writing of the revocation. The notice shall set forth the period of revocation and be served by mailing it to such person to the address provided to the director at the administrative license revocation hearing or, if the person does not appear at the hearing, to the address appearing on the records of the director. If the address on the director's records differs from the address on the arresting peace officer's report, the notice shall be sent to both addresses.

(2) If the director does not revoke the operator's license, the director shall immediately notify the person in writing of the decision. The notice shall set forth the time and place the person may obtain his or her license. The notice shall be mailed as provided in subsection (1) of this section. No reinstatement fee shall be charged for return of the confiscated operator's license pursuant to this subsection.

Source: Laws 1972, LB 1095, § 7; C.S.Supp.,1972, § 39-727.18; Laws 1992, LB 291, § 12; R.S.Supp.,1992, § 39-669.17; Laws 1993, LB 370, § 302; Laws 2001, LB 38, § 53; R.S.Supp.,2002, § 60-6,207; Laws 2003, LB 209, § 6; Laws 2011, LB667, § 26.

Operative date January 1, 2012.

60-498.04 License revocation; appeal; notice of judgment.

Any person who feels himself or herself aggrieved because of the revocation of his or her operator's license under sections 60-498.01 to 60-498.04 may appeal therefrom to the district court of the county where the alleged events occurred for which he or she was arrested, and the appeal shall be in accordance with section 84-917. The district court shall allow any party to an appeal to appear by telephone at any proceeding before the court for purposes of the appeal. Such appeal shall not suspend the order of revocation. The court shall provide notice of the final judgment to the department.

Source: Laws 1972, LB 1095, § 8; C.S.Supp.,1972, § 39-727.19; Laws 1988, LB 352, § 31; R.S.1943, (1988), § 39-669.18; Laws 1993, LB 370, § 303; Laws 1998, LB 309, § 17; R.S.1943, (1998), § 60-6,208; Laws 2003, LB 209, § 7; Laws 2011, LB667, § 27. Operative date January 1, 2012.

60-4,111.01 Storage or compilation of information; retailer; seller; authorized acts; sign posted; use of stored information; approval of negotiable instrument or certain payments; authorized acts; violations; penalty.

(1) The Department of Motor Vehicles, the courts, or law enforcement agencies may store or compile information acquired from an operator's license or a state identification card for their statutorily authorized purposes.

(2) Except as otherwise provided in subsection (3) or (4) of this section, no person having use of or access to machine-readable information encoded on an operator's license or a state identification card shall compile, store, preserve, trade, sell, or share such information. Any person who trades, sells, or shares such information shall be guilty of a Class IV felony. Any person who compiles, stores, or preserves such information except as authorized in subsection (3) or (4) of this section shall be guilty of a Class IV felony.

(3)(a) For purposes of compliance with and enforcement of restrictions on the purchase of alcohol, lottery tickets, and tobacco products, a retailer who sells any of such items pursuant to a license issued or a contract under the applicable statutory provision may scan machine-readable information encoded on an operator's license or a state identification card presented for the purpose of such a sale. The retailer may store only the following information obtained from the license or card: Age and license or card identification number. The retailer shall post a sign at the point of sale of any of such items stating that the license or card will be scanned and that the age and identification number will be stored. The stored information may only be used by a law enforcement agency for purposes of enforcement of the restrictions on the purchase of alcohol, lottery tickets, and tobacco products and may not be shared with any other person or entity.

(b) For purposes of compliance with the provisions of sections 28-458 to 28-462, a seller who sells methamphetamine precursors pursuant to such sections may scan machine-readable information encoded on an operator's license or a state identification card presented for the purpose of such a sale. The seller may store only the following information obtained from the license or card: Name, age, address, type of identification presented by the customer, the governmental entity that issued the identification, and the number on the identification. The seller shall post a sign at the point of sale stating that the license or card will be scanned and stating what information will be stored. The stored information may only be used by law enforcement agencies, regulatory

agencies, and the exchange for purposes of enforcement of the restrictions on the sale or purchase of methamphetamine precursors pursuant to sections 28-458 to 28-462 and may not be shared with any other person or entity. For purposes of this subsection, the terms exchange, methamphetamine precursor, and seller have the same meanings as in section 28-458.

(c) The retailer or seller shall utilize software that stores only the information allowed by this subsection. A programmer for computer software designed to store such information shall certify to the retailer that the software stores only the information allowed by this subsection. Intentional or grossly negligent programming by the programmer which allows for the storage of more than the age and identification number or wrongfully certifying the software shall be a Class IV felony.

(d) A retailer or seller who knowingly stores more information than authorized under this subsection from the operator's license or state identification card shall be guilty of a Class IV felony.

(e) Information scanned, compiled, stored, or preserved pursuant to subdivision (a) of this subsection may not be retained longer than eighteen months unless required by state or federal law.

(4) In order to approve a negotiable instrument, an electronic funds transfer, or a similar method of payment, a person having use of or access to machine-readable information encoded on an operator's license or a state identification card may:

(a) Scan, compile, store, or preserve such information in order to provide the information to a check services company subject to and in compliance with the federal Fair Credit Reporting Act, 15 U.S.C. 1681, as such act existed on January 1, 2010, for the purpose of effecting, administering, or enforcing a transaction requested by the holder of the license or card or preventing fraud or other criminal activity; or

(b) Scan and store such information only as necessary to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability or to resolve a dispute or inquiry by the holder of the license or card.

(5) Except as provided in subdivision (4)(a) of this section, information scanned, compiled, stored, or preserved pursuant to this section may not be traded or sold to or shared with a third party; used for any marketing or sales purpose by any person, including the retailer who obtained the information; or, unless pursuant to a court order, reported to or shared with any third party. A person who violates this subsection shall be guilty of a Class IV felony.

Source: Laws 2001, LB 574, § 30; Laws 2010, LB261, § 1; Laws 2011, LB20, § 9.

Operative date January 1, 2012.

(g) PROVISIONS APPLICABLE TO OPERATION OF MOTOR VEHICLES OTHER THAN COMMERCIAL

60-4,112 Sections; applicability.

Sections 60-4,114, 60-4,114.01, 60-4,116, and 60-4,118 to 60-4,130.05 shall apply to the operation of any motor vehicle except a commercial motor vehicle.

Source: Laws 1989, LB 285, § 62; Laws 1991, LB 44, § 2; Laws 1993, LB 105, § 8; Laws 1994, LB 211, § 4; Laws 1998, LB 320, § 4; Laws

2001, LB 38, § 27; Laws 2003, LB 562, § 5; Laws 2008, LB911, § 10; Laws 2011, LB158, § 2.
Effective date August 27, 2011.

60-4,113 Examining personnel; appointment; duties; examinations; issuance of certificate; license; state identification card; county treasurer; duties; delivery of license or card.

(1) In and for each county in the State of Nebraska, the director shall appoint as his or her agents one or more department personnel who shall examine all applicants for a state identification card or an operator's license as provided in section 60-4,114 except as otherwise provided in subsection (8) of section 60-4,122. The same department personnel may be assigned to one or more counties by the director. Each county shall furnish office space for the administration of the operator's license examination. The department personnel shall conduct the examination of applicants and deliver to each successful applicant an issuance certificate. The certificate may be presented to the county treasurer of any county within ninety days after issuance, and the county treasurer shall collect the fee and surcharge as provided in section 60-4,115 and issue a receipt which is valid for up to thirty days. If an operator's license is being issued, the receipt shall also authorize driving privileges for such thirty-day period. If the department personnel refuse to issue an issuance certificate for cause, the department personnel shall state such cause in writing and deliver such written cause to the applicant.

(2) The department may provide for the central production and issuance of operators' licenses and state identification cards. Production shall take place at a secure production facility designated by the director. The licenses and cards shall be of such a design and produced in such a way as to discourage, to the maximum extent possible, fraud in applicant enrollment, identity theft, and the forgery and counterfeiting of such licenses and cards. Delivery of an operator's license or state identification card shall be to the mailing address provided by the applicant at the time of application.

Source: Laws 1929, c. 148, § 2, p. 513; C.S.1929, § 60-402; Laws 1937, c. 141, § 12, p. 511; C.S.Supp.,1941, § 60-402; R.S.1943, § 60-404; Laws 1945, c. 141, § 2, p. 447; Laws 1945, c. 142, § 1, p. 454; Laws 1957, c. 366, § 36, p. 1270; Laws 1961, c. 307, § 4, p. 972; Laws 1961, c. 315, § 3, p. 999; Laws 1961, c. 316, § 3, p. 1009; Laws 1961, c. 317, § 1, p. 1016; Laws 1967, c. 389, § 1, p. 1212; Laws 1976, LB 329, § 1; Laws 1977, LB 90, § 3; R.S.1943, (1988), § 60-404; Laws 1989, LB 285, § 64; Laws 1999, LB 704, § 15; Laws 2001, LB 574, § 9; Laws 2008, LB911, § 11; Laws 2011, LB215, § 11.
Effective date March 11, 2011.

60-4,114 County treasurer; personnel; examination of applicant; denial or refusal of certificate; appeal; medical opinion.

(1) The county treasurer may employ such additional clerical help as may be necessary to assist him or her in the performance of the ministerial duties required of him or her under the Motor Vehicle Operator's License Act and, for such additional expense, shall be reimbursed as set out in section 60-4,115.

(2) The director may, in his or her discretion, appoint department personnel to examine all applicants who apply for an initial license or whose licenses have been revoked or canceled to ascertain such person's ability to operate a motor vehicle properly and safely.

(3) Except as otherwise provided in section 60-4,122, the application process, in addition to the other requisites of the act, shall include the following:

(a) An inquiry into the medical condition and visual ability of the applicant to operate a motor vehicle;

(b) An inquiry into the applicant's ability to drive and maneuver a motor vehicle; and

(c) An inquiry touching upon the applicant's knowledge of the motor vehicle laws of this state, which shall include sufficient questions to indicate familiarity with the provisions thereof.

(4) If an applicant is denied or refused a certificate for license, such applicant shall have the right to an immediate appeal to the director from the decision. It shall be the duty of the director to review the appeal and issue a final order, to be made not later than ten days after the receipt of the appeal by the director, except that if the director requests the advice of the Health Advisory Board on the matter, the director shall have up to forty-five days after the day a medical or vision problem is referred to him or her to consult with members of the board to obtain the medical opinion necessary to make a decision and shall issue a final order not later than ten days following receipt of the medical opinion. After consideration of the advice of the board, the director shall make a determination of the applicant's physical or mental ability to operate a motor vehicle and shall issue a final order. The order shall be in writing, shall be accompanied by findings of fact and conclusions of law, and shall be sent by registered or certified mail to the applicant's last-known address. The order may be appealed as provided in section 60-4,105.

Source: Laws 1929, c. 148, § 6, p. 514; C.S.1929, § 60-406; Laws 1931, c. 101, § 1, p. 272; Laws 1937, c. 141, § 16, p. 514; C.S.Supp.,1941, § 60-406; R.S.1943, § 60-408; Laws 1945, c. 141, § 5, p. 450; Laws 1947, c. 207, § 2, p. 676; Laws 1957, c. 366, § 38, p. 1272; Laws 1961, c. 307, § 5, p. 972; Laws 1961, c. 315, § 6, p. 1003; Laws 1961, c. 316, § 6, p. 1013; Laws 1972, LB 1439, § 1; Laws 1981, LB 76, § 2; R.S.1943, (1988), § 60-408; Laws 1989, LB 285, § 63; Laws 1994, LB 211, § 9; Laws 1999, LB 704, § 16; Laws 2001, LB 38, § 28; Laws 2001, LB 574, § 10; Laws 2011, LB215, § 12.

Effective date March 11, 2011.

60-4,114.01 Applicant for Class O or Class M license; issuance of LPD-learner's permit; restriction on reapplication for license.

An applicant for a Class O or Class M license that fails three successive tests of his or her ability to drive and maneuver a motor vehicle safely as provided in subdivision (3)(b) of section 60-4,114 may be issued an LPD-learner's permit. The applicant shall not be eligible to reapply for the Class O or Class M license and retake such test until he or she presents proof of successful completion of a

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department-approved driver training school or until he or she has held an LPD-learner's permit for at least ninety days.

Source: Laws 2011, LB158, § 3.
Effective date August 27, 2011.

60-4,115 Fees; allocation; identity security surcharge.

(1) Fees for operators' licenses and state identification cards shall be collected and distributed according to the table in subsection (2) of this section, except for the ignition interlock permit and associated fees as outlined in subsection (4) of this section. County officials shall remit the county portion of the fees collected to the county treasurer for placement in the county general fund. All other fees collected shall be remitted to the State Treasurer for credit to the appropriate fund.

(2) The fees provided in this subsection in the following dollar amounts apply for operators' licenses and state identification cards.

Document	Total Fee	County General Fund	Department of Motor Vehicles Cash Fund	State General Fund
State identification card:				
Valid for 1 year or less	5.00	2.75	1.25	1.00
Valid for more than 1 year but not more than 2 years	10.00	2.75	4.00	3.25
Valid for more than 2 years but not more than 3 years	14.00	2.75	5.25	6.00
Valid for more than 3 years but not more than 4 years	19.00	2.75	8.00	8.25
Valid for more than 4 years for person under 21	24.00	2.75	10.25	11.00
Valid for 5 years	24.00	3.50	10.25	10.25
Duplicate or replacement	11.00	2.75	6.00	2.25
Class O or M operator's license:				
Valid for 1 year or less	5.00	2.75	1.25	1.00
Valid for more than 1 year but not more than 2 years	10.00	2.75	4.00	3.25
Valid for more than 2 years but not more than 3 years	14.00	2.75	5.25	6.00
Valid for more than 3 years but not more than 4 years	19.00	2.75	8.00	8.25
Valid for 5 years	24.00	3.50	10.25	10.25
Bioptic or telescopic lens restriction:				
Valid for 1 year or less	5.00	0	5.00	0
Valid for more than 1 year but not more than 2 years	10.00	2.75	4.00	3.25
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Provisional operator's permit:				
Original	15.00	2.75	12.25	0
Bioptic or telescopic lens restriction:				
Valid for 1 year or less	5.00	0	5.00	0
Valid for more than 1 year but not more than 2 years	15.00	2.75	12.25	0
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
LPD-learner's permit:				

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Document	Total Fee	County General Fund	Department of Motor Vehicles Cash Fund	State General Fund
Original	8.00	.25	5.00	2.75
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
LPE-learner's permit:				
Original	8.00	.25	5.00	2.75
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
School permit:				
Original	8.00	.25	5.00	2.75
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Farm permit:				
Original or renewal	5.00	.25	0	4.75
Duplicate or replacement	5.00	.25	0	4.75
Temporary	5.00	.25	0	4.75
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Driving permits:				
Employment	45.00	0	5.00	40.00
Medical hardship	45.00	0	5.00	40.00
Duplicate or replacement	10.00	.25	5.00	4.75
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Commercial driver's license:				
Valid for 1 year or less	11.00	1.75	5.00	4.25
Valid for more than 1 year but not more than 2 years	22.00	1.75	5.00	15.25
Valid for more than 2 years but not more than 3 years	33.00	1.75	5.00	26.25
Valid for more than 3 years but not more than 4 years	44.00	1.75	5.00	37.25
Valid for 5 years	55.00	1.75	5.00	48.25
Bioptic or telescopic lens restriction:				
Valid for one year or less	11.00	1.75	5.00	4.25
Valid for more than 1 year but not more than 2 years	22.00	1.75	5.00	15.25
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	10.00	1.75	5.00	3.25
LPC-learner's permit:				
Original or renewal	10.00	.25	5.00	4.75
Duplicate or replacement	10.00	.25	5.00	4.75
Add, change, or remove class, endorsement, or restriction	10.00	.25	5.00	4.75
Seasonal permit:				
Original or renewal	10.00	.25	5.00	4.75
Duplicate or replacement	10.00	.25	5.00	4.75
Add, change, or remove class, endorsement, or restriction	10.00	.25	5.00	4.75
School bus permit:				
Original or renewal	5.00	0	5.00	0
Duplicate or replacement	5.00	0	5.00	0
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0

(3) If the department issues an operator's license or a state identification card, the department shall remit the county portion of the fees to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(4)(a) The fee for an ignition interlock permit shall be forty-five dollars. Five dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Forty dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Ignition Interlock Fund.

(b) The fee for a duplicate or replacement ignition interlock permit shall be eleven dollars. Two dollars and seventy-five cents of the fee shall be remitted to the county treasurer for credit to the county general fund. Six dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Two dollars and twenty-five cents of the fee shall be remitted to the State Treasurer for credit to the General Fund.

(c) The fee for adding, changing, or removing a class, endorsement, or restriction on an ignition interlock permit shall be five dollars. The fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(5) The department and its agents may collect an identity security surcharge to cover the cost of security and technology practices used to protect the identity of applicants for and holders of operators' licenses and state identification cards and to reduce identity theft, fraud, and forgery and counterfeiting of such licenses and cards to the maximum extent possible. The surcharge shall be in addition to all other required fees for operators' licenses and state identification cards. The amount of the surcharge shall be determined by the department. The surcharge shall not exceed eight dollars. The surcharge shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 1929, c. 148, § 7, p. 515; C.S.1929, § 60-407; Laws 1931, c. 101, § 2, p. 272; Laws 1937, c. 148, § 17, p. 515; Laws 1941, c. 128, § 1, p. 483; Laws 1941, c. 176, § 1, p. 687; C.S.Supp.,1941, § 60-407; R.S.1943, § 60-409; Laws 1945, c. 141, § 6, p. 452; Laws 1947, c. 207, § 3, p. 677; Laws 1949, c. 181, § 3, p. 525; Laws 1951, c. 195, § 12, p. 742; Laws 1955, c. 242, § 1, p. 757; Laws 1957, c. 366, § 39, p. 1273; Laws 1961, c. 315, § 7, p. 1004; Laws 1961, c. 316, § 7, p. 1014; Laws 1963, c. 359, § 2, p. 1151; Laws 1967, c. 234, § 3, p. 624; Laws 1976, LB 329, § 2; Laws 1977, LB 90, § 5; Laws 1981, LB 207, § 1; Laws 1985, Second Spec. Sess., LB 5, § 1; R.S.1943, (1988), § 60-409; Laws 1989, LB 285, § 65; Laws 1992, LB 319, § 4; Laws 1993, LB 491, § 12; Laws 1995, LB 467, § 11; Laws 1998, LB 309, § 5; Laws 1998, LB 320, § 5; Laws 1999, LB 704, § 17; Laws 2001, LB 574, § 11; Laws 2005, LB 1, § 5; Laws 2006, LB 1008, § 2; Laws 2008, LB736, § 4; Laws 2008, LB911, § 12; Laws 2009, LB497, § 3; Laws 2011, LB170, § 2; Laws 2011, LB215, § 13; Laws 2011, LB667, § 28.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB170, section 2, with LB215, section 13, and LB667, section 28, to reflect all amendments.

Note: Changes made by LB215 became effective March 11, 2011. Changes made by LB170 became operative January 1, 2012. Changes made by LB667 became operative January 1, 2012.

60-4,116 Applicant; department; duties.

Prior to the issuance of any original or renewal operator's license or the reissuance of any such license with a change of any classification, endorsement, or restriction, the department shall:

(1) Check the driving record of the applicant as maintained by the department or by any other state which has issued an operator's license to the applicant;

(2) Contact the Commercial Driver License Information System to determine whether the applicant possesses any valid commercial driver's license issued by any other state, whether such license or the applicant's privilege to operate a commercial motor vehicle has been suspended, revoked, or canceled, or whether the applicant has been disqualified from operating a commercial motor vehicle; and

(3) Contact the National Driver Register to determine if the applicant (a) has been disqualified from operating any motor vehicle, (b) has had an operator's license suspended, revoked, or canceled, (c) is not eligible, or (d) is deceased.

Source: Laws 2003, LB 562, § 6; Laws 2011, LB178, § 4.
Effective date August 27, 2011.

60-4,117 Operator's license or state identification card; form; county treasurer; duties.

(1) Upon presentation of an issuance certificate for an operator's license or state identification card issued by department personnel to the applicant, the county treasurer shall collect the applicable fee and surcharge as prescribed in section 60-4,115 and issue a receipt which is valid for up to thirty days. If there is cause for an operator's license to be issued, the receipt shall also authorize driving privileges for such thirty-day period. The license or card shall be delivered as provided in section 60-4,113.

(2) The operator's license and state identification card shall be in a form prescribed by the department. The license and card may include security features prescribed by the department. The license and card shall be conspicuously marked Nebraska Operator's License or Nebraska Identification Card, shall be, to the maximum extent practicable, tamper and forgery proof, and shall include the following information:

- (a) The full legal name and principal residence address of the holder;
- (b) The holder's full facial digital image;
- (c) A physical description of the holder, including gender, height, weight, and eye and hair colors;
- (d) The holder's date of birth;
- (e) The holder's signature;
- (f) The class of motor vehicle which the holder is authorized to operate and any applicable endorsements or restrictions;
- (g) The issuance and expiration date of the license or card;
- (h) The organ and tissue donation information specified in section 60-494; and
- (i) Such other marks and information as the director may determine.

(3) Each operator's license and state identification card shall contain the following encoded, machine-readable information: The holder's full legal name; date of birth; gender; race or ethnicity; document issue date; document expiration date; principal residence address; unique identification number; revision date; inventory control number; and state of issuance.

Source: Laws 1929, c. 148, § 4, p. 513; C.S.1929, § 60-404; Laws 1937, c. 141, § 14, p. 512; C.S.Supp.,1941, § 60-404; R.S.1943, § 60-406; Laws 1959, c. 286, § 2, p. 1082; Laws 1961, c. 315, § 4, p. 1000; Laws 1961, c. 316, § 4, p. 1008; Laws 1977, LB 90, § 4; R.S. 1943, (1988), § 60-406; Laws 1989, LB 285, § 67; Laws 2001, LB 34, § 4; Laws 2001, LB 38, § 29; Laws 2001, LB 574, § 12; Laws 2008, LB911, § 13; Laws 2011, LB215, § 14.
Effective date March 11, 2011.

60-4,118.06 Ignition interlock permit; issued; when; operation restrictions; revocation of permit by director; when.

(1) Upon receipt by the director of (a) a certified copy of a court order issued pursuant to section 60-6,211.05, a certified copy of an order for installation of an ignition interlock device and issuance of an ignition interlock permit pursuant to section 60-6,197.03, or a copy of an order from the Board of Pardons pursuant to section 83-1,127.02, (b) sufficient evidence that the person has surrendered his or her operator's license to the department and installed an approved ignition interlock device in accordance with such order, and (c) payment of the fee provided in section 60-4,115, such person may apply for an ignition interlock permit. A person subject to administrative license revocation under sections 60-498.01 to 60-498.04 shall be eligible for an ignition interlock permit as provided in such sections. The director shall issue an ignition interlock permit for the operation of a motor vehicle equipped with an ignition interlock device. Any person issued an ignition interlock permit pursuant to a court order who has no previous convictions under section 60-6,196, 60-6,197, or 60-6,197.06 and no previous administrative license revocation shall only operate the motor vehicle equipped with an ignition interlock device to and from his or her residence for purposes of his or her employment, his or her school, a substance abuse treatment program, his or her parole or probation officer, his or her continuing health care or the continuing health care of another person who is dependent upon the person, his or her court-ordered community service responsibilities, or an ignition interlock service facility. Any person issued an ignition interlock permit pursuant to a court order who has a previous conviction under section 60-6,196, 60-6,197, or 60-6,197.06 and no previous administrative license revocation shall only operate the motor vehicle to and from his or her residence for purposes of his or her employment, his or her school, or a substance abuse treatment program. The permit shall indicate for which purposes the permit may be used. All permits issued pursuant to this subsection shall indicate that the permit is not valid for the operation of any commercial motor vehicle.

(2) Upon expiration of the revocation period or upon expiration of an order issued by the Board of Pardons pursuant to section 83-1,127.02, a person may apply to the department in writing for issuance of an operator's license. Regardless of whether the license surrendered by such person under subsection (1) of this section has expired, the person shall apply for a new operator's license pursuant to the Motor Vehicle Operator's License Act.

(3)(a) An ignition interlock permit shall not be issued under this section or sections 60-498.01 to 60-498.04 to any person except in cases of a violation of subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,197.06.

(b) An ignition interlock permit shall only be available to a holder of a Class M or O operator's license.

(4) The director shall revoke a person's ignition interlock permit issued under this section or sections 60-498.01 to 60-498.04 upon receipt of an (a) abstract of conviction indicating that the person had his or her operating privileges revoked or canceled or (b) administrative order revoking or canceling the person's operating privileges, if such conviction or order resulted from an incident other than the incident which resulted in the application for the ignition interlock permit.

Source: Laws 2001, LB 38, § 32; Laws 2003, LB 209, § 9; Laws 2008, LB736, § 5; Laws 2009, LB497, § 4; Laws 2010, LB924, § 2; Laws 2011, LB667, § 29.

Operative date January 1, 2012.

60-4,120 Operator's license; state identification card; duplicate or replacement.

(1) Except as provided in subsection (4) of this section for persons temporarily out of the state, any person duly licensed or holding a valid state identification card issued under the Motor Vehicle Operator's License Act who loses his or her operator's license or card may obtain a duplicate upon filing with the county treasurer or the department an application showing such loss and furnishing proof of identification in accordance with section 60-484. If satisfied that the loss is genuine, the issuer shall cause to be issued, upon the payment of the fee prescribed in section 60-4,115, a duplicate license or card. Upon the issuance of any duplicate or replacement license or card, the license or card from which the duplicate or replacement is issued shall be void.

(2) If any person changes his or her name because of marriage or divorce or by court order or a common-law name change, he or she shall apply to the county treasurer for a replacement operator's license or state identification card and furnish proof of identification in accordance with section 60-484. If any person changes his or her address, the person shall apply to the county treasurer for a replacement operator's license or state identification card and furnish satisfactory evidence of such change. The application shall be made within sixty days after the change of name or address. The license or card shall be issued upon payment of the fee prescribed in section 60-4,115.

(3) In the event a mutilated and unreadable operator's license is held by any person duly licensed under the act or a mutilated and unreadable state identification card which was issued under the act is held by a person, such person may obtain a replacement license or card upon showing the original mutilated or unreadable license or card to the county treasurer. A replacement license or card may be issued, without a photograph, to any person who is out of the state at the time of application for the replacement license or card. Such license or card shall state on its face that it shall become invalid thirty days after such person resumes residence in the state. If the county treasurer is satisfied that the license or card is mutilated or unreadable, the county

treasurer shall cause to be issued, upon the payment of the fee prescribed in section 60-4,115, a replacement license or card.

(4) If any person duly licensed under the act loses his or her operator's license or if any holder of a state identification card loses his or her card while temporarily out of the state, he or she may apply for a duplicate operator's license or card without a photograph by filing with the county treasurer an application and affidavit showing such loss. Upon the officer being satisfied that the loss is genuine, the officer shall cause to be issued, upon the payment of the fee prescribed in section 60-4,115, a duplicate operator's license or card without a photograph. Upon the issuance of the duplicate, the original license or card shall be void.

(5) Any person holding a valid operator's license or state identification card without a photograph shall surrender such license or card to the treasurer of his or her county of residence within thirty days after resuming residency in this state. After the thirty-day period, such license or card shall be considered invalid. Upon the timely surrender of the license or card and payment of the fee prescribed in section 60-4,115, such person shall be issued an operator's license or card with a color photograph or digital image of the licensee included.

(6) An application form for a replacement or duplicate operator's license or state identification card shall include a voter registration portion pursuant to section 32-308 and the following specific question: Do you wish to register to vote as part of this application process?

(7) An applicant may obtain a replacement or duplicate operator's license or state identification card pursuant to subsection (1), (3), or (4) of this section by electronic means in a manner prescribed by the department. If the applicant has a digital image and digital signature preserved in the digital system, the replacement or duplicate shall be issued with the preserved digital image and digital signature.

Source: Laws 1929, c. 148, § 9, p. 517; C.S.1929, § 60-409; Laws 1937, c. 141, § 19, p. 517; Laws 1941, c. 176, § 2, p. 689; C.S.Supp.,1941, § 60-409; R.S.1943, § 60-415; Laws 1945, c. 141, § 8, p. 453; Laws 1947, c. 207, § 4, p. 678; Laws 1961, c. 315, § 10, p. 1005; Laws 1961, c. 316, § 10, p. 1015; Laws 1967, c. 234, § 7, p. 626; Laws 1969, c. 506, § 2, p. 2083; Laws 1971, LB 134, § 1; Laws 1971, LB 371, § 1; Laws 1972, LB 1296, § 2; Laws 1977, LB 90, § 6; Laws 1978, LB 606, § 1; Laws 1981, LB 46, § 3; Laws 1984, LB 811, § 6; Laws 1986, LB 575, § 2; Laws 1989, LB 284, § 9; R.S.1943, (1988), § 60-415; Laws 1989, LB 285, § 70; Laws 1993, LB 126, § 1; Laws 1993, LB 201, § 2; Laws 1994, LB 76, § 572; Laws 1998, LB 309, § 7; Laws 2001, LB 574, § 14; Laws 2005, LB 1, § 7; Laws 2011, LB215, § 15.
Effective date March 11, 2011.

60-4,121 Military service; renewal of operator's license; period valid.

(1) The operator's license of any person serving on active duty, other than members of the National Guard or reserves activated for training purposes only, outside the State of Nebraska as a member of the United States Armed Forces, or the spouse of any such person or a dependent of such member of the armed forces, shall be valid during such person's period of active duty and for

not more than sixty days immediately following such person's date of separation from service.

(2) Each individual who is applying for renewal of his or her operator's license shall submit his or her previous license to the department personnel or, when the previous license is unavailable, furnish proof of identification in accordance with section 60-484.

Source: Laws 1929, c. 148, § 8, p. 516; C.S.1929, § 60-408; Laws 1937, c. 141, § 18, p. 515; C.S.Supp.,1941, § 60-408; R.S.1943, § 60-411; Laws 1945, c. 141, § 7, p. 453; Laws 1947, c. 207, § 4, p. 678; Laws 1961, c. 315, § 8, p. 1004; Laws 1961, c. 316, § 8, p. 1014; Laws 1967, c. 389, § 2, p. 1213; Laws 1967, c. 234, § 5, p. 625; Laws 1971, LB 244, § 1; Laws 1982, LB 877, § 2; Laws 1984, LB 811, § 5; Laws 1985, LB 240, § 1; Laws 1989, LB 284, § 7; R.S.1943, (1988), § 60-411; Laws 1989, LB 285, § 71; Laws 1996, LB 974, § 2; Laws 1997, LB 22, § 1; Laws 1999, LB 704, § 22; Laws 2011, LB215, § 16.

Effective date March 11, 2011.

60-4,122 Operator's license; state identification card; renewal procedure; law examination; exceptions; department; powers.

(1) Except as otherwise provided in subsections (2), (3), and (8) of this section, no original or renewal operator's license shall be issued to any person until such person has demonstrated his or her ability to operate a motor vehicle safely as provided in section 60-4,114.

(2) Except as otherwise provided in this section and section 60-4,127, any person who renews his or her Class O or Class M license shall demonstrate his or her ability to drive and maneuver a motor vehicle safely as provided in subdivision (3)(b) of section 60-4,114 only at the discretion of department personnel, except that a person required to use bioptic or telescopic lenses shall be required to demonstrate his or her ability to drive and maneuver a motor vehicle safely each time he or she renews his or her license.

(3) Any person who renews his or her Class O or Class M license prior to or within one year after its expiration may not be required to demonstrate his or her knowledge of the motor vehicle laws of this state as provided in subdivision (3)(c) of section 60-4,114 if his or her driving record abstract maintained in the computerized records of the department shows that such person's license is not impounded, suspended, revoked, or canceled.

(4) Except for operators' licenses issued to persons required to use bioptic or telescopic lenses, any person who renews his or her operator's license which has been valid for fifteen months or less shall not be required to take any examination required under section 60-4,114.

(5) Any person who renews a state identification card shall appear before department personnel and present his or her current state identification card or shall follow the procedure for electronic renewal in subsection (9) of this section. Proof of identification shall be required as prescribed in sections 60-484 and 60-4,181 and also, beginning on an implementation date designated by the director on or before January 1, 2014, the information and documentation required by section 60-484.04.

(6) A nonresident who applies for an initial operator's license in this state and who holds a valid operator's license from another state which is his or her state of residence may not be required to demonstrate his or her knowledge of the motor vehicle laws of this state if he or she surrenders to the department his or her valid out-of-state operator's license.

(7) An applicant for an original operator's license may not be required to demonstrate his or her knowledge of the motor vehicle laws of this state if he or she has been issued a Nebraska LPD-learner's permit that is valid or has been expired for no more than one year. The written examination shall not be waived if the original operator's license being applied for contains a class or endorsement which is different from the class or endorsement of the Nebraska LPD-learner's permit.

(8)(a) A qualified licensee as determined by the department who is twenty-one years of age or older, whose license expires prior to his or her seventy-second birthday, and who has a digital image and digital signature preserved in the digital system may renew his or her Class O or Class M license once by electronic means in a manner prescribed by the department using the preserved digital image and digital signature without taking any examination required under section 60-4,114 if such renewal is prior to or within one year after the expiration of the license, if his or her driving record abstract maintained in the records of the department shows that such person's license is not impounded, suspended, revoked, or canceled, and if his or her driving record indicates that he or she is otherwise eligible. Every licensee must apply for renewal in person at least once every ten years and have a new digital image and digital signature taken.

(b) In order to allow for an orderly progression through the various types of operators' licenses issued to persons under twenty-one years of age, a qualified holder of an operator's license who is under twenty-one years of age and who has a digital image and digital signature preserved in the digital system may apply for an operator's license by electronic means in a manner prescribed by the department using the preserved digital image and digital signature if the applicant has passed any required examinations prior to application, if his or her driving record abstract maintained in the records of the department shows that such person's operator's license is not impounded, suspended, revoked, or canceled, and if his or her driving record indicates that he or she is otherwise eligible.

(9) Any person who is twenty-one years of age or older and who has been issued a state identification card with a digital image and digital signature may electronically renew his or her state identification card once by electronic means in a manner prescribed by the department using the preserved digital image and digital signature. Every holder of a state identification card shall apply for renewal in person at least once every ten years and have a new digital image and digital signature taken.

(10) In addition to services available at driver license offices, the department may develop requirements for using electronic means for online issuance of operators' licenses and state identification cards to qualified holders as determined by the department.

Source: Laws 1967, c. 234, § 6, p. 625; Laws 1984, LB 694, § 1; Laws 1989, LB 284, § 8; R.S.1943, (1988), § 60-411.01; Laws 1989, LB 285, § 72; Laws 1990, LB 369, § 16; Laws 1990, LB 742, § 4;

Laws 1990, LB 980, § 10; Laws 1993, LB 370, § 87; Laws 1998, LB 320, § 9; Laws 1999, LB 704, § 23; Laws 2001, LB 387, § 7; Laws 2001, LB 574, § 16; Laws 2008, LB911, § 16; Laws 2011, LB158, § 4; Laws 2011, LB215, § 17.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB158, section 4, with LB215, section 17, to reflect all amendments.

Note: Changes made by LB215 became effective March 11, 2011. Changes made by LB158 became effective August 27, 2011.

60-4,127 Motorcycle operation; Class M license required; issuance; examination.

(1) No person shall operate a motorcycle on the alleys or highways of the State of Nebraska until such person has obtained a Class M license. No such license shall be issued until the applicant has (a) met the vision and physical requirements established under section 60-4,118 for operation of a motor vehicle and (b) successfully completed an examination, including the actual operation of a motorcycle, prescribed by the director, except that the required examination may be waived, including the actual operation of a motorcycle, if the applicant presents proof of successful completion of a motorcycle safety course under the Motorcycle Safety Education Act within the immediately preceding twenty-four months.

(2) Upon presentation of an issuance certificate, the county treasurer shall collect the fee and surcharge for a Class M license as prescribed by section 60-4,115 and issue a receipt with driving privileges which is valid for up to thirty days. The license shall be delivered as provided in section 60-4,113. If the applicant is the holder of an operator's license, the county treasurer shall, upon receipt of the issuance certificate, have endorsed on the license the authorization to operate a motorcycle. Fees for Class M licenses shall be as provided by section 60-4,115.

Source: Laws 1967, c. 234, § 8, p. 626; Laws 1971, LB 962, § 1; Laws 1974, LB 328, § 2; Laws 1974, LB 821, § 13; Laws 1977, LB 90, § 2; Laws 1981, LB 22, § 15; Laws 1986, LB 1004, § 1; R.S. 1943, (1988), § 60-403.01; Laws 1989, LB 285, § 77; Laws 1990, LB 369, § 17; Laws 1993, LB 201, § 3; Laws 1993, LB 370, § 88; Laws 1999, LB 704, § 25; Laws 2001, LB 574, § 20; Laws 2008, LB911, § 20; Laws 2011, LB170, § 3; Laws 2011, LB215, § 18.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB170, section 3, with LB215, section 18, to reflect all amendments.

Note: Changes made by LB215 became effective March 11, 2011. Changes made by LB170 became operative January 1, 2012.

Cross References

Motorcycle Safety Education Act, see section 60-2120.

60-4,129 Employment driving permit; issuance; conditions; violations; penalty; revocation.

(1) Any person whose operator's license is revoked under section 60-4,183 or 60-4,186 or suspended under section 43-3318 shall be eligible to operate any motor vehicle, except a commercial motor vehicle, in this state under an employment driving permit. An employment driving permit issued due to a revocation under section 60-4,183 or 60-4,186 is valid for the period of revocation. An employment driving permit issued due to a suspension of an operator's license under section 43-3318 is valid for no more than three months and cannot be renewed.

(2) Any person whose operator's license has been suspended or revoked pursuant to any law of this state, except section 43-3318, 60-4,183, or 60-4,186, shall not be eligible to receive an employment driving permit during the period of such suspension or revocation.

(3) A person who is issued an employment driving permit may operate any motor vehicle, except a commercial motor vehicle, (a) from his or her residence to his or her place of employment and return and (b) during the normal course of employment if the use of a motor vehicle is necessary in the course of such employment. Such permit shall indicate for which purposes the permit may be used. All permits issued pursuant to this section shall indicate that the permit is not valid for the operation of any commercial motor vehicle.

(4) The operation of a motor vehicle by the holder of an employment driving permit, except as provided in this section, shall be unlawful. Any person who violates this section shall be guilty of a Class IV misdemeanor.

(5) The director shall revoke a person's employment driving permit upon receipt of an abstract of conviction, other than a conviction which is based upon actions which resulted in the application for such employment driving permit, indicating that the person committed an offense for which points are assessed pursuant to section 60-4,182. If the permit is revoked in this manner, the person shall not be eligible to receive an employment driving permit for the remainder of the period of suspension or revocation of his or her operator's license.

Source: Laws 1975, LB 259, § 5; Laws 1977, LB 41, § 15; Laws 1982, LB 568, § 8; Laws 1986, LB 779, § 1; R.S.1943, (1988), § 39-669.34; Laws 1989, LB 285, § 79; Laws 1992, LB 291, § 16; Laws 1993, LB 370, § 89; Laws 1997, LB 752, § 140; Laws 2003, LB 209, § 10; Laws 2010, LB805, § 6; Laws 2011, LB667, § 30; Laws 2011, LB675, § 3.

Operative date January 1, 2012.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB667, section 30, with LB675, section 3, to reflect all amendments.

(h) PROVISIONS APPLICABLE TO OPERATION OF COMMERCIAL MOTOR VEHICLES

60-4,131 Sections; applicability; terms, defined.

(1) Sections 60-462.01 and 60-4,132 to 60-4,172 shall apply to the operation of any commercial motor vehicle.

(2) For purposes of such sections:

(a) Disqualification means:

(i) The suspension, revocation, cancellation, or any other withdrawal by a state of a person's privilege to drive a commercial motor vehicle;

(ii) A determination by the Federal Motor Carrier Safety Administration, under the rules of practice for motor carrier safety contained in 49 C.F.R. part 386, that a person is no longer qualified to operate a commercial motor vehicle under 49 C.F.R. part 391; or

(iii) The loss of qualification which automatically follows conviction of an offense listed in 49 C.F.R. 383.51;

(b) Downgrade means the state:

(i) Allows the driver of a commercial motor vehicle to change his or her self-certification to interstate, but operating exclusively in transportation or operation excepted from 49 C.F.R. part 391, as provided in 49 C.F.R. 390.3(f), 391.2, 391.68, or 398.3;

(ii) Allows the driver of a commercial motor vehicle to change his or her self-certification to intrastate only, if the driver qualifies under a state's physical qualification requirements for intrastate only;

(iii) Allows the driver of a commercial motor vehicle to change his or her certification to intrastate, but operating exclusively in transportation or operations excepted from all or part of a state driver qualification requirement; or

(iv) Removes the commercial driver's license privilege from the operator's license;

(c) Employee means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent, or occasional drivers; and leased drivers and independent, owner-operator contractors, while in the course of operating a commercial motor vehicle, who are either directly employed by or under lease to an employer;

(d) Employer means any person, including the United States, a state, the District of Columbia, or a political subdivision of a state, that owns or leases a commercial motor vehicle or assigns employees to operate a commercial motor vehicle;

(e) Endorsement means an authorization to an individual's commercial driver's license required to permit the individual to operate certain types of commercial motor vehicles;

(f) Medical examiner's certificate means a form meeting the requirements of 49 C.F.R. 391.43 issued by a medical examiner in compliance with such regulation;

(g) Medical variance means the Federal Motor Carrier Safety Administration has provided a driver with either an exemption letter permitting operation of a commercial motor vehicle pursuant to 49 C.F.R. 381, subpart C, or 49 C.F.R. 391.64 or a Skill Performance Evaluation Certificate permitting operation of a commercial motor vehicle pursuant to 49 C.F.R. 391.49;

(h) Representative vehicle means a motor vehicle which represents the type of motor vehicle that a driver applicant operates or expects to operate;

(i) State means a state of the United States and the District of Columbia;

(j) State of domicile means that state where a person has his or her true, fixed, and permanent home and principal residence and to which he or she has the intention of returning whenever he or she is absent;

(k) Tank vehicle means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicle includes, but is not limited to, a cargo tank and a portable tank, as defined in 49 C.F.R. part 171. However, this definition does not include a portable tank that has a rated capacity under one thousand gallons;

(l) United States means the fifty states and the District of Columbia; and

(m) Vehicle group means a class or type of vehicle with certain operating characteristics.

Source: Laws 1989, LB 285, § 81; Laws 1990, LB 980, § 11; Laws 1993, LB 420, § 5; Laws 1996, LB 323, § 2; Laws 2003, LB 562, § 7; Laws 2005, LB 76, § 7; Laws 2011, LB178, § 5.
Effective date August 27, 2011.

60-4,131.01 Individuals operating commercial motor vehicles for military purposes; applicability of sections.

Sections 60-462.01 and 60-4,132 to 60-4,172 shall not apply to individuals who operate commercial motor vehicles for military purposes, including and limited to:

- (1) Active duty military personnel;
- (2) Members of the military reserves, other than military technicians;
- (3) Active duty United States Coast Guard personnel; and
- (4) Members of the National Guard on active duty, including:
 - (a) Personnel on full-time National Guard duty;
 - (b) Personnel on part-time National Guard training; and
 - (c) National Guard military technicians required to wear military uniforms.

Such individuals must have a valid military driver's license unless such individual is operating the vehicle under written orders from a commanding officer in an emergency declared by the federal government or by the State of Nebraska.

Source: Laws 2006, LB 853, § 13; Laws 2011, LB178, § 6.
Effective date August 27, 2011.

60-4,132 Purposes of sections.

The purposes of sections 60-462.01 and 60-4,137 to 60-4,172 are to implement the requirements mandated by the federal Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31100 et seq., the federal Motor Carrier Safety Improvement Act of 1999, Public Law 106-159, section 1012 of the federal Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, USA PATRIOT Act, 49 U.S.C. 5103a, and federal regulations and to reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by: (1) Permitting drivers to hold only one operator's license; (2) disqualifying drivers for specified offenses and serious traffic violations; and (3) strengthening licensing and testing standards.

Source: Laws 1989, LB 285, § 82; Laws 1993, LB 7, § 2; Laws 1993, LB 420, § 6; Laws 2002, LB 499, § 1; Laws 2003, LB 562, § 8; Laws 2005, LB 76, § 8; Laws 2011, LB178, § 7.
Effective date August 27, 2011.

60-4,137 Operation of commercial motor vehicle; commercial driver's license or LPC-learner's permit required.

Any resident of this state operating a commercial motor vehicle on the highways of this state shall possess a commercial driver's license or LPC-

learner's permit issued pursuant to sections 60-462.01 and 60-4,138 to 60-4,172.

Source: Laws 1989, LB 285, § 87; Laws 1993, LB 7, § 3; Laws 1993, LB 420, § 7; Laws 2001, LB 108, § 1; Laws 2003, LB 562, § 9; Laws 2005, LB 76, § 9; Laws 2011, LB178, § 8.
Effective date August 27, 2011.

60-4,138 Commercial drivers' licenses and restricted commercial drivers' licenses; classification.

(1) Commercial drivers' licenses and restricted commercial drivers' licenses shall be issued by the department in compliance with 49 C.F.R. parts 383 and 391, shall be classified as provided in subsection (2) of this section, and shall bear such endorsements and restrictions as are provided in subsections (3) and (4) of this section.

(2) Commercial motor vehicle classifications for purposes of commercial drivers' licenses shall be as follows:

(a) Class A Combination Vehicle — Any combination of motor vehicles and towed vehicles with a gross vehicle weight rating of more than twenty-six thousand pounds if the gross vehicle weight rating of the vehicles being towed are in excess of ten thousand pounds;

(b) Class B Heavy Straight Vehicle — Any single commercial motor vehicle with a gross vehicle weight rating of twenty-six thousand one pounds or more or any such commercial motor vehicle towing a vehicle with a gross vehicle weight rating not exceeding ten thousand pounds; and

(c) Class C Small Vehicle — Any single commercial motor vehicle with a gross vehicle weight rating of less than twenty-six thousand one pounds or any such commercial motor vehicle towing a vehicle with a gross vehicle weight rating not exceeding ten thousand pounds comprising:

(i) Motor vehicles designed to transport sixteen or more passengers, including the driver; and

(ii) Motor vehicles used in the transportation of hazardous materials and required to be placarded pursuant to section 75-364.

(3) The endorsements to a commercial driver's license shall be as follows:

(a) T — Double/triple trailers;

(b) P — Passenger;

(c) N — Tank vehicle;

(d) H — Hazardous materials;

(e) X — Combination tank vehicle and hazardous materials; and

(f) S — School bus.

(4) The restrictions to a commercial driver's license shall be as follows:

(a) I — Operation of a commercial motor vehicle only in intrastate commerce due to an exemption from 49 C.F.R. part 391 pursuant to subsection (4) of section 75-363;

(b) K — Operation of a commercial motor vehicle only in intrastate commerce;

(c) L — Operation of only a commercial motor vehicle which is not equipped with air brakes;

- (d) M — Operation of a commercial motor vehicle which is not a Class A bus;
- (e) N — Operation of a commercial motor vehicle which is not a Class A or Class B bus;
- (f) O — Operation of a commercial motor vehicle which is not a tractor-trailer combination; and
- (g) V — Operation of a commercial motor vehicle for drivers with medical variance documentation. The documentation shall be required to be carried on the driver's person while operating a commercial motor vehicle.

Source: Laws 1989, LB 285, § 88; Laws 1990, LB 980, § 14; Laws 1993, LB 420, § 8; Laws 1996, LB 938, § 1; Laws 2003, LB 562, § 10; Laws 2006, LB 1007, § 6; Laws 2011, LB178, § 9.
Effective date August 27, 2011.

60-4,139 Commercial motor vehicle; nonresident; operating privilege.

Any nonresident may operate a commercial motor vehicle upon the highways of this state if (1) such nonresident has in his or her immediate possession a valid commercial driver's license or LPC-learner's permit issued by his or her state of residence or by a jurisdiction with standards that are in accord with 49 C.F.R. parts 383 and 391, (2) the license or permit is not suspended, revoked, or canceled, (3) such nonresident is not disqualified from operating a commercial motor vehicle, and (4) the commercial motor vehicle is not operated in violation of any downgrade.

Source: Laws 1989, LB 285, § 89; Laws 2001, LB 108, § 2; Laws 2006, LB 853, § 10; Laws 2011, LB178, § 10.
Effective date August 27, 2011.

60-4,143 Commercial driver's license; LPC-learner's permit; issuance; restriction; surrender of other licenses.

(1) No commercial driver's license or LPC-learner's permit shall, under any circumstances, be issued to any person who has not attained the age of eighteen years.

(2) A commercial driver's license or LPC-learner's permit shall not be issued to any person during the period the person is subject to a disqualification in this or any other state, while the person's operator's license is suspended, revoked, or canceled in this or any other state, or when the Commercial Driver License Information System indicates "not-certified".

(3) The department shall not issue any commercial driver's license to any person unless the person applying for a commercial driver's license first surrenders to the department all operators' licenses issued to such person by this or any other state. Any operator's license issued by another state which is surrendered to the department shall be returned to that state by the director for cancellation.

Source: Laws 1989, LB 285, § 93; Laws 2005, LB 76, § 11; Laws 2011, LB178, § 11.
Effective date August 27, 2011.

60-4,144 Commercial drivers' licenses; applications; contents; application; demonstration of knowledge and skills; information and documentation required.

(1) An applicant for any original or renewal commercial driver's license or an applicant for a change of class of commercial motor vehicle, endorsement, or restriction shall demonstrate his or her knowledge and skills for operating a commercial motor vehicle as prescribed in the Motor Vehicle Operator's License Act. An applicant for a commercial driver's license shall provide the information and documentation required by this section and sections 60-484 and 60-4,144.01 and also, beginning on an implementation date designated by the director on or before January 1, 2014, the information and documentation required by section 60-484.04. Such information and documentation shall include any additional information required by 49 C.F.R. parts 383 and 391 and also include:

(a) Certification that the commercial motor vehicle in which the applicant takes any driving skills examination is representative of the class of commercial motor vehicle that the applicant operates or expects to operate; and

(b) The names of all states where the applicant has been licensed to operate any type of motor vehicle in the ten years prior to the date of application.

(2) Any person applying for any commercial driver's license on or before December 31, 2011, must present the certification required pursuant to section 60-4,145 or 60-4,146.

(3) Any person applying for any commercial driver's license on or after January 1, 2012, must make one of the certifications in section 60-4,144.01 and provide such certification to the department in order to be issued a commercial driver's license.

(4) On or after January 1, 2012, but no later than January 30, 2014, every person who holds any commercial driver's license must provide to the department medical certification as required by section 60-4,144.01. The department may provide notice and prescribe medical certification compliance requirements for all holders of commercial driver's licenses. Holders of commercial driver's licenses who fail to meet the prescribed medical certification compliance requirements may be subject to downgrade.

Source: Laws 1989, LB 285, § 94; Laws 1992, LB 1178, § 4; Laws 1994, LB 76, § 575; Laws 1997, LB 635, § 21; Laws 1999, LB 147, § 3; Laws 1999, LB 704, § 29; Laws 2000, LB 1317, § 8; Laws 2001, LB 34, § 5; Laws 2003, LB 228, § 13; Laws 2003, LB 562, § 14; Laws 2004, LB 208, § 7; Laws 2004, LB 559, § 4; Laws 2005, LB 76, § 12; Laws 2008, LB911, § 21; Laws 2011, LB178, § 12; Laws 2011, LB215, § 19.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB178, section 12, with LB215, section 19, to reflect all amendments.

Note: Changes made by LB215 became effective March 11, 2011. Changes made by LB178 became effective August 27, 2011.

60-4,144.01 Commercial drivers' licenses; certification required; medical examiner's certificate.

(1) A person must certify that he or she operates or expects to operate a commercial motor vehicle in interstate commerce, is both subject to and meets the qualification requirements under 49 C.F.R. part 391, and is required to obtain a medical examiner's certificate by 49 C.F.R. 391.45. Any nonexcepted holder of a commercial driver's license on or after January 1, 2012, who certifies that he or she will operate a commercial motor vehicle in nonexcepted, interstate commerce must maintain a current medical examiner's certificate

and provide a copy of it to the department in order to maintain his or her medical certification status;

(2) A person must certify that he or she operates or expects to operate a commercial motor vehicle in interstate commerce, but engages exclusively in transportation or operations excepted under 49 C.F.R. 390.3(f), 391.2, 391.68, or 398.3 from all or part of the qualification requirements of 49 C.F.R. part 391, and is therefor not required to obtain a medical examiner's certificate by 49 C.F.R. 391.45;

(3) A person must certify that he or she operates a commercial motor vehicle only in intrastate commerce and therefor is subject to state driver qualification requirements as provided in section 75-363; or

(4) A person must certify that he or she operates a commercial motor vehicle in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the state driver qualification requirements.

Source: Laws 2011, LB178, § 13.

Effective date August 27, 2011.

60-4,144.02 Commercial drivers' licenses; medical examiner's certificate; department; duties; failure of driver to comply; department; duties.

(1) Beginning January 1, 2012, for each operator of a commercial motor vehicle required to have a commercial driver's license, the department, in compliance with 49 C.F.R. 383.73, shall:

(a) Post the driver's self-certification of type of driving under 49 C.F.R. 383.71(a)(1)(ii);

(b) Retain the medical examiner's certificate of any driver required to provide documentation of physical qualification for three years beyond the date the certificate was issued; and

(c) Post the information from the medical examiner's certificate within ten calendar days to the Commercial Driver License Information System driver record, including:

(i) The medical examiner's name;

(ii) The medical examiner's telephone number;

(iii) The date of the medical examiner's certificate issuance;

(iv) The medical examiner's license number and the state that issued it;

(v) The medical examiner's National Registry identification number (if the National Registry of Medical Examiners, mandated by 49 U.S.C. 31149(d), requires one);

(vi) The indicator of the medical certification status, either "certified" or "not-certified";

(vii) The expiration date of the medical examiner's certificate;

(viii) The existence of any medical variance on the medical certificate, such as an exemption, Skill Performance Evaluation (SPE) certification, or grandfather provisions;

(ix) Any restrictions, for example, corrective lenses, hearing aid, or required to have possession of an exemption letter or Skill Performance Evaluation certificate while on duty; and

(x) The date the medical examiner's certificate information was posted to the Commercial Driver License Information System driver record.

(2) Beginning January 1, 2012, the department shall, within ten calendar days of the driver's medical certification status expiring or a medical variance expiring or being rescinded, update the medical certification status of that driver as "not-certified".

(3) Beginning January 1, 2012, within ten calendar days of receiving information from the Federal Motor Carrier Safety Administration regarding issuance or renewal of a medical variance for a driver, the department shall update the Commercial Driver License Information System driver record to include the medical variance information provided by the Federal Motor Carrier Safety Administration.

(4)(a) Beginning January 1, 2012, if a driver's medical certification or medical variance expires, or the Federal Motor Carrier Safety Administration notifies the department that a medical variance was removed or rescinded, the department shall:

(i) Notify the commercial driver's license holder of his or her commercial driver's license "not-certified" medical certification status and that the commercial driver's license privilege will be removed from the driver's license unless the driver submits a current medical certificate or medical variance or changes his or her self-certification to driving only in excepted or intrastate commerce, if permitted by the department; and

(ii) Initiate established department procedures for downgrading the license. The commercial driver's license downgrade shall be completed and recorded within sixty days of the driver's medical certification status becoming "not-certified" to operate a commercial motor vehicle.

(b) Beginning January 1, 2012, if a driver fails to provide the department with the certification contained in 49 C.F.R. 383.71(a)(1)(ii), or a current medical examiner's certificate if the driver self-certifies according to 49 C.F.R. 383.71(a)(1)(ii)(A) that he or she is operating in nonexcepted interstate commerce as required by 49 C.F.R. 383.71(h), the department shall mark that Commercial Driver License Information System driver record as "not-certified" and initiate a commercial driver's license downgrade following department procedures in accordance with subdivision (4)(a)(ii) of this section.

Source: Laws 2011, LB178, § 14.

Effective date August 27, 2011.

60-4,145 Application; operation in interstate or foreign commerce; certification required.

This section applies up to and including December 31, 2011. Upon making any application pursuant to section 60-4,144, any applicant who operates or expects to operate a commercial motor vehicle in interstate or foreign commerce and who is subject to 49 C.F.R. part 391 adopted pursuant to section 75-363 shall certify that the applicant meets the qualification requirements of 49 C.F.R. part 391. A commercial driver's license examiner may require any applicant making certification pursuant to this section to demonstrate with or without the aid of corrective devices sufficient powers of eyesight to enable him or her to operate a commercial motor vehicle in conformance with the minimum vision requirements of 49 C.F.R. part 391 adopted pursuant to

section 75-363. If from the examination given it appears that any applicant's powers of eyesight are such that he or she cannot meet the minimum vision requirements, the examiner shall allow the applicant to present an ophthalmologist's or optometrist's certificate to the effect that the applicant has sufficient powers of eyesight for such purpose before issuing a commercial driver's license to the applicant. If the examination given by the commercial driver's license examiner or the ophthalmologist's or optometrist's certificate indicates that the applicant must wear a corrective device to meet the minimum vision requirements established by this section, the applicant shall have the use of the commercial driver's license issued to him or her restricted to wearing a corrective device while operating a motor vehicle. An applicant who has been issued a waiver or exemption by the Federal Motor Carrier Safety Administration from the vision requirements set forth in 49 C.F.R. 391.41(b)(10) may be issued an interstate commercial driver's license without meeting the vision requirements set forth in 49 C.F.R. 391.41(b)(10).

Source: Laws 1989, LB 285, § 95; Laws 1990, LB 980, § 18; Laws 1999, LB 704, § 30; Laws 2006, LB 1007, § 7; Laws 2011, LB178, § 15. Effective date August 27, 2011.

60-4,146 Application; operation in intrastate commerce; certification; restrictions.

(1) Beginning January 1, 2012, in addition to certifying himself or herself under this section, an applicant shall also certify himself or herself under subsections (2) and (4) of section 60-4,144.01.

(2) Upon making application pursuant to section 60-4,144, any applicant who operates or expects to operate a commercial motor vehicle solely in intrastate commerce and who is not subject to 49 C.F.R. part 391 adopted pursuant to section 75-363 shall certify that he or she is not subject to 49 C.F.R. part 391. Any applicant making certification pursuant to this section shall meet the physical and vision requirements established in section 60-4,118 and shall be subject to the provisions of such section relating to the Health Advisory Board.

(3) An applicant who certifies that he or she is exempt from the physical qualifications and examination requirements of 49 C.F.R. part 391 pursuant to subsection (4) of section 75-363 shall meet the physical and vision requirements established in section 60-4,118 and shall be subject to the provisions of such section relating to the Health Advisory Board. A successful applicant shall be issued a commercial driver's license which restricts the holder to operating a commercial motor vehicle solely in intrastate commerce and which also indicates that the holder is exempt from the physical qualifications and examination requirements prescribed by 49 C.F.R. part 391. Two years after the initial issuance of such license and upon renewal, and every two years following renewal, the holder of the commercial driver's license shall present to the department upon request, on a form to be prescribed by the department, a statement from a physician detailing that based upon his or her examination of the applicant the medical or physical condition in existence prior to July 30, 1996, which would otherwise render the individual not qualified under federal standards, has not significantly worsened or that another nonqualifying medical or physical condition has not developed.

(4) An applicant who certifies that he or she is not subject to 49 C.F.R. part 391 under subsection (2) of this section or who certifies that he or she is exempt

from 49 C.F.R. part 391 under subsection (3) of this section shall answer the following questions on the application:

(a) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

- (i) lost voluntary control or consciousness ... yes ... no
- (ii) experienced vertigo or multiple episodes of dizziness or fainting ... yes ... no
- (iii) experienced disorientation ... yes ... no
- (iv) experienced seizures ... yes ... no
- (v) experienced impairment of memory, memory loss ... yes ... no

Please explain:

(b) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of, or impairment of, foot, leg, hand, arm; neurological or neuromuscular disease, etc.) ... yes ... no

Please explain:

(c) Since the issuance of your last driver's license/permit has your health or medical condition changed or worsened? ... yes ... no

Please explain, including how the above affects your ability to drive:

Source: Laws 1989, LB 285, § 96; Laws 1990, LB 980, § 19; Laws 1994, LB 211, § 11; Laws 1996, LB 938, § 2; Laws 1998, LB 320, § 18; Laws 1999, LB 704, § 31; Laws 2006, LB 1007, § 8; Laws 2011, LB178, § 16.
Effective date August 27, 2011.

60-4,147.02 Hazardous materials endorsement; USA PATRIOT Act requirements.

No endorsement authorizing the driver to operate a commercial motor vehicle transporting hazardous materials shall be issued, renewed, or transferred by the Department of Motor Vehicles unless the endorsement is issued, renewed, or transferred in conformance with the requirements of section 1012 of the federal Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, USA PATRIOT Act, 49 U.S.C. 5103a, including all amendments and federal regulations adopted pursuant thereto as of January 1, 2011, for the issuance of licenses to operate commercial motor vehicles transporting hazardous materials.

Source: Laws 2005, LB 76, § 17; Laws 2006, LB 853, § 12; Laws 2007, LB239, § 5; Laws 2008, LB756, § 17; Laws 2009, LB331, § 10; Laws 2010, LB805, § 7; Laws 2011, LB212, § 6.
Effective date February 23, 2011.

60-4,149 Commercial drivers' licenses; examination; issuance; delivery.

(1) The examination for commercial drivers' licenses by the department shall occur in and for each county of the State of Nebraska. Each county shall furnish office space for the administration of the examinations, except that two or more counties may, with the permission of the director, establish a separate facility to jointly conduct the examinations for such licenses.

(2) Except as provided for by section 60-4,157, all commercial driver's license examinations shall be conducted by department personnel designated by the director. Each successful applicant shall be issued a certificate entitling the applicant to secure a commercial driver's license. If department personnel refuse to issue such certificate for cause, he or she shall state such cause in writing and deliver the same to the applicant. Department personnel shall not be required to hold a commercial driver's license to administer a driving skills examination and occupy the seat beside an applicant for a commercial driver's license.

(3) The successful applicant shall, within thirty days, present his or her issuance certificate to the county treasurer who shall collect the fee and surcharge as provided in section 60-4,115 and issue a receipt with driving privileges which is valid for up to thirty days. The commercial driver's license shall be delivered to the applicant as provided in section 60-4,113.

Source: Laws 1989, LB 285, § 99; Laws 1990, LB 980, § 21; Laws 1999, LB 704, § 34; Laws 2008, LB911, § 23; Laws 2011, LB215, § 20. Effective date March 11, 2011.

60-4,150 Commercial drivers' licenses; duplicate and replacement licenses; delivery.

(1) Any person holding a commercial driver's license who loses his or her license, who requires issuance of a replacement license because of a change of name or address, or whose license is mutilated or unreadable may obtain a duplicate or replacement commercial driver's license by filing an application and by furnishing proof of identification in accordance with section 60-484.

(2) The application for a replacement license because of a change of name or address shall be made within sixty days after the change of name or address.

(3) A duplicate or replacement commercial driver's license shall be delivered to the applicant as provided in section 60-4,113 after the county treasurer collects the fee and surcharge prescribed in section 60-4,115 and issues the applicant a receipt with driving privileges which is valid for up to thirty days.

(4) Duplicate and replacement commercial drivers' licenses shall be issued in the manner provided for the issuance of original and renewal commercial drivers' licenses as provided for by section 60-4,149. Upon issuance of any duplicate or replacement commercial driver's license, the commercial driver's license for which the duplicate or replacement license is issued shall be void.

Source: Laws 1989, LB 285, § 100; Laws 1990, LB 980, § 22; Laws 1993, LB 126, § 2; Laws 1998, LB 309, § 10; Laws 2001, LB 574, § 25; Laws 2005, LB 1, § 9; Laws 2008, LB911, § 24; Laws 2010, LB805, § 8; Laws 2011, LB215, § 21. Effective date March 11, 2011.

60-4,151 Commercial driver's license; restricted commercial driver's license; seasonal permit; form.

(1)(a) The commercial driver's license shall be conspicuously marked Nebraska Commercial Driver's License and shall be, to the maximum extent practicable, tamper and forgery proof.

(b) The form of the commercial driver's license shall also comply with section 60-4,117.

(2) The restricted commercial driver's license shall be conspicuously marked Nebraska Restricted Commercial Driver's License and shall be, to the maximum extent practicable, tamper and forgery proof. The restricted commercial driver's license shall contain such additional information as deemed necessary by the director.

(3) The seasonal permit shall contain such information as deemed necessary by the director but shall include the time period during which the commercial motor vehicle operating privilege is effective. The seasonal permit shall be valid only when held in conjunction with a restricted commercial driver's license.

Source: Laws 1989, LB 285, § 101; Laws 1992, LB 1178, § 5; Laws 1993, LB 420, § 11; Laws 2001, LB 34, § 6; Laws 2001, LB 574, § 26; Laws 2008, LB911, § 25; Laws 2011, LB215, § 22.
Effective date March 11, 2011.

60-4,153 Issuance of license; department; duties.

Prior to the issuance of any original or renewal commercial driver's license or the reissuance of any commercial driver's license with a change of any classification, endorsement, or restriction, the department shall, within twenty-four hours prior to issuance if the applicant does not currently possess a valid commercial driver's license issued by this state and within ten days prior to the issuance or reissuance for all other applicants:

(1) Check the driving record of the applicant as maintained by the department or by any other state which has issued an operator's license to the applicant;

(2) Contact the Commercial Driver License Information System to determine whether the applicant possesses any valid commercial driver's license issued by any other state, whether such license or the applicant's privilege to operate a commercial motor vehicle has been suspended, revoked, or canceled, or whether the applicant has been disqualified from operating a commercial motor vehicle; and

(3) Contact the National Driver Register to determine if the applicant (a) has been disqualified from operating any motor vehicle, (b) has had an operator's license suspended, revoked, or canceled for cause in the three-year period ending on the date of application, (c) has been convicted of operation of a motor vehicle while under the influence of or while impaired by alcohol or a controlled substance, a traffic violation arising in connection with a fatal traffic accident, reckless driving, racing on the highways, failure to render aid or provide identification when involved in an accident which resulted in a fatality or personal injury, or perjury or the knowledgeable making of a false affidavit or statement to officials in connection with activities governed by a law, rule, or regulation related to the operation of a motor vehicle, (d) is not eligible, or (e) is deceased.

Source: Laws 1989, LB 285, § 103; Laws 1999, LB 704, § 36; Laws 2011, LB178, § 17.
Effective date August 27, 2011.

60-4,154 Issuance of license; director notify Commercial Driver License Information System; department; post information.

(1) Prior to the issuance of any original or renewal commercial driver's license or the reissuance of any commercial driver's license with a change of any classification, endorsement, or restriction, the director shall notify the Commercial Driver License Information System of the issuance and shall provide the applicant's name, social security number, and any other required information to the operator of the system.

(2) Beginning January 1, 2012, the department shall post information from the medical examiner's certificate to the Commercial Driver License Information System in accordance with section 60-4,144.02 and 49 C.F.R. 383.73.

Source: Laws 1989, LB 285, § 104; Laws 2011, LB178, § 18.

Effective date August 27, 2011.

60-4,164 Alcoholic liquor; implied consent to submit to chemical tests; refusal or failure; penalty; officer; report.

(1) Any person who operates or is in the actual physical control of a commercial motor vehicle upon a highway in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood or breath for the purpose of determining the amount of alcoholic content in his or her blood or breath.

(2) Any law enforcement officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village who, after stopping or detaining the operator of any commercial motor vehicle, has reasonable grounds to believe that the operator was driving or in the actual physical control of a commercial motor vehicle while having any alcoholic liquor in his or her body may require such operator to submit to a chemical test or tests of his or her blood or breath for the purpose of determining the alcoholic content of such blood or breath.

(3) Any law enforcement officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village may require any person who operates or has in his or her actual physical control a commercial motor vehicle upon a highway in this state to submit to a preliminary breath test of his or her breath for alcoholic content if the officer has reasonable grounds to believe that such person has any alcoholic liquor in his or her body, has committed a moving traffic violation, or has been involved in a traffic accident. Any such person who refuses to submit to a preliminary breath test shall be placed under arrest and shall be guilty of a Class V misdemeanor. Any person arrested for refusing to submit to a preliminary breath test or any person who submits to a preliminary breath test the results of which indicate the presence of any alcoholic liquor in such person's body may, upon the direction of a law enforcement officer, be required to submit to a chemical test or tests of his or her blood or breath for a determination of the alcoholic content.

(4) Any person operating or in the actual physical control of a commercial motor vehicle who submits to a chemical test or tests of his or her blood or breath which discloses the presence of any alcoholic liquor in his or her body shall be placed out of service for twenty-four hours by the law enforcement officer.

(5) Any person operating or in the actual physical control of a commercial motor vehicle who refuses to submit to a chemical test or tests of his or her blood or breath or any person operating or in the actual physical control of a

commercial motor vehicle who submits to a chemical test or tests of his or her blood or breath which discloses an alcoholic concentration of: (a) Four-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or (b) four-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath shall be placed out of service for twenty-four hours by the law enforcement officer, and the officer shall forward to the director a sworn report. The director may accept a sworn report submitted electronically. The report shall state that the person was operating or in the actual physical control of a commercial motor vehicle, was requested to submit to the required chemical test or tests, and refused to submit to the required chemical test or tests or submitted to the required chemical test or tests and possessed an alcohol concentration at or in excess of that specified by this subsection.

(6) Any person involved in a commercial motor vehicle accident in this state may be required to submit to a chemical test or tests of his or her blood or breath by any law enforcement officer if the officer has reasonable grounds to believe that such person was driving or was in actual physical control of a commercial motor vehicle on a highway in this state while under the influence of alcoholic liquor at the time of the accident. A person involved in a commercial motor vehicle accident subject to the implied consent law of this state shall not be deemed to have withdrawn consent to submit to a chemical test or tests of his or her blood or breath by reason of leaving this state. If the person refuses a test or tests under this section and leaves the state for any reason following an accident, he or she shall remain subject to this section upon return.

Source: Laws 1989, LB 285, § 114; Laws 1992, LB 872, § 6; Laws 1993, LB 191, § 2; Laws 1996, LB 323, § 6; Laws 2011, LB667, § 31. Operative date January 1, 2012.

60-4,171 Issuance of Class O or M operator's license; reinstatement of commercial driver's license; when.

(1) Following any period of revocation ordered by a court, a resident who has had a commercial driver's license revoked pursuant to section 60-4,169 may apply for a Class O or M operator's license.

(2) Any person who has had his or her commercial driver's license revoked pursuant to section 60-4,169 may, at the end of such revocation period, apply to have his or her eligibility for a commercial driver's license reinstated. The applicant shall (a) apply to the Department of Motor Vehicles and provide his or her social security number, (b) take the commercial driver's license knowledge and driving skills examinations prescribed pursuant to section 60-4,155, (c) up to and including December 31, 2011, comply with section 60-4,145 regarding physical requirements, (d) on or after January 1, 2012, certify pursuant to section 60-4,144.01 and meet the applicable medical requirements for such certification, (e) be subject to a check of his or her driving record, (f) pay the fees specified in section 60-4,115 and a reinstatement fee as provided in section 60-499.01, and (g) surrender any operator's license issued pursuant to subsection (1) of this section.

Source: Laws 1989, LB 285, § 121; Laws 1993, LB 420, § 14; Laws 1993, LB 491, § 14; Laws 1997, LB 752, § 144; Laws 1999, LB 704,

§ 39; Laws 2001, LB 38, § 38; Laws 2001, LB 574, § 27; Laws 2011, LB178, § 19.

Effective date August 27, 2011.

(j) STATE IDENTIFICATION CARDS

60-4,181 State identification cards; issuance; requirements; form; delivery; cancellation.

(1) Each applicant for a state identification card shall provide the information and documentation required by section 60-484 and also, beginning on an implementation date designated by the director on or before January 1, 2014, the information and documentation required by section 60-484.04. The form of the state identification card shall comply with section 60-4,117. Upon presentation of an applicant's issuance certificate, the county treasurer shall collect the fee and surcharge as prescribed in section 60-4,115 and issue a receipt to the applicant which is valid up to thirty days. The state identification card shall be delivered to the applicant as provided in section 60-4,113.

(2) The director may summarily cancel any state identification card, and any judge or magistrate may order a state identification card canceled in a judgment of conviction, if the application or issuance certificate for the card contains any false or fraudulent statements which were deliberately and knowingly made as to any matter material to the issuance of the card or if the application or issuance certificate does not contain required or correct information. Any state identification card so obtained shall be void from the date of issuance. Any judgment of conviction ordering cancellation of a state identification card shall be transmitted to the director who shall cancel the card.

(3) This subsection applies beginning on an implementation date designated by the director on or before January 1, 2014. No person shall be a holder of a state identification card and an operator's license at the same time.

Source: Laws 1989, LB 284, § 6; Laws 1989, LB 285, § 130; Laws 1992, LB 1178, § 6; Laws 1993, LB 491, § 15; Laws 1994, LB 76, § 576; Laws 1995, LB 467, § 14; Laws 1996, LB 1073, § 2; Laws 1997, LB 21, § 1; Laws 1997, LB 635, § 22; Laws 1998, LB 309, § 11; Laws 1999, LB 147, § 4; Laws 1999, LB 704, § 41; Laws 2000, LB 1317, § 9; Laws 2001, LB 34, § 7; Laws 2001, LB 574, § 29; Laws 2003, LB 228, § 14; Laws 2004, LB 559, § 5; Laws 2008, LB911, § 26; Laws 2011, LB215, § 23.

Effective date March 11, 2011.

(k) POINT SYSTEM

60-4,182 Point system; offenses enumerated.

In order to prevent and eliminate successive traffic violations, there is hereby provided a point system dealing with traffic violations as disclosed by the files of the director. The following point system shall be adopted:

(1) Conviction of motor vehicle homicide - 12 points;

(2) Third offense drunken driving in violation of any city or village ordinance or of section 60-6,196, as disclosed by the records of the director, regardless of whether the trial court found the same to be a third offense - 12 points;

(3) Failure to stop and render aid as required under section 60-697 in the event of involvement in a motor vehicle accident resulting in the death or personal injury of another - 6 points;

(4) Failure to stop and report as required under section 60-696 or any city or village ordinance in the event of a motor vehicle accident resulting in property damage - 6 points;

(5) Driving a motor vehicle while under the influence of alcoholic liquor or any drug or when such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or per two hundred ten liters of his or her breath in violation of any city or village ordinance or of section 60-6,196 - 6 points;

(6) Willful reckless driving in violation of any city or village ordinance or of section 60-6,214 or 60-6,217 - 6 points;

(7) Careless driving in violation of any city or village ordinance or of section 60-6,212 - 4 points;

(8) Negligent driving in violation of any city or village ordinance - 3 points;

(9) Reckless driving in violation of any city or village ordinance or of section 60-6,213 - 5 points;

(10) Speeding in violation of any city or village ordinance or any of sections 60-6,185 to 60-6,190 and 60-6,313:

(a) Not more than five miles per hour over the speed limit - 1 point;

(b) More than five miles per hour but not more than ten miles per hour over the speed limit - 2 points;

(c) More than ten miles per hour but not more than thirty-five miles per hour over the speed limit - 3 points, except that one point shall be assessed upon conviction of exceeding by not more than ten miles per hour, two points shall be assessed upon conviction of exceeding by more than ten miles per hour but not more than fifteen miles per hour, and three points shall be assessed upon conviction of exceeding by more than fifteen miles per hour but not more than thirty-five miles per hour the speed limits provided for in subdivision (1)(e), (f), (g), or (h) of section 60-6,186; and

(d) More than thirty-five miles per hour over the speed limit - 4 points;

(11) Failure to yield to a pedestrian not resulting in bodily injury to a pedestrian - 2 points;

(12) Failure to yield to a pedestrian resulting in bodily injury to a pedestrian - 4 points;

(13) Using a handheld wireless communication device in violation of section 60-6,179.01 - 3 points;

(14) Unlawful obstruction or interference of the view of an operator in violation of section 60-6,256 - 1 point; and

(15) All other traffic violations involving the operation of motor vehicles by the operator for which reports to the Department of Motor Vehicles are required under sections 60-497.01 and 60-497.02 - 1 point.

Subdivision (15) of this section does not include violations involving an occupant protection system pursuant to section 60-6,270, parking violations, violations for operating a motor vehicle without a valid operator's license in the operator's possession, muffler violations, overwidth, overheight, or overlength

violations, motorcycle or moped protective helmet violations, or overloading of trucks.

All such points shall be assessed against the driving record of the operator as of the date of the violation for which conviction was had. Points may be reduced by the department under section 60-4,188.

In all cases, the forfeiture of bail not vacated shall be regarded as equivalent to the conviction of the offense with which the operator was charged.

The point system shall not apply to persons convicted of traffic violations committed while operating a bicycle or an electric personal assistive mobility device as defined in section 60-618.02.

Source: Laws 1953, c. 219, § 1, p. 768; Laws 1955, c. 156, § 1, p. 457; Laws 1957, c. 168, § 1, p. 587; Laws 1957, c. 366, § 26, p. 1261; Laws 1959, c. 169, § 2, p. 617; Laws 1959, c. 174, § 1, p. 625; Laws 1961, c. 185, § 3, p. 571; Laws 1967, c. 235, § 2, p. 630; R.R.S.1943, § 39-7,128; Laws 1974, LB 590, § 1; Laws 1974, LB 873, § 4; Laws 1975, LB 328, § 1; Laws 1975, LB 381, § 4; Laws 1976, LB 265, § 1; Laws 1983, LB 204, § 1; Laws 1985, LB 496, § 2; Laws 1987, LB 224, § 3; Laws 1987, LB 430, § 3; Laws 1988, LB 428, § 6; Laws 1992, LB 958, § 2; R.S.Supp.,1992, § 39-669.26; Laws 1993, LB 370, § 80; Laws 1993, LB 575, § 17; Laws 1996, LB 901, § 2; Laws 2001, LB 166, § 3; Laws 2001, LB 773, § 14; Laws 2002, LB 1105, § 446; Laws 2006, LB 925, § 3; Laws 2007, LB35, § 1; Laws 2008, LB621, § 1; Laws 2010, LB945, § 1; Laws 2011, LB500, § 1.
Effective date August 27, 2011.

Cross References

Assessment of points when person is placed on probation, see section 60-497.01.

ARTICLE 5

MOTOR VEHICLE SAFETY RESPONSIBILITY

(a) DEFINITIONS

Section

60-501. Terms, defined.

(d) PROOF OF FINANCIAL RESPONSIBILITY

60-520. Judgments; payments sufficient to satisfy requirements.

60-547. Bond; proof of financial responsibility.

(a) DEFINITIONS

60-501 Terms, defined.

For purposes of the Motor Vehicle Safety Responsibility Act, unless the context otherwise requires:

(1) Department means Department of Motor Vehicles;

(2) Judgment means any judgment which shall have become final by the expiration of the time within which an appeal might have been perfected without being appealed, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, (a) upon a cause of action arising out of the ownership, maintenance, or use of any motor

vehicle for damages, including damages for care and loss of services, because of bodily injury to or death of any person or for damages because of injury to or destruction of property, including the loss of use thereof, or (b) upon a cause of action on an agreement of settlement for such damages;

(3) License means any license issued to any person under the laws of this state pertaining to operation of a motor vehicle within this state;

(4) Low-speed vehicle means a four-wheeled motor vehicle (a) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (b) whose gross vehicle weight rating is less than three thousand pounds, and (c) that complies with 49 C.F.R. part 571, as such part existed on January 1, 2011;

(5) Minitruck means a foreign-manufactured import vehicle or domestic-manufactured vehicle which (a) is powered by an internal combustion engine with a piston or rotor displacement of one thousand cubic centimeters or less, (b) is sixty-seven inches or less in width, (c) has a dry weight of four thousand two hundred pounds or less, (d) travels on four or more tires, (e) has a top speed of approximately fifty-five miles per hour, (f) is equipped with a bed or compartment for hauling, (g) has an enclosed passenger cab, (h) is equipped with headlights, taillights, turnsignals, windshield wipers, a rearview mirror, and an occupant protection system, and (i) has a four-speed, five-speed, or automatic transmission;

(6) Motor vehicle means any self-propelled vehicle which is designed for use upon a highway, including trailers designed for use with such vehicles, mini-trucks, and low-speed vehicles. Motor vehicle does not include (a) mopeds as defined in section 60-637, (b) traction engines, (c) road rollers, (d) farm tractors, (e) tractor cranes, (f) power shovels, (g) well drillers, (h) every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails, (i) electric personal assistive mobility devices as defined in section 60-618.02, and (j) off-road designed vehicles, including, but not limited to, golf carts, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles and utility-type vehicles as defined in section 60-6,355, minibikes as defined in section 60-636, and snowmobiles as defined in section 60-663;

(7) Nonresident means every person who is not a resident of this state;

(8) Nonresident's operating privilege means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by him or her of a motor vehicle or the use of a motor vehicle owned by him or her in this state;

(9) Operator means every person who is in actual physical control of a motor vehicle;

(10) Owner means a person who holds the legal title of a motor vehicle, or in the event (a) a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or (b) a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purposes of the act;

(11) Person means every natural person, firm, partnership, limited liability company, association, or corporation;

(12) Proof of financial responsibility means evidence of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of such proof, arising out of the ownership, maintenance, or use of a motor vehicle, (a) in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, (b) subject to such limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and (c) in the amount of twenty-five thousand dollars because of injury to or destruction of property of others in any one accident;

(13) Registration means registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles;

(14) State means any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada; and

(15) The forfeiture of bail, not vacated, or of collateral deposited to secure an appearance for trial shall be regarded as equivalent to conviction of the offense charged.

Source: Laws 1949, c. 178, § 1, p. 482; Laws 1957, c. 366, § 42, p. 1275; Laws 1959, c. 298, § 1, p. 1107; Laws 1959, c. 299, § 1, p. 1123; Laws 1971, LB 644, § 4; Laws 1972, LB 1196, § 4; Laws 1973, LB 365, § 1; Laws 1979, LB 23, § 14; Laws 1983, LB 253, § 1; Laws 1987, LB 80, § 11; Laws 1993, LB 121, § 385; Laws 1993, LB 370, § 94; Laws 2002, LB 1105, § 447; Laws 2010, LB650, § 32; Laws 2011, LB289, § 26.
Operative date January 1, 2012.

(d) PROOF OF FINANCIAL RESPONSIBILITY

60-520 Judgments; payments sufficient to satisfy requirements.

Judgments in excess of the amounts specified in subdivision (12) of section 60-501 shall, for the purpose of the Motor Vehicle Safety Responsibility Act only, be deemed satisfied when payments in the amounts so specified have been credited thereon. Payments made in settlement of any claims because of bodily injury, death, or property damage arising from a motor vehicle accident shall be credited in reduction of the respective amounts so specified.

Source: Laws 1949, c. 178, § 20, p. 492; Laws 2010, LB650, § 33; Laws 2011, LB289, § 27.
Operative date January 1, 2012.

60-547 Bond; proof of financial responsibility.

Proof of financial responsibility may be evidenced by the bond of a surety company duly authorized to transact business within this state, or a bond with at least two individual sureties who each own real estate within this state, which real estate shall be scheduled in the bond approved by a judge of a court of record. The bond shall be conditioned for the payment of the amounts specified in subdivision (12) of section 60-501. It shall be filed with the department and shall not be cancelable except after ten days' written notice to the department. Such bond shall constitute a lien in favor of the state upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a final judgment against the person who has filed such bond, for

damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a motor vehicle after such bond was filed, upon the filing of notice to that effect by the department in the office of the register of deeds of the county where such real estate shall be located.

Source: Laws 1949, c. 178, § 47, p. 498; Laws 2010, LB650, § 34; Laws 2011, LB289, § 28.

Operative date January 1, 2012.

ARTICLE 6

NEBRASKA RULES OF THE ROAD

(a) GENERAL PROVISIONS

Section

- 60-601. Rules, how cited.
- 60-605. Definitions, where found.
- 60-628.01. Low-speed vehicle, defined.

(d) ACCIDENTS AND ACCIDENT REPORTING

- 60-697. Accident; driver's duty; penalty.
- 60-698. Accident; failure to stop; penalty.

(o) ALCOHOL AND DRUG VIOLATIONS

- 60-6,196.01. Driving under influence of alcoholic liquor or drug; additional penalty.
- 60-6,197. Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; when test administered; refusal; advisement; effect; violation; penalty.
- 60-6,197.02. Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; terms, defined; prior convictions; use; sentencing provisions; when applicable.
- 60-6,197.03. Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; penalties.
- 60-6,197.05. Driving under influence of alcoholic liquor or drugs; implied consent to chemical test; revocation; effect.
- 60-6,197.09. Driving under influence of alcoholic liquor or drugs; not eligible for probation or suspended sentence.
- 60-6,197.10. Driving under influence of alcohol or drugs; public education campaign; Department of Motor Vehicles; duties.
- 60-6,198. Driving under influence of alcoholic liquor or drugs; serious bodily injury; violation; penalty.
- 60-6,211.05. Ignition interlock device; continuous alcohol monitoring device and abstinence from alcohol use; orders authorized; prohibited acts; violation; penalty; costs; Department of Motor Vehicles Ignition Interlock Fund; created; use; investment; prohibited acts relating to tampering with device; hearing.
- 60-6,211.08. Open alcoholic beverage container; consumption of alcoholic beverages; prohibited acts; applicability of section to certain passengers of limousine or bus.
- 60-6,211.11. Prohibited acts relating to ignition interlock device; violation; penalty.

(q) LIGHTING AND WARNING EQUIPMENT

- 60-6,232. Rotating or flashing amber light; when permitted.

(t) WINDSHIELDS, WINDOWS, AND MIRRORS

- 60-6,256. Objects placed or hung to obstruct or interfere with view of operator; unlawful; enforcement; penalty.

Section

(u) OCCUPANT PROTECTION SYSTEMS

60-6,267. Use of restraint system or occupant protection system; when; information and education program.

60-6,268. Use of restraint system or occupant protection system; violations; penalty; enforcement; when.

(y) SIZE, WEIGHT, AND LOAD

60-6,288.01. Person moving certain buildings or objects; notice required; contents.

60-6,291. Violations; penalty.

60-6,297. Disabled vehicles; length, load, width, height limitations; exception; special single trip permit; liability.

60-6,298. Vehicles; size; weight; load; overweight; special, continuing, or continuous permit; issuance discretionary; conditions; penalty; continuing permit; fees.

(ee) SPECIAL RULES FOR MINIBIKES AND OTHER OFF-ROAD VEHICLES

60-6,348. Minibikes and off-road designed vehicles; use; emergencies; parades.

60-6,349. Minibikes and similar vehicles; sale; notice.

(kk) SPECIAL RULES FOR LOW-SPEED VEHICLES

60-6,380. Low-speed vehicle; restrictions on use.

(a) GENERAL PROVISIONS

60-601 Rules, how cited.

Sections 60-601 to 60-6,380 shall be known and may be cited as the Nebraska Rules of the Road.

Source: Laws 1973, LB 45, § 122; Laws 1989, LB 285, § 9; Laws 1992, LB 291, § 14; Laws 1992, LB 872, § 5; R.S.Supp., 1992, § 39-6,122; Laws 1993, LB 370, § 97; Laws 1993, LB 564, § 14; Laws 1996, LB 901, § 3; Laws 1996, LB 1104, § 2; Laws 1997, LB 91, § 1; Laws 1998, LB 309, § 12; Laws 1999, LB 585, § 3; Laws 2001, LB 38, § 42; Laws 2002, LB 1105, § 448; Laws 2002, LB 1303, § 10; Laws 2004, LB 208, § 8; Laws 2006, LB 853, § 14; Laws 2006, LB 925, § 4; Laws 2008, LB736, § 6; Laws 2008, LB756, § 18; Laws 2009, LB92, § 1; Laws 2010, LB650, § 35; Laws 2010, LB945, § 2; Laws 2011, LB164, § 1; Laws 2011, LB289, § 29; Laws 2011, LB667, § 32; Laws 2011, LB675, § 4.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB164, section 1, with LB289, section 29, LB667, section 32, and LB675, section 4, to reflect all amendments.

Note: Changes made by LB164 became effective August 27, 2011. Changes made by LB289 became operative January 1, 2012. Changes made by LB667 became operative January 1, 2012. Changes made by LB675 became operative January 1, 2012.

60-605 Definitions, where found.

For purposes of the Nebraska Rules of the Road, the definitions found in sections 60-606 to 60-676 shall be used.

Source: Laws 1993, LB 370, § 101; Laws 1996, LB 901, § 4; Laws 1997, LB 91, § 2; Laws 2001, LB 38, § 43; Laws 2006, LB 853, § 15; Laws 2006, LB 925, § 5; Laws 2008, LB756, § 19; Laws 2010, LB650, § 36; Laws 2011, LB289, § 30.
Operative date January 1, 2012.

60-628.01 Low-speed vehicle, defined.

Low-speed vehicle means a four-wheeled motor vehicle (1) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (2) whose gross vehicle weight rating is less than three thousand pounds, and (3) that complies with 49 C.F.R. part 571, as such part existed on January 1, 2011.

Source: Laws 2011, LB289, § 31.
Operative date January 1, 2012.

(d) ACCIDENTS AND ACCIDENT REPORTING

60-697 Accident; driver's duty; penalty.

(1) The driver of any vehicle involved in an accident upon either a public highway, private road, or private drive, resulting in injury or death to any person, shall (a) immediately stop such vehicle at the scene of such accident and ascertain the identity of all persons involved, (b) give his or her name and address and the license number of the vehicle and exhibit his or her operator's license to the person struck or the occupants of any vehicle collided with, and (c) render to any person injured in such accident reasonable assistance, including the carrying of such person to a physician or surgeon for medical or surgical treatment if it is apparent that such treatment is necessary or is requested by the injured person.

(2) Any person violating any of the provisions of this section shall upon conviction thereof be punished as provided in section 60-698.

Source: Laws 1931, c. 110, § 28, p. 314; C.S.Supp.,1941, § 39-1159; R.S.1943, § 39-762; Laws 1947, c. 148, § 2(1), p. 409; Laws 1949, c. 119, § 1, p. 315; Laws 1949, c. 120, § 1, p. 317; R.R.S.1943, § 39-762; R.S.1943, (1988), § 39-6,104.01; Laws 1993, LB 370, § 193; Laws 2005, LB 274, § 240; Laws 2006, LB 925, § 8; Laws 2011, LB675, § 5.
Operative date January 1, 2012.

Cross References

Operator's license, assessment of points, revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.

60-698 Accident; failure to stop; penalty.

(1) Any person convicted of violating section 60-697 relative to the duty to stop in the event of certain accidents shall be guilty of (a) a Class IIIA felony if the accident resulted in an injury to any person other than a serious bodily injury as defined in section 60-6,198 or death or (b) a Class III felony if the accident resulted in the death of any person or serious bodily injury as defined in section 60-6,198.

(2) The court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of not less than one year nor more than fifteen years from the date ordered by the court and shall order that the operator's license of such person be revoked for a like period. The order of the court shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked, whichever is later.

Source: Laws 1931, c. 110, § 56, p. 324; C.S.Supp.,1941, § 39-1187; R.S.1943, § 39-763; Laws 1953, c. 214, § 2, p. 757; R.R.S.1943,

§ 39-763; Laws 1978, LB 748, § 27; R.S.1943, (1988), § 39-6,104.03; Laws 1993, LB 31, § 18; Laws 1993, LB 370, § 194; Laws 1997, LB 772, § 6; Laws 2006, LB 925, § 9; Laws 2011, LB675, § 6.

Operative date January 1, 2012.

(o) ALCOHOL AND DRUG VIOLATIONS

60-6,196.01 Driving under influence of alcoholic liquor or drug; additional penalty.

In addition to any other penalty provided for operating a motor vehicle in violation of section 60-6,196, if a person has a prior conviction as defined in section 60-6,197.02 for a violation punishable as a felony under section 60-6,197.03 and is subsequently found to have operated or been in the actual physical control of any motor vehicle when such person has (1) a concentration of two-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or (2) a concentration of two-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath, such person shall be guilty of a Class IIIA misdemeanor.

Source: Laws 2011, LB675, § 7.

Operative date January 1, 2012.

60-6,197 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; when test administered; refusal; advisement; effect; violation; penalty.

(1) Any person who operates or has in his or her actual physical control a motor vehicle in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine.

(2) Any peace officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village may require any person arrested for any offense arising out of acts alleged to have been committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine when the officer has reasonable grounds to believe that such person was driving or was in the actual physical control of a motor vehicle in this state while under the influence of alcoholic liquor or drugs in violation of section 60-6,196.

(3) Any person arrested as described in subsection (2) of this section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his or her blood, breath, or urine for a determination of the concentration of alcohol or the presence of drugs. If the chemical test discloses the presence of a concentration of alcohol in violation of subsection (1) of section 60-6,196, the person shall be subject to the administrative license revocation procedures provided in sections 60-498.01 to 60-498.04 and upon conviction be punished as provided in sections 60-6,197.02 to 60-6,197.08. Any person who refuses to submit to such test or tests required pursuant to this section shall be

subject to the administrative license revocation procedures provided in sections 60-498.01 to 60-498.04 and shall be guilty of a crime and upon conviction punished as provided in sections 60-6,197.02 to 60-6,197.08.

(4) Any person involved in a motor vehicle accident in this state may be required to submit to a chemical test or tests of his or her blood, breath, or urine by any peace officer if the officer has reasonable grounds to believe that the person was driving or was in actual physical control of a motor vehicle on a public highway in this state while under the influence of alcoholic liquor or drugs at the time of the accident. A person involved in a motor vehicle accident subject to the implied consent law of this state shall not be deemed to have withdrawn consent to submit to a chemical test of his or her blood, breath, or urine by reason of leaving this state. If the person refuses a test under this section and leaves the state for any reason following an accident, he or she shall remain subject to subsection (3) of this section and sections 60-498.01 to 60-498.04 upon return.

(5) Any person who is required to submit to a chemical blood, breath, or urine test or tests pursuant to this section shall be advised that refusal to submit to such test or tests is a separate crime for which the person may be charged. Failure to provide such advisement shall not affect the admissibility of the chemical test result in any legal proceedings. However, failure to provide such advisement shall negate the state's ability to bring any criminal charges against a refusing party pursuant to this section.

(6) Refusal to submit to a chemical blood, breath, or urine test or tests pursuant to this section shall be admissible evidence in any action for a violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section.

Source: Laws 1959, c. 168, § 1, p. 613; Laws 1961, c. 187, § 2, p. 577; Laws 1963, c. 229, § 1, p. 716; Laws 1971, LB 948, § 2; Laws 1972, LB 1095, § 2; R.S.Supp.,1972, § 39-727.03; Laws 1982, LB 568, § 6; Laws 1986, LB 153, § 4; Laws 1987, LB 404, § 2; Laws 1987, LB 224, § 1; Laws 1988, LB 377, § 2; Laws 1990, LB 799, § 2; Laws 1992, LB 872, § 1; Laws 1992, LB 291, § 5; R.S.Supp.,1992, § 39-669.08; Laws 1993, LB 370, § 293; Laws 1993, LB 564, § 8; Laws 1996, LB 939, § 2; Laws 1998, LB 309, § 14; Laws 1999, LB 585, § 6; Laws 2000, LB 1004, § 2; Laws 2001, LB 38, § 48; Laws 2001, LB 773, § 16; Laws 2003, LB 209, § 12; Laws 2004, LB 208, § 11; Laws 2011, LB667, § 33.

Operative date January 1, 2012.

Cross References

Applicability of statute to private property, see section 60-6,108.

Conviction of felony involving use of motor vehicle, transmittal of abstract, see section 60-497.02.

Ineligibility for pretrial diversion, see section 29-3604.

Operator's license, assessment of points and revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.

Violation of ordinance, prosecuting attorney, consult victim, see section 29-120.

60-6,197.02 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; terms, defined; prior convictions; use; sentencing provisions; when applicable.

(1) A violation of section 60-6,196 or 60-6,197 shall be punished as provided in sections 60-6,196.01 and 60-6,197.03. For purposes of sentencing under sections 60-6,196.01 and 60-6,197.03:

(a) Prior conviction means a conviction for a violation committed within the fifteen-year period prior to the offense for which the sentence is being imposed as follows:

(i) For a violation of section 60-6,196:

(A) Any conviction for a violation of subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197; or

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198; or

(ii) For a violation of section 60-6,197:

(A) Any conviction for a violation of subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197; or

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198;

(b) Prior conviction includes any conviction under subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198, or any city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197, as such sections or city or village ordinances existed at the time of such conviction regardless of subsequent amendments to any of such sections or city or village ordinances; and

(c) Fifteen-year period means the period computed from the date of the prior offense to the date of the offense which resulted in the conviction for which the sentence is being imposed.

(2) In any case charging a violation of section 60-6,196 or 60-6,197, the prosecutor or investigating agency shall use due diligence to obtain the person's driving record from the Department of Motor Vehicles and the person's driving record from other states where he or she is known to have resided within the last fifteen years. The prosecutor shall certify to the court, prior to sentencing, that such action has been taken. The prosecutor shall present as evidence for purposes of sentence enhancement a court-certified copy or an authenticated copy of a prior conviction in another state. The court-certified or authenticated copy shall be prima facie evidence of such prior conviction.

(3) For each conviction for a violation of section 60-6,196 or 60-6,197, the court shall, as part of the judgment of conviction, make a finding on the record as to the number of the convicted person's prior convictions. The convicted person shall be given the opportunity to review the record of his or her prior convictions, bring mitigating facts to the attention of the court prior to sentencing.

ing, and make objections on the record regarding the validity of such prior convictions.

(4) A person arrested for a violation of section 60-6,196 or 60-6,197 before January 1, 2012, but sentenced pursuant to section 60-6,197.03 for such violation on or after January 1, 2012, shall be sentenced according to the provisions of section 60-6,197.03 in effect on the date of arrest.

Source: Laws 2004, LB 208, § 12; Laws 2005, LB 594, § 2; Laws 2009, LB497, § 6; Laws 2011, LB667, § 34; Laws 2011, LB675, § 8. Operative date January 1, 2012.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB667, section 34, with LB675, section 8, to reflect all amendments.

60-6,197.03 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; penalties.

Any person convicted of a violation of section 60-6,196 or 60-6,197 shall be punished as follows:

(1) Except as provided in subdivision (2) of this section, if such person has not had a prior conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of six months from the date ordered by the court. The revocation order shall require that the person apply for an ignition interlock permit pursuant to section 60-6,211.05 for the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of sixty days from the date ordered by the court. The court shall order that during the period of revocation the person apply for an ignition interlock permit pursuant to section 60-6,211.05. Such order of probation or sentence suspension shall also include, as one of its conditions, the payment of a five-hundred-dollar fine;

(2) If such person has not had a prior conviction and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of one year from the date ordered by the court. The revocation order shall require that the person apply for an ignition interlock permit pursuant to subdivision (1)(b) of section 60-6,197.01 for the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a

period of one year from the date ordered by the court. The revocation order shall require that the person apply for an ignition interlock permit pursuant to subdivision (1)(b) of section 60-6,197.01 for the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for two days or the imposition of not less than one hundred twenty hours of community service;

(3) Except as provided in subdivision (5) of this section, if such person has had one prior conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of one year from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court shall order that the person apply for an ignition interlock permit for the remainder of the revocation period and have an ignition interlock device installed on any motor vehicle he or she owns or operates during the remainder of the revocation period and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of one year from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court shall order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for ten days or the imposition of not less than two hundred forty hours of community service;

(4) Except as provided in subdivision (6) of this section, if such person has had two prior convictions, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least two years but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section

60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for thirty days;

(5) If such person has had one prior conviction and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class I misdemeanor, and the court shall, as part of the judgment of conviction, order payment of a one-thousand-dollar fine and revoke the operator's license of such person for a period of at least one year but not more than fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least ninety days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least one year but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for thirty days;

(6) If such person has had two prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class IIIA felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least one hundred eighty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least five years but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section

60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine, confinement in the city or county jail for sixty days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than sixty days;

(7) Except as provided in subdivision (8) of this section, if such person has had three prior convictions, such person shall be guilty of a Class IIIA felony, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least one hundred eighty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for ninety days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than ninety days;

(8) If such person has had three prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class III felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for one hundred twenty days,

and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than one hundred twenty days;

(9) Except as provided in subdivision (10) of this section, if such person has had four or more prior convictions, such person shall be guilty of a Class III felony with a minimum sentence of two years' imprisonment, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for one hundred eighty days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than one hundred eighty days; and

(10) If such person has had four or more prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class II felony with a minimum sentence of two years' imprisonment and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for one hundred eighty days, and, upon release from such confinement, the use of a continuous alcohol

monitoring device and abstention from alcohol use at all times for no less than one hundred eighty days.

Source: Laws 2004, LB 208, § 13; Laws 2005, LB 594, § 3; Laws 2006, LB 925, § 11; Laws 2007, LB578, § 4; Laws 2008, LB736, § 8; Laws 2009, LB497, § 7; Laws 2010, LB924, § 4; Laws 2011, LB667, § 35; Laws 2011, LB675, § 9.
Operative date January 1, 2012.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB667, section 35, with LB675, section 9, to reflect all amendments.

60-6,197.05 Driving under influence of alcoholic liquor or drugs; implied consent to chemical test; revocation; effect.

Any period of revocation imposed by the court for a violation of section 60-6,196 or 60-6,197 shall be reduced by any period of revocation imposed under sections 60-498.01 to 60-498.04, including any period during which a person has a valid ignition interlock permit, arising from the same incident.

Source: Laws 2004, LB 208, § 15; Laws 2009, LB497, § 8; Laws 2011, LB667, § 36.
Operative date January 1, 2012.

60-6,197.09 Driving under influence of alcoholic liquor or drugs; not eligible for probation or suspended sentence.

Notwithstanding the provisions of section 60-6,197.03, a person who commits a violation punishable under subdivision (3)(b) or (c) of section 28-306 or subdivision (3)(b) or (c) of section 28-394 or a violation of section 60-6,196, 60-6,197, or 60-6,198 while participating in criminal proceedings for a violation of section 60-6,196, 60-6,197, or 60-6,198, or a city or village ordinance enacted in accordance with section 60-6,196 or 60-6,197, or a law of another state if, at the time of the violation under the law of such other state, the offense for which the person was charged would have been a violation of section 60-6,197, shall not be eligible to receive a sentence of probation or a suspended sentence for either violation committed in this state.

Source: Laws 2006, LB 925, § 14; Laws 2011, LB667, § 37.
Operative date January 1, 2012.

60-6,197.10 Driving under influence of alcohol or drugs; public education campaign; Department of Motor Vehicles; duties.

The Department of Motor Vehicles shall conduct an ongoing public education campaign to inform the residents of this state about the dangers and consequences of driving under the influence of alcohol or drugs in this state. Information shall include, but not be limited to, the criminal and administrative penalties for driving under the influence, any related laws, rules, instructions, and any explanatory matter. The department shall use its best efforts to utilize all available opportunities for making public service announcements on television and radio broadcasts for the public education campaign and to obtain and utilize federal funds for highway safety and other grants in conducting the public education campaign. The information may be included in publications

containing information related to other motor vehicle laws and shall be given wide distribution by the department.

Source: Laws 2011, LB667, § 38.
Operative date January 1, 2012.

60-6,198 Driving under influence of alcoholic liquor or drugs; serious bodily injury; violation; penalty.

(1) Any person who, while operating a motor vehicle in violation of section 60-6,196 or 60-6,197, proximately causes serious bodily injury to another person or an unborn child of a pregnant woman shall be guilty of a Class IIIA felony and the court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years from the date ordered by the court and shall order that the operator's license of such person be revoked for the same period.

(2) For purposes of this section, serious bodily injury means bodily injury which involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a temporary or protracted loss or impairment of the function of any part or organ of the body.

(3) For purposes of this section, unborn child has the same meaning as in section 28-396.

(4) The crime punishable under this section shall be treated as a separate and distinct offense from any other offense arising out of acts alleged to have been committed while the person was in violation of this section.

Source: Laws 1986, LB 153, § 6; Laws 1992, LB 291, § 13; R.S.Supp.,1992, § 39-669.39; Laws 1993, LB 370, § 307; Laws 1997, LB 364, § 17; Laws 2001, LB 38, § 50; Laws 2006, LB 57, § 10; Laws 2011, LB667, § 39; Laws 2011, LB675, § 10.
Operative date January 1, 2012.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB667, section 39, with LB675, section 10, to reflect all amendments.

Cross References

Conviction of felony involving use of vehicle, transmittal of abstract, see section 60-497.02.

60-6,211.05 Ignition interlock device; continuous alcohol monitoring device and abstention from alcohol use; orders authorized; prohibited acts; violation; penalty; costs; Department of Motor Vehicles Ignition Interlock Fund; created; use; investment; prohibited acts relating to tampering with device; hearing.

(1) If an order is granted under section 60-6,196 or 60-6,197 and sections 60-6,197.02 and 60-6,197.03, the court may order that the defendant install an ignition interlock device of a type approved by the Director of Motor Vehicles on each motor vehicle operated by the defendant during the period of revocation. Upon sufficient evidence of installation, the defendant may apply to the director for an ignition interlock permit pursuant to section 60-4,118.06. The device shall, without tampering or the intervention of another person, prevent the defendant from operating the motor vehicle when the defendant has an alcohol concentration greater than three-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or three-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath. The Department of Motor Vehicles shall issue an

ignition interlock permit to the defendant under section 60-4,118.06 only upon sufficient proof that a defendant has installed an ignition interlock device on any motor vehicle that the defendant will operate during his or her release.

(2) If the court orders installation of an ignition interlock device and issuance of an ignition interlock permit pursuant to subsection (1) of this section, the court may also order the use of a continuous alcohol monitoring device and abstention from alcohol use at all times. The device shall, without tampering or the intervention of another person, test and record the alcohol consumption level of the defendant on a periodic basis and transmit such information to probation authorities.

(3) Any order issued by the court pursuant to this section shall not take effect until the defendant is eligible to operate a motor vehicle pursuant to subsection (8) of section 60-498.01. A person shall be eligible to be issued an ignition interlock permit allowing operation of a motor vehicle equipped with an ignition interlock device if he or she is not subject to any other suspension, cancellation, required no-driving period, or period of revocation and has successfully completed the ignition interlock permit application process. The Department of Motor Vehicles shall review its records and the driving record abstract of any person who applies for an ignition interlock permit allowing operation of a motor vehicle equipped with an ignition interlock device to determine (a) the applicant's eligibility for an ignition interlock permit, (b) the applicant's previous convictions under section 60-6,196, 60-6,197, or 60-6,197.06 or any previous administrative license revocation, if any, (c) if the applicant is subject to any required no-drive periods before the ignition interlock permit may be issued, and (d) the permitted driving uses to be allowed to that person on his or her ignition interlock permit.

(4)(a) If the court orders an ignition interlock device or the Board of Pardons orders an ignition interlock device under section 83-1,127.02, the court or the Board of Pardons shall order the defendant to apply for an ignition interlock permit as provided in section 60-4,118.06 which indicates that the defendant is only allowed to operate a motor vehicle equipped with an ignition interlock device.

(b) Such court order shall remain in effect for a period of time as determined by the court not to exceed the maximum term of revocation which the court could have imposed according to the nature of the violation and shall allow operation by the defendant of an ignition-interlock-equipped motor vehicle only (i) if the defendant has no previous conviction under section 60-6,196, 60-6,197, or 60-6,197.06 and no previous administrative license revocation, to and from his or her residence for purposes of his or her employment, his or her school, a substance abuse treatment program, his or her probation officer, his or her continuing health care or the continuing health care of another person who is dependent upon the person, his or her court-ordered community service responsibilities, or an ignition interlock service facility or (ii) if the defendant has a previous conviction under section 60-6,196, 60-6,197, or 60-6,197.06 or a previous administrative license revocation, to and from his or her residence for purposes of his or her employment, his or her school, or a substance abuse treatment program.

(c) Such Board of Pardons order shall remain in effect for a period of time not to exceed any period of revocation the applicant is subject to at the time the application for a reprieve is made.

(5) Any person restricted to operating a motor vehicle equipped with an ignition interlock device, pursuant to a Board of Pardons order, who operates upon the highways of this state a motor vehicle without such device or if the device has been disabled, bypassed, or altered in any way, shall be punished as provided in subsection (3) of section 83-1,127.02.

(6) If a person ordered to use a continuous alcohol monitoring device and abstain from alcohol use pursuant to a court order as provided in subsection (2) of this section violates the provisions of such court order by removing, tampering with, or otherwise bypassing the continuous alcohol monitoring device or by consuming alcohol while required to use such device, he or she shall have his or her ignition interlock permit revoked and be unable to apply for reinstatement for the duration of the revocation period imposed by the court.

(7) The director shall adopt and promulgate rules and regulations regarding the approval of ignition interlock devices, the means of installing ignition interlock devices, and the means of administering the ignition interlock permit program.

(8)(a) The costs incurred in order to comply with the ignition interlock requirements of this section shall be paid directly to the ignition interlock provider by the person complying with an order for an ignition interlock permit and installation of an ignition interlock device.

(b) If the Department of Motor Vehicles has determined the person to be indigent and incapable of paying for the cost of installation, removal, or maintenance of the ignition interlock device in accordance with this section, such costs shall be paid out of the Department of Motor Vehicles Ignition Interlock Fund if such funds are available, according to rules and regulations adopted and promulgated by the department. Such costs shall also be paid out of the Department of Motor Vehicles Ignition Interlock Fund if such funds are available and if the court or the Board of Pardons, whichever is applicable, has determined the person to be indigent and incapable of paying for the cost of installation, removal, or maintenance of the ignition interlock device in accordance with this section. The Department of Motor Vehicles Ignition Interlock Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(9)(a)(i) An ignition interlock service facility shall notify the appropriate district probation office or the appropriate court, as applicable, of any evidence of tampering with or circumvention of an ignition interlock device, or any attempts to do so, when the facility becomes aware of such evidence. Failure of the facility to provide notification as provided in this subdivision is a Class V misdemeanor.

(ii) An ignition interlock service facility shall notify the Department of Motor Vehicles, if the ignition interlock permit is issued pursuant to sections 60-498.01 to 60-498.04, of any evidence of tampering with or circumvention of an ignition interlock device, or any attempts to do so, when the facility becomes aware of such evidence. Failure of the facility to provide notification as provided in this subdivision is a Class V misdemeanor.

(b) If a district probation office receives evidence of tampering with or circumvention of an ignition interlock device, or any attempts to do so, from an ignition interlock service facility, the district probation office shall notify the appropriate court of such violation. The court shall immediately schedule an

evidentiary hearing to be held within fourteen days after receiving such evidence, either from the district probation office or an ignition interlock service facility, and the court shall cause notice of the hearing to be given to the person operating a motor vehicle pursuant to an order under subsection (1) of this section. If the person who is the subject of such evidence does not appear at the hearing and show cause why the order made pursuant to subsection (1) of this section should remain in effect, the court shall rescind the original order. Nothing in this subsection shall apply to an order made by the Board of Pardons pursuant to section 83-1,127.02.

(10) Notwithstanding any other provision of law, the issuance of an ignition interlock permit by the Department of Motor Vehicles under section 60-498.01 or an order for the installation of an ignition interlock device and ignition interlock permit made pursuant to subsection (1) of this section as part of a conviction, as well as the administration of such court order by the Office of Probation Administration for the installation, maintenance, and removal of such device, as applicable, shall not be construed to create an order of probation when an order of probation has not been issued.

Source: Laws 1993, LB 564, § 6; Laws 1998, LB 309, § 24; Laws 2001, LB 38, § 55; Laws 2003, LB 209, § 15; Laws 2004, LB 208, § 22; Laws 2006, LB 925, § 16; Laws 2008, LB736, § 10; Laws 2009, LB497, § 10; Laws 2010, LB924, § 5; Laws 2011, LB667, § 40. Operative date January 1, 2012.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

60-6,211.08 Open alcoholic beverage container; consumption of alcoholic beverages; prohibited acts; applicability of section to certain passengers of limousine or bus.

(1) For purposes of this section:

(a) Alcoholic beverage means (i) beer, ale porter, stout, and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor, (ii) wine of not less than one-half of one percent of alcohol by volume, or (iii) distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced. Alcoholic beverage does not include trace amounts not readily consumable as a beverage;

(b) Highway means a road or street including the entire area within the right-of-way;

(c) Limousine means a luxury vehicle used to provide prearranged passenger transportation on a dedicated basis at a premium fare that has a seating capacity of at least five and no more than fourteen persons behind the driver with a physical partition separating the driver seat from the passenger compartment. Limousine does not include taxicabs, hotel or airport buses or shuttles, or buses;

(d) Open alcoholic beverage container, except as provided in subsection (3) of section 53-123.04 and subdivision (1)(c) of section 53-123.11, means any bottle, can, or other receptacle:

(i) That contains any amount of alcoholic beverage; and

(ii)(A) That is open or has a broken seal or (B) the contents of which are partially removed; and

(e) Passenger area means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including any compartments in such area. Passenger area does not include the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk.

(2) Except as otherwise provided in this section, it is unlawful for any person in the passenger area of a motor vehicle to possess an open alcoholic beverage container while the motor vehicle is located in a public parking area or on any highway in this state.

(3) Except as provided in section 53-186 or subsection (4) of this section, it is unlawful for any person to consume an alcoholic beverage (a) in a public parking area or on any highway in this state or (b) inside a motor vehicle while in a public parking area or on any highway in this state.

(4) This section does not apply to persons who are passengers of, but not drivers of, a limousine or bus being used in a charter or special party service as defined by rules and regulations adopted and promulgated by the Public Service Commission and subject to Chapter 75, article 3. Such passengers may possess open alcoholic beverage containers and may consume alcoholic beverages while such limousine or bus is in a public parking area or on any highway in this state if (a) the driver of the limousine or bus is prohibited from consuming alcoholic liquor and (b) alcoholic liquor is not present in any area that is readily accessible to the driver while in the driver's seat, including any compartments in such area.

Source: Laws 1999, LB 585, § 4; Laws 2006, LB 562, § 6; Laws 2011, LB281, § 3.

Effective date August 27, 2011.

60-6,211.11 Prohibited acts relating to ignition interlock device; violation; penalty.

(1) Any person who tampers with or circumvents an ignition interlock device installed under a court order or Department of Motor Vehicles order while the order is in effect or who operates a motor vehicle which is not equipped with an ignition interlock device in violation of a court order or Department of Motor Vehicles order shall be guilty of a Class IV felony.

(2) Any person who otherwise operates a motor vehicle equipped with an ignition interlock device in violation of the requirements of the court order or Department of Motor Vehicles order under which the device was installed shall be guilty of a Class III misdemeanor.

Source: Laws 2011, LB667, § 41.

Operative date January 1, 2012.

(q) LIGHTING AND WARNING EQUIPMENT

60-6,232 Rotating or flashing amber light; when permitted.

A rotating or flashing amber light or lights shall be displayed on the roof of any motor vehicle being operated by any rural mail carrier outside the corpo-

rate limits of any municipality in this state on or near any highway in the process of delivering mail.

A rotating or flashing amber light or lights may be displayed on (1) any vehicle of the Military Department while on any state emergency mission, (2) any motor vehicle being operated by any public utility, vehicle service, or towing service or any publicly or privately owned construction or maintenance vehicle while performing its duties on or near any highway, (3) any motor vehicle being operated by any member of the Civil Air Patrol, (4) any pilot vehicle escorting an overdimensional load, (5) any vehicle while actually engaged in the moving of houses, buildings, or other objects of extraordinary bulk, including unbaled livestock forage as authorized by subdivision (2)(f) of section 60-6,288, (6) any motor vehicle owned by or operated on behalf of a railroad carrier that is stopped to load or unload passengers, or (7) any motor vehicle operated by or for an emergency management worker as defined in section 81-829.39 or a storm spotter as defined in section 81-829.67 who is activated by a local emergency management organization.

Source: Laws 1969, c. 327, § 4, p. 1171; Laws 1971, LB 365, § 1; R.S.Supp.,1972, § 39-788.03; Laws 1977, LB 427, § 1; R.S.1943, (1988), § 39-6,150; Laws 1993, LB 370, § 328; Laws 1995, LB 59, § 7; Laws 2000, LB 1361, § 4; Laws 2005, LB 471, § 1; Laws 2011, LB573, § 1.

Effective date August 27, 2011.

(t) WINDSHIELDS, WINDOWS, AND MIRRORS

60-6,256 Objects placed or hung to obstruct or interfere with view of operator; unlawful; enforcement; penalty.

(1) It shall be unlawful for any person to operate a motor vehicle with any object placed or hung in or upon the motor vehicle, except required or permitted equipment of the motor vehicle, in such a manner as to significantly and materially obstruct or interfere with the view of the operator through the windshield or to prevent the operator from having a clear and full view of the road and condition of traffic behind the motor vehicle. Any sticker or identification authorized or required by the federal government or any agency thereof or the State of Nebraska or any political subdivision thereof may be placed upon the windshield of the motor vehicle without violating this section.

(2) Enforcement of this section by state or local law enforcement agencies shall be accomplished only as a secondary action when a driver of a motor vehicle has been cited or charged with a traffic violation or some other offense.

(3) Any person who violates this section is guilty of a traffic infraction. Any person who is found guilty of a traffic infraction under this section shall be assessed points on his or her motor vehicle operator's license pursuant to section 60-4,182 and shall be fined:

- (a) Fifty dollars for the first offense;
- (b) One hundred dollars for a second offense; and
- (c) One hundred fifty dollars for a third and subsequent offense.

Source: Laws 1959, c. 173, § 1, p. 624; R.R.S.1943, § 39-7,123.04; Laws 1977, LB 41, § 30; R.S.1943, (1988), § 39-6,170; Laws 1993, LB 370, § 352; Laws 2011, LB500, § 2.

Effective date August 27, 2011.

Cross References

Interference with view of driver by passengers or load prohibited, see section 60-6,179.

(u) OCCUPANT PROTECTION SYSTEMS

60-6,267 Use of restraint system or occupant protection system; when; information and education program.

(1) Any person in Nebraska who drives any motor vehicle which has or is required to have an occupant protection system shall ensure that all children up to six years of age being transported by such vehicle use a child passenger restraint system of a type which meets Federal Motor Vehicle Safety Standard 213 as developed by the National Highway Traffic Safety Administration, as such standard existed on January 1, 2009, and which is correctly installed in such vehicle.

(2) Any person in Nebraska who drives any motor vehicle which has or is required to have an occupant protection system shall ensure that all children six years of age and less than eighteen years of age being transported by such vehicle use an occupant protection system.

(3) Subsections (1) and (2) of this section apply to every motor vehicle which is equipped with an occupant protection system or is required to be equipped with restraint systems pursuant to Federal Motor Vehicle Safety Standard 208, as such standard existed on January 1, 2009, except taxicabs, mopeds, motorcycles, and any motor vehicle designated by the manufacturer as a 1963 year model or earlier which is not equipped with an occupant protection system.

(4) Whenever any licensed physician determines, through accepted medical procedures, that use of a child passenger restraint system by a particular child would be harmful by reason of the child's weight, physical condition, or other medical reason, the provisions of subsection (1) or (2) of this section shall be waived. The driver of any vehicle transporting such a child shall carry on his or her person or in the vehicle a signed written statement of the physician identifying the child and stating the grounds for such waiver.

(5) The drivers of authorized emergency vehicles shall not be subject to the requirements of subsection (1) or (2) of this section when operating such authorized emergency vehicles pursuant to their employment.

(6) A driver of a motor vehicle shall not be subject to the requirements of subsection (1) or (2) of this section if the motor vehicle is being operated in a parade or exhibition and the parade or exhibition is being conducted in accordance with applicable state law and local ordinances and resolutions.

(7) The Department of Roads shall develop and implement an ongoing statewide public information and education program regarding the use of child passenger restraint systems and occupant protection systems and the availability of distribution and discount programs for child passenger restraint systems.

(8) All persons being transported by a motor vehicle operated by a holder of a provisional operator's permit or a school permit shall use such motor vehicle's occupant protection system.

Source: Laws 1983, LB 306, § 2; Laws 1985, LB 259, § 1; Laws 1990, LB 958, § 1; Laws 1992, LB 958, § 3; R.S.Supp.,1992, § 39-6,103.01; Laws 1993, LB 370, § 363; Laws 2000, LB 410, § 1; Laws 2002, LB 1073, § 1; Laws 2004, LB 227, § 2; Laws 2006, LB 853, § 20;

Laws 2007, LB239, § 7; Laws 2008, LB756, § 22; Laws 2009, LB219, § 1; Laws 2009, LB331, § 12; Laws 2011, LB67, § 1.
Effective date August 27, 2011.

60-6,268 Use of restraint system or occupant protection system; violations; penalty; enforcement; when.

(1) A person violating any provision of subsection (1) or (2) of section 60-6,267 shall be guilty of an infraction as defined in section 29-431 and shall be fined twenty-five dollars for each violation. The failure to provide a child restraint system for more than one child in the same vehicle at the same time, as required in such subsection, shall not be treated as a separate offense.

(2) Enforcement of subsection (2) or (8) of section 60-6,267 shall be accomplished only as a secondary action when an operator of a motor vehicle has been cited or charged with a violation or some other offense unless the violation involves a person under the age of eighteen years riding in or on any portion of the vehicle not designed or intended for the use of passengers when the vehicle is in motion.

Source: Laws 1983, LB 306, § 3; R.S.1943, (1988), § 39-6,103.02; Laws 1993, LB 370, § 364; Laws 2000, LB 410, § 2; Laws 2002, LB 1073, § 2; Laws 2004, LB 227, § 3; Laws 2011, LB67, § 2.
Effective date August 27, 2011.

(y) SIZE, WEIGHT, AND LOAD

60-6,288.01 Person moving certain buildings or objects; notice required; contents.

Any person moving a building or an object that, in combination with the transporting vehicle, is over fifteen feet, six inches high or wider than the roadway on a county or township road shall notify the local authority and the electric utility responsible for the infrastructure, including poles, wires, substations, and underground residential distribution cable boxes adjacent to or crossing the roadway along the route over which such building or object is being transported. Notification shall be made at least ten days prior to the move. Notification shall specifically describe the transporting vehicle, the width, length, height, and weight of the building or object to be moved, the route to be used, and the date and hours during which the building or object will be transported. Complying with the notification requirement of this section does not exempt the person from complying with any other federal, state, or local authority permit or notification requirements.

Source: Laws 2011, LB164, § 2.
Effective date August 27, 2011.

60-6,291 Violations; penalty.

Any person who violates any provision of sections 60-6,288 to 60-6,290 or who drives, moves, causes, or knowingly permits to be moved on any highway any vehicle or vehicles which exceed the limitations as to width, length, or height as provided in such sections for which a penalty is not elsewhere provided shall be guilty of a Class III misdemeanor.

Source: Laws 1933, c. 105, § 8, p. 431; Laws 1941, c. 76, § 1, p. 312; C.S.Supp.,1941, § 39-1037; R.S.1943, § 39-725; Laws 1949, c.

115, § 1, p. 309; Laws 1953, c. 134, § 6, p. 421; Laws 1955, c. 151, § 2, p. 449; R.R.S.1943, § 39-725; Laws 1974, LB 593, § 4; Laws 1977, LB 41, § 35; R.S.1943, (1988), § 39-6,188; Laws 1993, LB 370, § 387; Laws 1993, LB 121, § 207; Laws 1994, LB 884, § 81; Laws 2011, LB164, § 3.
Effective date August 27, 2011.

60-6,297 Disabled vehicles; length, load, width, height limitations; exception; special single trip permit; liability.

(1) Subdivision (1)(b) of section 60-6,290 and subsections (2) and (3) of section 60-6,294 shall not apply to a vehicle or combination of vehicles disabled or wrecked on a highway or right-of-way when the vehicle or combination of vehicles is towed to a place of secure safekeeping by any wrecker or tow truck performing a wrecker or towing service.

(2) Subdivision (1)(b) of section 60-6,290 and subsections (2) and (3) of section 60-6,294 shall not apply to a single vehicle that is disabled or wrecked when the single vehicle is towed by any wrecker or tow truck to a place for repair or to a point of storage.

(3)(a) Section 60-6,288, subsection (1) of section 60-6,289, subdivision (1)(b) of section 60-6,290, and subsections (2) and (3) of section 60-6,294 shall not apply to a vehicle or combination of vehicles permitted by the Department of Roads for overwidth, overheight, overlength, or overweight operation that is disabled or wrecked on a highway or right-of-way when the vehicle or combination of vehicles is towed if the vehicle or combination of vehicles is towed by any wrecker or tow truck performing a wrecker or towing service to the first or nearest place of secure safekeeping off the traveled portion of the highway that can accommodate the parking of such disabled vehicle or combination of vehicles.

(b) After the vehicle or combination of vehicles has been towed to a place of secure safekeeping, such vehicle or combination of vehicles shall then be operated in compliance with section 60-6,288, subsection (1) of section 60-6,289, subdivision (1)(b) of section 60-6,290, and subsections (2) and (3) of section 60-6,294, or the vehicle or combination of vehicles shall acquire a special single trip permit from the department for the movement of the overwidth, overheight, overlength, or overweight vehicle or combination of vehicles beyond the first or nearest place of secure safekeeping to its intended destination.

(4) The owners, lessees, and operators of any wrecker or tow truck exceeding the width, height, length, or weight restrictions while towing a disabled or wrecked vehicle or combination of vehicles shall be jointly and severally liable for any injury or damages that result from the operation of the wrecker or tow truck while exceeding such restrictions.

(5) If a disabled or wrecked vehicle or combination of vehicles is towed, the wrecker or tow truck shall be connected with the air brakes and brake lights of the towed vehicle or combination of vehicles.

(6) For purposes of this section:

(a) Place of secure safekeeping means a location off the traveled portion of the highway that can accommodate the parking of the disabled or wrecked

vehicle or combination of vehicles in order for the vehicle or combination of vehicles to be repaired or moved to a point of storage; and

(b) Wrecker or tow truck means an emergency commercial vehicle equipped, designed, and used to assist or render aid and transport or tow a disabled vehicle or combination of vehicles from a highway or right-of-way to a place of secure safekeeping.

Source: Laws 1982, LB 383, § 3; R.S.1943, (1988), § 39-6,180.02; Laws 1993, LB 370, § 393; Laws 2003, LB 137, § 1; Laws 2005, LB 82, § 4; Laws 2011, LB35, § 1.
Effective date August 27, 2011.

60-6,298 Vehicles; size; weight; load; overweight; special, continuing, or continuous permit; issuance discretionary; conditions; penalty; continuing permit; fees.

(1)(a) The Department of Roads or the Nebraska State Patrol, with respect to highways under its jurisdiction including the National System of Interstate and Defense Highways, and local authorities, with respect to highways under their jurisdiction, may in their discretion upon application and good cause being shown therefor issue a special, continuing, or continuous permit in writing authorizing the applicant or his or her designee:

(i) To operate or move a vehicle, a combination of vehicles, or objects of a size or weight of vehicle or load exceeding the maximum specified by law when such permit is necessary:

(A) To further the national defense or the general welfare;

(B) To permit movement of cost-saving equipment to be used in highway or other public construction or in agricultural land treatment; or

(C) Because of an emergency, an unusual circumstance, or a very special situation;

(ii) To operate vehicles, for a distance up to one hundred twenty miles, loaded up to fifteen percent greater than the maximum weight specified by law, up to ten percent greater than the maximum length specified by law, except that for a truck-tractor semitrailer trailer combination utilized to transport sugar beets which may be up to twenty-five percent greater than the maximum length specified by law, or both, when carrying grain or other seasonally harvested products from the field where such grain or products are harvested to storage, market, or stockpile in the field or from stockpile to market or factory when failure to move such grain or products in abundant quantities would cause an economic loss to the person or persons whose grain or products are being transported or when failure to move such grain or products in as large quantities as possible would not be in the best interests of the national defense or general welfare. The distance limitation may be waived for vehicles when carrying dry beans from the field where harvested to storage or market when dry beans are not normally stored, purchased, or used within the permittee's local area and must be transported more than one hundred twenty miles to an available marketing or storage destination. No permit shall authorize a weight greater than twenty thousand pounds on any single axle;

(iii) To transport an implement of husbandry which does not exceed twelve and one-half feet in width during daylight hours, except that the permit shall not allow transport on holidays;

(iv) To operate one or more recreational vehicles, as defined in section 71-4603, exceeding the maximum width specified by law if movement of the recreational vehicles is prior to retail sale and the recreational vehicles comply with subdivision (2)(k) of section 60-6,288; or

(v) To operate an emergency vehicle for purposes of sale, demonstration, exhibit, or delivery, if the applicant or his or her designee is a manufacturer or sales agent of the emergency vehicle. No permit shall be issued for an emergency vehicle which weighs over sixty thousand pounds on the tandem axle.

(b) No permit shall be issued under subdivision (a)(i) of this subsection for a vehicle carrying a load unless such vehicle is loaded with an object which exceeds the size or weight limitations, which cannot be dismantled or reduced in size or weight without great difficulty, and which of necessity must be moved over the highways to reach its intended destination. No permit shall be required for the temporary movement on highways other than dustless-surfaced state highways and for necessary access to points on such highways during daylight hours of cost-saving equipment to be used in highway or other public construction or in agricultural land treatment when such temporary movement is necessary and for a reasonable distance.

(2) The application for any such permit shall specifically describe the vehicle, the load to be operated or moved, whenever possible the particular highways for which permit to operate is requested, and whether such permit is requested for a single trip or for continuous or continuing operation.

(3) The department or local authority is authorized to issue or withhold such permit at its discretion or, if such permit is issued, to limit the number of days during which the permit is valid, to limit the number of trips, to establish seasonal or other time limitations within which the vehicles described may be operated on the highways indicated, or to issue a continuous or continuing permit for use on all highways, including the National System of Interstate and Defense Highways. The permits are subject to reasonable conditions as to periodic renewal of such permit and as to operation or movement of such vehicles. The department or local authority may otherwise limit or prescribe conditions of operation of such vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surfaces, or structures or undue danger to the public safety. The department or local authority may require such undertaking or other security as may be deemed necessary to compensate for any injury to any roadway or road structure.

(4) Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer, carrier enforcement officer, or authorized agent of any authority granting such permit. Each such permit shall state the maximum weight permissible on a single axle or combination of axles and the total gross weight allowed. No person shall violate any of the terms or conditions of such special permit. In case of any violation, the permit shall be deemed automatically revoked and the penalty of the original limitations shall be applied unless:

(a) The violation consists solely of exceeding the size or weight specified by the permit, in which case only the penalty of the original size or weight limitation exceeded shall be applied; or

(b) The total gross load is within the maximum authorized by the permit, no axle is more than ten percent in excess of the maximum load for such axle or group of axles authorized by the permit, and such load can be shifted to meet

the weight limitations of wheel and axle loads authorized by such permit. Such shift may be made without penalty if it is made at the state or commercial scale designated in the permit. The vehicle may travel from its point of origin to such designated scale without penalty, and a scale ticket from such scale, showing the vehicle to be properly loaded and within the gross and axle weights authorized by the permit, shall be reasonable evidence of compliance with the terms of the permit.

(5) The department or local authority issuing a permit as provided in this section may adopt and promulgate rules and regulations with respect to the issuance of permits provided for in this section.

(6) The department shall make available applications for permits authorized pursuant to subdivisions (1)(a)(ii) and (1)(a)(iii) of this section in the office of each county treasurer. The department may make available applications for all other permits authorized by this section to the office of the county treasurer and may make available applications for all permits authorized by this section to any other location chosen by the department.

(7) The department or local authority issuing a permit may require a permit fee of not to exceed twenty-five dollars, except that:

(a) The fee for a continuous or continuing permit may not exceed twenty-five dollars for a ninety-day period, fifty dollars for a one-hundred-eighty-day period, or one hundred dollars for a one-year period; and

(b) The fee for permits issued pursuant to subdivision (1)(a)(ii) of this section shall be twenty-five dollars for a thirty-day permit and fifty dollars for a sixty-day permit. Permits issued pursuant to such subdivision shall be valid for thirty days or sixty days and shall be renewable for a total number of days not to exceed two hundred ten days per year.

A vehicle or combination of vehicles for which an application for a permit is requested pursuant to this section shall be registered under section 60-3,147 or 60-3,198 for the maximum gross vehicle weight that is permitted pursuant to section 60-6,294 before a permit shall be issued.

Source: Laws 1957, c. 156, § 4, p. 565; Laws 1961, c. 183, § 1, p. 546; Laws 1963, c. 220, § 3, p. 695; Laws 1963, c. 226, § 1, p. 708; Laws 1965, c. 214, § 1, p. 627; Laws 1967, c. 235, § 1, p. 627; Laws 1972, LB 1337, § 1; Laws 1973, LB 152, § 1; R.S.Supp.,1973, § 39-722.01; Laws 1975, LB 306, § 2; Laws 1979, LB 287, § 1; Laws 1980, LB 842, § 1; Laws 1981, LB 285, § 3; Laws 1986, LB 122, § 1; Laws 1986, LB 833, § 1; R.S.1943, (1988), § 39-6,181; Laws 1993, LB 176, § 1; Laws 1993, LB 370, § 394; Laws 1994, LB 1061, § 4; Laws 1995, LB 467, § 15; Laws 1996, LB 1306, § 2; Laws 1997, LB 122, § 1; Laws 1997, LB 261, § 1; Laws 2000, LB 1361, § 9; Laws 2001, LB 376, § 5; Laws 2003, LB 563, § 33; Laws 2005, LB 82, § 5; Laws 2005, LB 274, § 246; Laws 2010, LB820, § 2; Laws 2011, LB35, § 2.

Effective date August 27, 2011.

Cross References

Rules and regulations of Department of Roads, adoption, penalty, see sections 39-102 and 39-103.

(ee) SPECIAL RULES FOR MINIBIKES AND
OTHER OFF-ROAD VEHICLES**60-6,348 Minibikes and off-road designed vehicles; use; emergencies; parades.**

Minibikes and all off-road designed vehicles not authorized by law for use on a highway, including, but not limited to, golf carts, go-carts, riding lawnmowers, garden tractors, and snowmobiles, shall be exempt from the provisions of sections 60-678, 60-6,351 to 60-6,353, and 60-6,380 during any public emergency or while being used in parades by regularly organized units of any recognized charitable, social, educational, or community service organization.

Source: Laws 1971, LB 644, § 7; Laws 1972, LB 1196, § 6; Laws 1987, LB 80, § 12; R.S.1943, (1988), § 60-2102; Laws 1993, LB 370, § 444; Laws 2011, LB289, § 33.
Operative date January 1, 2012.

60-6,349 Minibikes and similar vehicles; sale; notice.

All minibikes and similar two-wheeled, three-wheeled, and four-wheeled miniature vehicles offered for sale in this state shall bear the following notice to the customer and user: This vehicle as manufactured or sold is for off-road use only. This section shall not apply to a low-speed vehicle, as applicable to its design, or to an electric personal assistive mobility device.

Source: Laws 1971, LB 644, § 8; Laws 1972, LB 1196, § 7; R.S.1943, (1988), § 60-2103; Laws 1993, LB 370, § 445; Laws 2002, LB 1105, § 464; Laws 2011, LB289, § 34.
Operative date January 1, 2012.

(kk) SPECIAL RULES FOR LOW-SPEED VEHICLES

60-6,380 Low-speed vehicle; restrictions on use.

A low-speed vehicle may be operated on any highway on which the speed limit is not more than thirty-five miles per hour. A low-speed vehicle may cross a highway on which the speed limit is more than thirty-five miles per hour. Nothing in this section shall prevent a county, city, or village from adopting more stringent ordinances governing low-speed vehicle operation if the governing body of the county, city, or village determines that such ordinances are necessary in the interest of public safety. Any person operating a low-speed vehicle as authorized under this section shall have a valid Class O operator's license and shall have liability insurance coverage for the low-speed vehicle. The Department of Roads may prohibit the operation of low-speed vehicles on any highway under its jurisdiction if it determines that the prohibition is necessary in the interest of public safety.

Source: Laws 2011, LB289, § 32.
Operative date January 1, 2012.

ARTICLE 14

MOTOR VEHICLE INDUSTRY LICENSING

Section

60-1401.

Act, how cited; applicability of amendments.

60-1409.

Nebraska Motor Vehicle Industry Licensing Fund; created; collections; disbursements; investment; audited.

Section

- 60-1420. Franchise; termination; noncontinuance; change community; hearing; when required.
- 60-1424. Franchise; termination; noncontinuance; change community; additional dealership of same line-make; application.
- 60-1425. Franchise; termination; noncontinuance; change community; additional dealership of same line-make; application; hearing; notice.
- 60-1427. Franchise; termination; noncontinuance; change community; additional dealership; application; hearing; burden of proof.
- 60-1429. Franchise; termination; noncontinuance; change community; additional dealership; acts not constituting good cause.
- 60-1436. Manufacturer or distributor; prohibited acts with respect to new motor vehicle dealers.
- 60-1437. Manufacturer or distributor; prohibited acts with respect to new motor vehicles.
- 60-1438. Manufacturer or distributor; warranty obligation; prohibited acts.
- 60-1438.01. Manufacturer or distributor; restrictions with respect to franchises and consumer care or service facilities.

60-1401 Act, how cited; applicability of amendments.

Sections 60-1401 to 60-1440 shall be known and may be cited as the Motor Vehicle Industry Regulation Act.

Any amendments to the act shall apply to franchises subject to the act which are entered into, amended, altered, modified, renewed, or extended after the date of the amendments to the act except as otherwise specifically provided in the act.

All amendments to the act shall apply upon the issuance or renewal of a dealer's or manufacturer's license.

Source: Laws 2010, LB816, § 12; Laws 2011, LB477, § 1.

Effective date August 27, 2011.

60-1409 Nebraska Motor Vehicle Industry Licensing Fund; created; collections; disbursements; investment; audited.

The Nebraska Motor Vehicle Industry Licensing Fund is created. All fees collected under the Motor Vehicle Industry Regulation Act shall be remitted by the board, as collected, to the State Treasurer for credit to the fund. Such fund shall be appropriated by the Legislature for the operations of the Nebraska Motor Vehicle Industry Licensing Board and shall be paid out from time to time by warrants of the Director of Administrative Services on the State Treasurer for authorized expenditures upon duly itemized vouchers executed as provided by law and approved by the chairperson of the board or the executive secretary, except that transfers from the fund to the General Fund may be made at the direction of the Legislature through June 30, 2011. The expenses of conducting the office must always be kept within the income collected and reported to the State Treasurer by such board. Such office and expense thereof shall not be supported or paid from the General Fund, and all money deposited in the Nebraska Motor Vehicle Industry Licensing Fund shall be expended only for such office and expense thereof and, unless determined by the board, it shall not be required to expend any funds to any person or any other governmental agency.

Any money in the Nebraska Motor Vehicle Industry Licensing Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

The fund shall be audited by the Auditor of Public Accounts at such time as he or she determines necessary.

Source: Laws 1957, c. 280, § 9, p. 1019; Laws 1969, c. 584, § 60, p. 2382; Laws 1972, LB 1335, § 5; Laws 1974, LB 754, § 8; Laws 1978, LB 248, § 6; Laws 1995, LB 7, § 63; Laws 2002, LB 1310, § 6; Laws 2009, First Spec. Sess., LB3, § 36; Laws 2010, LB816, § 65; Laws 2011, LB337, § 3.
Effective date April 27, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

60-1420 Franchise; termination; noncontinuance; change community; hearing; when required.

(1) Except as provided in subsection (2) or (3) of this section, no franchisor shall terminate or refuse to continue any franchise or change a franchisee's community unless the franchisor has first established, in a hearing held pursuant to section 60-1425, that:

(a) The franchisor has good cause for termination, noncontinuance, or change;

(b) Upon termination or noncontinuance, another franchise in the same line-make will become effective in the same community, without diminution of the franchisee's service formerly provided, or that the community cannot be reasonably expected to support such a dealership; and

(c) Upon termination or noncontinuance, the franchisor is willing and able to comply with section 60-1430.02.

(2) Upon providing good and sufficient evidence to the board, a franchisor may terminate a franchise without such hearing (a) for a particular line-make if the franchisor discontinues that line-make, (b) if the franchisee's license as a motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealer is revoked pursuant to the Motor Vehicle Industry Regulation Act, or (c) upon a mutual written agreement of the franchisor and franchisee.

(3) A franchisor may change a franchisee's community without a hearing if the franchisor notifies the franchisee of the proposed change at least thirty days before the change, provides the franchisee an opportunity to object, and enters into an agreement with the franchisee regarding the change of the franchisee's community. If no agreement is reached, the franchisor shall comply with sections 60-1420 to 60-1435 prior to changing the franchisee's community.

Source: Laws 1971, LB 768, § 20; Laws 1987, LB 327, § 1; Laws 1989, LB 280, § 5; Laws 2010, LB816, § 72; Laws 2011, LB477, § 2.
Effective date August 27, 2011.

60-1424 Franchise; termination; noncontinuance; change community; additional dealership of same line-make; application.

If a franchisor seeks to terminate or not continue any franchise or change a franchisee's community, or seeks to enter into a franchise establishing an additional motor vehicle, combination motor vehicle and trailer, motorcycle or trailer dealership of the same line-make, the franchisor shall file an application with the board for permission to terminate or not continue the franchise, to

change a franchisee's community, or to enter into a franchise for additional representation of the same line-make in that community, except that no application needs to be filed to change a franchisee's community if an agreement has been entered into as provided in subsection (3) of section 60-1420.

Source: Laws 1971, LB 768, § 24; Laws 2011, LB477, § 3.
Effective date August 27, 2011.

60-1425 Franchise; termination; noncontinuance; change community; additional dealership of same line-make; application; hearing; notice.

Upon receiving an application under section 60-1424, the board shall enter an order fixing a time, which shall be within ninety days of the date of such order, and place of hearing, and shall send by certified or registered mail, with return receipt requested, a copy of the order to the franchisee whose franchise the franchisor seeks to terminate, not continue, or change. If the application requests permission to change a franchisee's community or establish an additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership, a copy of the order shall be sent to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of orders shall be addressed to the franchisee at the place where the business is conducted. The board may also give notice of franchisor's application to any other parties whom the board may deem interested persons, such notice to be in the form and substance and given in the manner the board deems appropriate. Any person who can show an interest in the application may become a party to the hearing, whether or not he or she receives notice, but a party not receiving notice shall be limited to participation at the hearing on the question of the public interest in the termination or continuation of the franchise, the change in community, or the establishment of an additional motor vehicle dealership.

Source: Laws 1971, LB 768, § 25; Laws 2011, LB477, § 4.
Effective date August 27, 2011.

60-1427 Franchise; termination; noncontinuance; change community; additional dealership; application; hearing; burden of proof.

Upon hearing, the franchisor shall have the burden of proof to establish that under the Motor Vehicle Industry Regulation Act the franchisor should be granted permission to terminate or not continue the franchise, to change the franchisee's community, or to enter into a franchise establishing an additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership.

Nothing contained in the act shall be construed to require or authorize any investigation by the board of any matter before the board under the provisions of sections 60-1420 to 60-1435. Upon hearing, the board shall hear the evidence introduced by the parties and shall make its decision solely upon the record so made.

Source: Laws 1971, LB 768, § 27; Laws 1972, LB 1335, § 14; Laws 2010, LB816, § 75; Laws 2011, LB477, § 5.
Effective date August 27, 2011.

60-1429 Franchise; termination; noncontinuation; change community; additional dealership; acts not constituting good cause.

Notwithstanding the terms, provisions, or conditions of any agreement or franchise, the following shall not constitute good cause, as used in sections 60-1420 and 60-1422, for the termination or noncontinuation of a franchise, for changing the franchisee's community, or for entering into a franchise for the establishment of an additional dealership in a community for the same line-make:

- (1) The sole fact that the franchisor desires further penetration of the market;
- (2) The change of ownership of the franchisee's dealership or the change of executive management of the franchisee's dealership unless the franchisor, having the burden of proof, proves that such change of ownership or executive management will be substantially detrimental to the distribution of the franchisor's motor vehicles, combination motor vehicles and trailers, motorcycles, or trailer products or to competition in the community. Substantially detrimental may include, but is not limited to, the failure of any proposed transferee or individual to meet the current criteria generally applied by the franchisor in qualifying new motor vehicle dealers; or
- (3) The fact that the franchisee refused to purchase or accept delivery of any motor vehicle, combination motor vehicle and trailer, motorcycle, trailer, vehicle parts or accessories, or other commodity or service not ordered by the franchisee.

Source: Laws 1971, LB 768, § 29; Laws 1984, LB 825, § 32; Laws 1989, LB 280, § 6; Laws 2011, LB477, § 6.
Effective date August 27, 2011.

60-1436 Manufacturer or distributor; prohibited acts with respect to new motor vehicle dealers.

A manufacturer or distributor shall not require or coerce any new motor vehicle dealer in this state to do any of the following:

- (1) Order or accept delivery of any new motor vehicle, part or accessory, equipment, or other commodity not required by law which was not voluntarily ordered by the new motor vehicle dealer or retain any part or accessory that the dealer has not sold within twelve months if the part or accessory was not obtained through a specific order initiated by the dealer but was specified for, sold to, and shipped to the dealer pursuant to an automatic ordering system, if the part or accessory is in the condition required for return, and if the part or accessory is returned within thirty days after such twelve-month period. For purposes of this subdivision, automatic ordering system means a computerized system required by the franchisor, manufacturer, or distributor that automatically specifies parts and accessories for sale and shipment to the dealer without specific order thereof initiated by the dealer. The manufacturer, factory branch, distributor, or distributor branch shall not charge a restocking or handling fee for any part or accessory returned under this subdivision. In determining whether parts or accessories in the dealer's inventory were specified and sold under an automated ordering system, the parts and accessories in the dealer's inventory are presumed to be the most recent parts and accessories that were sold to the dealer. This section shall not be construed to prevent the manufacturer or distributor from requiring that new motor vehicle dealers carry a reasonable inventory of models offered for sale by the manufacturer or distributor;

(2) Offer or accept delivery of any new motor vehicle with special features, accessories, or equipment not included in the list price of the new motor vehicle as publicly advertised by the manufacturer or distributor;

(3) Participate monetarily in any advertising campaign or contest or purchase any promotional materials, display devices, or display decorations or materials at the expense of the new motor vehicle dealer;

(4) Join, contribute to, or affiliate with an advertising association;

(5) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer agreement shall not constitute a violation of the Motor Vehicle Industry Regulation Act;

(6) Change the capital structure of the new motor vehicle dealership or the means by or through which the dealer finances the operation of the dealership, if the dealership at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria;

(7) Refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products as long as the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements, and makes no change in the principal management of the dealer;

(8) Prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by the act or require any controversy between the new motor vehicle dealer and a manufacturer or distributor to be referred to a person other than the duly constituted courts of the state or the United States, if the referral would be binding upon the new motor vehicle dealer;

(9) Change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, if such changes or alterations would be unreasonable, including unreasonably requiring a franchisee to establish, maintain, or continue exclusive sales facilities, sales display space, personnel, service, parts, or administrative facilities for a line-make, unless such exclusivity is reasonable and otherwise justified by reasonable business considerations. In making that determination, the franchisor shall take into consideration the franchisee's compliance with facility requirements as required by the franchise agreement. The franchisor shall have the burden of proving that business considerations justify exclusivity;

(10) Release, convey, or otherwise provide customer information if to do so is unlawful or if the customer objects in writing to doing so, unless the information is necessary for the manufacturer, factory branch, or distributor to meet its obligations to consumers or the new motor vehicle dealer including vehicle recalls or other requirements imposed by state or federal law;

(11) Release to any unaffiliated third party any customer information which has been provided by the new motor vehicle dealer to the manufacturer except as provided in subdivision (10) of this section. A manufacturer, importer, or distributor may not share, sell, or transfer customer information, obtained from a dealer and not otherwise publicly available, to other dealers franchised by the

manufacturer while the originating dealer is still a franchised dealer of the manufacturer unless otherwise agreed to by the originating dealer. A manufacturer, importer, or distributor may not use any nonpublic personal information, as that term is used in 16 C.F.R. part 313, which is obtained from a dealer unless such use falls within one or more of the exceptions to opt out requirements under 16 C.F.R. 313.14 or 313.15;

(12) Establish in connection with the sale of a motor vehicle prices at which the dealer must sell products or services not manufactured or distributed by the manufacturer or distributor, whether by agreement, program, incentive provision, or otherwise;

(13) Underutilize the dealer's facilities by requiring or coercing a dealer to exclude or remove from the dealer's facilities operations for selling or servicing a line-make of motor vehicles for which the dealer has a franchise agreement to utilize the facilities, except that this subdivision does not prohibit a manufacturer from requiring an exclusive sales area within the facilities that are in compliance with reasonable requirements for the facilities if the dealer complies with subdivision (9) of this section; or

(14)(a) Enter into any agreement with a manufacturer, factory branch, distributor, distributor branch, or one of its affiliates which gives site control of the premises of the dealer that does not terminate upon the occurrence of any of the following events:

(i) The right of the franchisor to manufacture or distribute the line-make of vehicles covered by the dealer's franchise is sold, assigned, or otherwise transferred by the manufacturer, factory branch, distributor, or distributor branch to another; or

(ii) The final termination of the dealer's franchise for any reason unless an agreement for site control is voluntarily negotiated separately and apart from the franchise agreement and consideration has been offered by the manufacturer and accepted by the dealer. If a dealer voluntarily terminates and has entered into a separately negotiated site control agreement, the agreement may survive the termination if the agreement clearly states that fact.

(b) For purposes of this subdivision, site control means the contractual right to control in any way the commercial use and development of the premises upon which a dealer's business operations are located, including the right to approve of additional or different uses for the property beyond those of its franchise, the right to lease or sublease the dealer's property, or the right or option to purchase the dealer's property.

Any action prohibited for a manufacturer or distributor under the Motor Vehicle Industry Regulation Act is also prohibited for a subsidiary which is wholly owned or controlled by contract by a manufacturer or distributor or in which a manufacturer or distributor has more than a ten percent ownership interest, including a financing division.

Source: Laws 1984, LB 825, § 19; Laws 1999, LB 632, § 7; Laws 2010, LB816, § 81; Laws 2011, LB477, § 7.
Effective date August 27, 2011.

60-1437 Manufacturer or distributor; prohibited acts with respect to new motor vehicles.

In addition to the restrictions imposed by section 60-1436, a manufacturer or distributor shall not:

(1) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within a reasonable time and in reasonable quantities relative to the new motor vehicle dealer's market area and facilities, unless the failure is caused by acts or occurrences beyond the control of the manufacturer or distributor or unless the failure results from an order by the new motor vehicle dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor;

(2) Refuse to disclose to a new motor vehicle dealer the method and manner of distribution of new motor vehicles by the manufacturer or distributor or, if a line-make is allocated among new motor vehicle dealers, refuse to disclose to any new motor vehicle dealer that handles the same line-make the system of allocation, including, but not limited to, a complete breakdown by model, and a concise listing of dealerships with an explanation of the derivation of the allocation system, including its mathematical formula in a clear and comprehensible form;

(3) Refuse to disclose to a new motor vehicle dealer the total number of new motor vehicles of a given model which the manufacturer or distributor has sold during the current model year within the dealer's marketing district, zone, or region, whichever geographical area is the smallest;

(4) Increase the price of any new motor vehicle which the new motor vehicle dealer had ordered and delivered to the same retail consumer for whom the vehicle was ordered, if the order was made prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer shall constitute evidence of such order. In the event of manufacturer or distributor price reduction or cash rebate, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Any price reduction in excess of five dollars shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. A price difference applicable to a new model or series of motor vehicles at the time of the introduction of the new model or series shall not be considered a price increase or price decrease. This subdivision shall not apply to price changes caused by the following:

(a) The addition to a motor vehicle of required or optional equipment pursuant to state or federal law;

(b) In the case of foreign-made vehicles or components, revaluation of the United States dollar; or

(c) Any increase in transportation charges due to an increase in rates charged by a common carrier or other transporter;

(5) Fail or refuse to sell or offer to sell to all franchised new motor vehicle dealers in a line-make every new motor vehicle sold or offered for sale to any franchised new motor vehicle dealer of the same line-make. However, the failure to deliver any such new motor vehicle shall not be considered a violation of this section if the failure is due to a lack of manufacturing capacity or to a strike or labor difficulty, a shortage of materials, a freight embargo, or any other cause over which the franchisor has no control. A manufacturer or distributor shall not require that any of its new motor vehicle dealers located in this state pay any extra fee, purchase unreasonable or unnecessary quantities of advertising displays or other materials, or remodel, renovate, or recondition the

new motor vehicle dealer's existing facilities in order to receive any particular model or series of vehicles manufactured or distributed by the manufacturer for which the dealers have a valid franchise. Notwithstanding the provisions of this subdivision, nothing contained in this section shall be deemed to prohibit or prevent a manufacturer from requiring that its franchised dealers located in this state purchase special tools or equipment, stock reasonable quantities of certain parts, or participate in training programs which are reasonably necessary for those dealers to sell or service any model or series of new motor vehicles. This subdivision shall not apply to manufacturers of recreational vehicles;

(6) Fail to offer dealers of a specific line-make a new franchise agreement containing substantially similar terms and conditions for sales of the line-make if the ownership of the manufacturer or distributor changes or there is a change in the plan or system of distribution;

(7) Take an adverse action against a dealer because the dealer sells or leases a motor vehicle that is later exported to a location outside the United States. A franchise provision that allows a manufacturer or distributor to take adverse action against a dealer because the dealer sells or leases a motor vehicle that is later exported to a location outside the United States is enforceable only if, at the time of the original sale or lease, the dealer knew or reasonably should have known that the motor vehicle would be exported to a location outside the United States. A dealer is presumed to have no knowledge that a motor vehicle the dealer sells or leases will be exported to a location outside the United States if, under the laws of a state of the United States (a) the motor vehicle is titled, (b) the motor vehicle is registered, and (c) applicable state and local taxes are paid for the motor vehicle. Such presumption may be rebutted by direct, clear, and convincing evidence that the dealer knew or reasonably should have known at the time of the original sale or lease that the motor vehicle would be exported to a location outside the United States. Except as otherwise permitted by subdivision (7) of this section, a franchise provision that allows a manufacturer or distributor to take adverse action against a dealer because the dealer sells or leases a motor vehicle that is later exported to a location outside the United States is void and unenforceable;

(8) Discriminate against a dealer holding a franchise for a line-make of the manufacturer or distributor in favor of other dealers of the same line-make in this state by:

(a) Selling or offering to sell a new motor vehicle to a dealer at a lower actual price, including the price for vehicle transportation, than the actual price at which the same model similarly equipped is offered to or is available to another dealer in this state during a similar time period; or

(b) Using a promotional program or device or an incentive, payment, or other benefit, whether paid at the time of the sale of the new motor vehicle to the dealer or later, that results in the sale or offer to sell a new motor vehicle to a dealer at a lower price, including the price for vehicle transportation, than the price at which the same model similarly equipped is offered or is available to another dealer in this state during a similar time period. This subdivision shall not prohibit a promotional or incentive program that is functionally available to competing dealers of the same line-make in this state on substantially comparable terms;

(9) Make any express or implied statement or representation directly or indirectly that the dealer is under any obligation whatsoever to offer to sell or sell any extended service contract, extended maintenance plan, gap policy, gap waiver, or other aftermarket product or service offered, sold, backed by, or sponsored by the manufacturer or distributor or to sell, assign, or transfer any of the dealer's retail sales contracts or leases in this state on motor vehicles manufactured or sold by the manufacturer or distributor to a finance company or class of finance companies, leasing company or class of leasing companies, or other specified person, because of any relationship or affiliation between the manufacturer or distributor and the finance company or companies, leasing company or leasing companies, or the specified person or persons; or

(10) Prohibit a franchisee from acquiring a line-make of new motor vehicles solely because the franchisee owns or operates a franchise of the same line-make in a contiguous market.

Any such statements, threats, promises, acts, contracts, or offers of contracts, when their effect may be to lessen or eliminate competition or tend to create a monopoly, are declared unfair trade practices and unfair methods of competition and are prohibited.

Source: Laws 1984, LB 825, § 20; Laws 1999, LB 632, § 8; Laws 2010, LB816, § 82; Laws 2011, LB477, § 8.
Effective date August 27, 2011.

60-1438 Manufacturer or distributor; warranty obligation; prohibited acts.

(1) Each new motor vehicle manufacturer or distributor shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer's obligations for preparation, delivery, and warranty service on its products. The manufacturer or distributor shall compensate the new motor vehicle dealer for warranty service which such manufacturer or distributor requires the dealer to provide, including warranty and recall obligations related to repairing and servicing motor vehicles and all parts and components included in or manufactured for installation in the motor vehicles of the manufacturer or distributor. The manufacturer or distributor shall provide the new motor vehicle dealer with the schedule of compensation to be paid to the dealer for parts, work, and service and the time allowance for the performance of the work and service.

(2)(a) The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service, parts, and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factors to be given consideration shall be the prevailing wage rates being paid by dealers in the community in which the dealer is doing business, and in no event shall the compensation of the dealer for warranty parts and labor be less than the rates charged by the dealer for like parts and service to retail or fleet customers, as long as such rates are reasonable. In determining prevailing wage rates, the rate of compensation for labor for that portion of repair orders for routine maintenance, such as oil and fluid changes, shall not be used.

(b) For purposes of this section, compensation for parts may be determined by calculating the price paid by the dealer for parts, including all shipping and other charges, multiplied by the sum of one and the dealer's average percentage

markup over the price paid by the dealer for parts purchased by the dealer from the manufacturer and sold at retail. The dealer may establish average percentage markup by submitting to the manufacturer one hundred sequential customer-paid service repair orders or ninety days of customer-paid service repair orders, whichever is less, covering repairs made no more than one hundred eighty days before the submission and declaring what the average percentage markup is. Within thirty days after receipt of the repair orders, the manufacturer may audit the submitted repair orders and approve or deny approval of the average percentage markup based on the audit. The average percentage markup shall go into effect forty-five days after the approval based on that audit. If the manufacturer denies approval of the average percentage markup declared by the dealer, the dealer may file a complaint with the board. The manufacturer shall have the burden to establish that the denial was reasonable. If the board determines that the denial was not reasonable, the denial shall be deemed a violation of the Motor Vehicle Industry Regulation Act subject to the enforcement procedures of the act. Only retail sales not involving warranty repairs or parts supplied for routine vehicle maintenance shall be considered in calculating average percentage markup. No manufacturer shall require a dealer to establish average percentage markup by a methodology, or by requiring information, that is unduly burdensome or time consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations. A dealer shall not request a change in the average percentage markup more than twice in one calendar year.

(3) A manufacturer or distributor shall not do any of the following:

- (a) Fail to perform any warranty obligation;
- (b) Fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of the defects; or
- (c) Fail to compensate any of the new motor vehicle dealers licensed in this state for repairs effected by the recall.

(4) A dealer's claim for warranty compensation may be denied only if:

- (a) The dealer's claim is based on a nonwarranty repair;
- (b) The dealer lacks documentation for the claim;
- (c) The dealer fails to comply with specific substantive terms and conditions of the franchisor's warranty compensation program; or
- (d) The manufacturer has a bona fide belief based on competent evidence that the dealer's claim is intentionally false, fraudulent, or misrepresented.

(5) All claims made by a new motor vehicle dealer pursuant to this section for labor and parts shall be made within six months after completing the work and shall be paid within thirty days after their approval. All claims shall be either approved or disapproved by the manufacturer or distributor within thirty days after their receipt on a proper form generally used by the manufacturer or distributor and containing the usually required information therein. Any claim not specifically disapproved in writing within thirty days after the receipt of the form shall be considered to be approved and payment shall be made within thirty days. The manufacturer has the right to audit the claims for one year after payment, except that if the manufacturer has reasonable cause to believe that a claim submitted by a dealer is intentionally false or fraudulent, the manufacturer has the right to audit the claims for four years after payment. For

purposes of this subsection, reasonable cause means a bona fide belief based upon evidence that the issues of fact are such that a person of ordinary caution, prudence, and judgment could believe that a claim was intentionally false or fraudulent. As a result of an audit authorized under this subsection, the manufacturer has the right to charge back to the new motor vehicle dealer the amount of any previously paid claim after the new motor vehicle dealer has had notice and an opportunity to participate in all franchisor internal appeal processes as well as all available legal processes. The requirement to approve and pay the claim within thirty days after receipt of the claim does not preclude chargebacks for any fraudulent claim previously paid. A manufacturer may not deny a claim based solely on a dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error that does not put into question the legitimacy of the claim. If a claim is rejected for a clerical error, the dealer may resubmit a corrected claim in a timely manner.

(6) The warranty obligations set forth in this section shall also apply to any manufacturer of a new motor vehicle transmission, engine, or rear axle that separately warrants its components to customers.

(7) This section does not apply to recreational vehicles.

Source: Laws 1984, LB 825, § 21; Laws 1991, LB 393, § 1; Laws 2003, LB 371, § 1; Laws 2010, LB816, § 83; Laws 2011, LB477, § 9. Effective date August 27, 2011.

60-1438.01 Manufacturer or distributor; restrictions with respect to franchises and consumer care or service facilities.

(1) For purposes of this section, manufacturer or distributor includes (a) a factory representative or a distributor representative or (b) a person who is affiliated with a manufacturer or distributor or who, directly or indirectly through an intermediary, is controlled by, or is under common control with, the manufacturer or distributor. A person is controlled by a manufacturer or distributor if the manufacturer or distributor has the authority directly or indirectly, by law or by agreement of the parties, to direct or influence the management and policies of the person. A franchise agreement with a Nebraska-licensed dealer which conforms to and is subject to the Motor Vehicle Industry Regulation Act is not control for purposes of this section.

(2) Except as provided in this section, a manufacturer or distributor shall not directly or indirectly:

(a) Own an interest in a franchise, franchisee, or consumer care or service facility, except that a manufacturer or distributor may hold stock in a publicly held franchise, franchisee, or consumer care or service facility so long as the manufacturer or distributor does not by virtue of holding such stock operate or control the franchise, franchisee, or consumer care or service facility;

(b) Operate or control a franchise, franchisee, or consumer care or service facility; or

(c) Act in the capacity of a franchisee or motor vehicle dealer.

(3) A manufacturer or distributor may own an interest in a franchisee or otherwise control a franchise for a period not to exceed twelve months after the date the manufacturer or distributor acquires the franchise if:

(a) The person from whom the manufacturer or distributor acquired the franchise was a franchisee; and

(b) The franchise is for sale by the manufacturer or distributor.

(4) For purposes of broadening the diversity of its franchisees and enhancing opportunities for qualified persons who lack the resources to purchase a franchise outright, but for no other purpose, a manufacturer or distributor may temporarily own an interest in a franchise if the manufacturer's or distributor's participation in the franchise is in a bona fide relationship with a franchisee and the franchisee:

(a) Has made a significant investment in the franchise, which investment is subject to loss;

(b) Has an ownership interest in the franchise; and

(c) Operates the franchise under a plan to acquire full ownership of the franchise within a reasonable time and under reasonable terms and conditions.

(5) On a showing of good cause by a manufacturer or distributor, the board may extend the time limit set forth in subsection (3) of this section. An extension may not exceed twelve months. An application for an extension after the first extension is granted is subject to protest by a franchisee of the same line-make whose franchise is located in the same community as the franchise owned or controlled by the manufacturer or distributor.

(6) The prohibition in subdivision (2)(b) of this section shall not apply to any manufacturer of manufactured housing, recreational vehicles, or trailers.

Source: Laws 2000, LB 1018, § 3; Laws 2010, LB816, § 84; Laws 2011, LB477, § 10.

Effective date August 27, 2011.

ARTICLE 21

MINIBIKES OR MOTORCYCLES

(b) MOTORCYCLE SAFETY EDUCATION

Section	
60-2120.	Act, how cited.
60-2121.	Terms, defined.
60-2125.	Motorcycle safety courses; requirements.
60-2126.	Motorcycle safety course; approval by director; application; contents; certified motorcycle safety instructor required; fee; course audits.
60-2127.	Motorcycle safety instructors; certificate; requirements; renewal; person certified by another state; how treated.
60-2128.	Motorcycle safety instructor preparation course; department; duties.
60-2129.	Motorcycle trainers; requirements; certificates; person certified by another state; how treated.
60-2130.	Motorcycle safety instructor or motorcycle trainer; certificate; term; renewal.
60-2131.	Certification of motorcycle safety course, motorcycle safety instructor's certificate, or motorcycle trainer's certificate; denial, suspension, or revocation; procedure.
60-2132.	Repealed. Laws 2011, LB 170, § 17.
60-2132.01.	Motorcycle Safety Education Fund; transfers.
60-2133.	Repealed. Laws 2011, LB 170, § 17.
60-2134.	Repealed. Laws 2011, LB 170, § 17.
60-2135.	Repealed. Laws 2011, LB 170, § 17.
60-2136.	Repealed. Laws 2011, LB 170, § 17.
60-2137.	Repealed. Laws 2011, LB 170, § 17.
60-2138.	Repealed. Laws 2011, LB 170, § 17.
60-2139.	Rules and regulations.

(b) MOTORCYCLE SAFETY EDUCATION

60-2120 Act, how cited.

Sections 60-2120 to 60-2139 shall be known and may be cited as the Motorcycle Safety Education Act.

Source: Laws 1986, LB 1004, § 2; Laws 1989, LB 25, § 2; Laws 2011, LB170, § 4.

Operative date January 1, 2012.

60-2121 Terms, defined.

For purposes of the Motorcycle Safety Education Act, unless the context otherwise requires:

- (1) Department means the Department of Motor Vehicles;
- (2) Director means the Director of Motor Vehicles;
- (3) Driving course means a driving pattern used to aid students in learning the skills needed to safely operate a motorcycle as part of a motorcycle safety course;
- (4) Motorcycle safety course means a curriculum of study which has been approved by the department designed to teach drivers the skills and knowledge to safely operate a motorcycle;
- (5) Motorcycle safety instructor means any person who has successfully passed a motorcycle safety instructor's course curriculum and is certified by the department to teach a motorcycle safety course; and
- (6) Motorcycle trainer means a person who is qualified and certified by the department to teach another person to become a certified motorcycle safety instructor in this state.

Source: Laws 1981, LB 22, § 1; Laws 1984, LB 1089, § 3; R.S.1943, (1984), § 60-2109; Laws 1986, LB 1004, § 3; Laws 2002, LB 93, § 5; Laws 2011, LB170, § 5.

Operative date January 1, 2012.

60-2125 Motorcycle safety courses; requirements.

(1) The department may adopt and promulgate rules and regulations establishing minimum requirements for both basic and advanced motorcycle safety courses. The courses shall be designed to develop, instill, and improve the knowledge and skills necessary for safe operation of a motorcycle.

(2) The motorcycle safety courses shall be designed to teach either a novice motorcycle rider knowledge and basic riding skills or to refresh the knowledge and riding skills of motorcycle riders necessary for the safe and legal operation of a motorcycle on the highways of this state. Every motorcycle safety course shall be conducted at a site with room for a driving course designed to allow motorcycle riders to practice the knowledge and skills necessary for safe motorcycle operation.

Source: Laws 1981, LB 22, § 2; R.S.1943, (1984), § 60-2110; Laws 1986, LB 1004, § 7; Laws 2011, LB170, § 6.

Operative date January 1, 2012.

60-2126 Motorcycle safety course; approval by director; application; contents; certified motorcycle safety instructor required; fee; course audits.

(1) A school, business, or organization may apply to the department to provide a motorcycle safety course or courses in this state. Prospective providers of such course or courses shall submit an application for approval of such course or courses to the director. The application shall include a list of instructors of the course or courses. Such instructors shall be or shall become motorcycle safety instructors certified by the department prior to teaching any motorcycle safety course in this state. Applications for certification of motorcycle safety instructors may be included along with an application for approval of a motorcycle safety course or courses. The director shall approve such course if it meets the requirements set forth by the department by rule and regulation and will be taught by a certified motorcycle safety instructor or instructors.

(2) The application for certification or renewal of a certification of each motorcycle safety course shall be accompanied by a fee of one hundred dollars. The fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Motorcycle safety course certification shall expire two years from the date of the director's certification.

(3) Motorcycle safety courses shall be subject to audits by the department to assure compliance with the Motorcycle Safety Education Act and rules and regulations of the department.

Source: Laws 1981, LB 22, § 3; R.S.1943, (1984), § 60-2111; Laws 1986, LB 1004, § 8; Laws 2011, LB170, § 7.
Operative date January 1, 2012.

60-2127 Motorcycle safety instructors; certificate; requirements; renewal; person certified by another state; how treated.

(1) The director may adopt and promulgate rules and regulations establishing minimum standards, skills' qualifications, and education requirements for motorcycle safety instructors. The director shall issue or renew a certificate in the manner and form prescribed by the director to motorcycle safety instructor applicants who meet such requirements. A motorcycle safety instructor certificate shall expire two years after the date of issuance. To renew a certificate, a person shall submit an application demonstrating compliance with rules and regulations of the department.

(2) If the certification requirements are comparable to the requirements in this state, a person currently certified as a motorcycle safety instructor by another state or recognized accrediting organization may be issued a motorcycle safety instructor's certificate by the department without having to take the course established in section 60-2128.

(3) A person who holds a valid, unexpired permit issued by the department to be a motorcycle safety instructor before January 1, 2012, shall be recognized as a certified motorcycle safety instructor until January 1, 2014, or until the expiration date of such permit, whichever is earlier. At that time the permit holder may apply for and become a certified motorcycle safety instructor to teach a motorcycle safety class in this state as provided in rules and regulations of the department.

Source: Laws 1981, LB 22, § 4; R.S.1943, (1984), § 60-2112; Laws 1986, LB 1004, § 9; Laws 2011, LB170, § 8.
Operative date January 1, 2012.

60-2128 Motorcycle safety instructor preparation course; department; duties.

The department may adopt and promulgate rules and regulations developing a motorcycle safety instructor preparation course which shall be taught by motorcycle trainers. Such course shall insure that the motorcycle safety instructor who successfully passes the course is familiar with the material included in the particular motorcycle safety course which such motorcycle safety instructor will be teaching.

Source: Laws 1981, LB 22, § 5; Laws 1984, LB 1089, § 4; R.S.1943, (1984), § 60-2113; Laws 1986, LB 1004, § 10; Laws 2011, LB170, § 9.

Operative date January 1, 2012.

60-2129 Motorcycle trainers; requirements; certificates; person certified by another state; how treated.

(1) The director may adopt and promulgate rules and regulations establishing minimum education requirements for motorcycle trainers. The director shall issue certificates in the manner and form prescribed by the director to no more than two motorcycle trainers who meet the minimum education, skill, and experience requirements. The department may reimburse documented expenses incurred by a person in connection with taking and successfully passing an educational course to become a motorcycle trainer, as provided in sections 81-1174 to 81-1177, when there are less than two motorcycle trainers working in this state. In return for the reimbursement of such documented expenses, motorcycle trainers shall teach the motorcycle safety instructor preparation course as assigned by the director.

(2) If the certification requirements are comparable to the requirements in this state, a person currently certified as a motorcycle trainer by another state or recognized accrediting organization may be issued a motorcycle trainer's certificate by the department without having to receive the training required by this section.

(3) A person who holds a valid, unexpired permit issued by the department to be a chief instructor for motorcycle safety before January 1, 2012, shall be recognized as a motorcycle trainer until January 1, 2014, or until the expiration date of such permit, whichever is earlier. At that time the permit holder may apply for and be recertified as a motorcycle trainer to teach a motorcycle safety instructor preparation class in this state as provided in rules and regulations of the department.

Source: Laws 1986, LB 1004, § 11; Laws 2011, LB170, § 10.

Operative date January 1, 2012.

60-2130 Motorcycle safety instructor or motorcycle trainer; certificate; term; renewal.

All certificates issued under sections 60-2127 and 60-2129 shall be valid for two years and may be renewed upon application to the director as provided in rules and regulations of the department.

Source: Laws 1981, LB 22, § 6; R.S.1943, (1984), § 60-2114; Laws 1986, LB 1004, § 12; Laws 1997, LB 752, § 148; Laws 2011, LB170, § 11.

Operative date January 1, 2012.

60-2131 Certification of motorcycle safety course, motorcycle safety instructor's certificate, or motorcycle trainer's certificate; denial, suspension, or revocation; procedure.

(1) The director may cancel, suspend, revoke, or refuse to issue or renew certification of a motorcycle safety course, a motorcycle safety instructor's certificate, or a motorcycle trainer's certificate in any case when the director finds the certificate holder or applicant has not complied with or has violated the Motorcycle Safety Education Act or any rule or regulation adopted and promulgated by the director.

(2) No person or provider whose certificate has been canceled, suspended, revoked, or refused shall be certified until the person or provider meets the requirements of rules and regulations of the department and shows that the event or occurrence that caused the director to take action has been corrected and will not affect future performance. Persons or providers who are suspended may be summarily reinstated upon the director's acceptance of a demonstration of compliance and satisfactory correction of any noncompliance. All other persons or providers shall reapply for certification. A person or provider may contest action taken by the director to cancel, suspend, revoke, or refuse to issue or renew a certificate by filing a written petition with the department within thirty days after the date of the director's action.

Source: Laws 1981, LB 22, § 7; R.S.1943, (1984), § 60-2115; Laws 1986, LB 1004, § 13; Laws 1989, LB 285, § 136; Laws 1999, LB 704, § 48; Laws 2011, LB170, § 12.
Operative date January 1, 2012.

60-2132 Repealed. Laws 2011, LB 170, § 17.

Operative date January 1, 2012.

60-2132.01 Motorcycle Safety Education Fund; transfers.

Within sixty days after January 1, 2012, twenty-five percent of the money remaining in the Motorcycle Safety Education Fund shall be transferred to the Department of Motor Vehicles Cash Fund and seventy-five percent of the money remaining in the Motorcycle Safety Education Fund shall be transferred to the Highway Trust Fund. The Motorcycle Safety Education Fund shall be eliminated on such date after the transfers are made.

Source: Laws 2011, LB170, § 13.
Operative date January 1, 2012.

60-2133 Repealed. Laws 2011, LB 170, § 17.

Operative date January 1, 2012.

60-2134 Repealed. Laws 2011, LB 170, § 17.

Operative date January 1, 2012.

60-2135 Repealed. Laws 2011, LB 170, § 17.

Operative date January 1, 2012.

60-2136 Repealed. Laws 2011, LB 170, § 17.

Operative date January 1, 2012.

60-2137 Repealed. Laws 2011, LB 170, § 17.

Operative date January 1, 2012.

60-2138 Repealed. Laws 2011, LB 170, § 17.

Operative date January 1, 2012.

60-2139 Rules and regulations.

The director may adopt and promulgate such rules and regulations for the administration and enforcement of the Motorcycle Safety Education Act as are necessary. In adopting such rules and regulations, the director shall comply with the Administrative Procedure Act.

Source: Laws 1981, LB 22, § 14; R.S.1943, (1984), § 60-2119; Laws 1986, LB 1004, § 21; Laws 2011, LB170, § 14.

Operative date January 1, 2012.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 29

UNIFORM MOTOR VEHICLE RECORDS DISCLOSURE ACT

Section

60-2909.01. Disclosure; purposes authorized.

60-2909.01 Disclosure; purposes authorized.

The department and any officer, employee, agent, or contractor of the department having custody of a motor vehicle record shall, upon the verification of identity and purpose of a requester, disclose and make available the requested motor vehicle record, including the sensitive personal information in the record, other than the social security number, for the following purposes:

(1) For use by any federal, state, or local governmental agency, including any court or law enforcement agency, in carrying out the agency's functions or by a private person or entity acting on behalf of a governmental agency in carrying out the agency's functions;

(2) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any federal, state, or local court or governmental agency or before any self-regulatory body, including service of process, investigation in anticipation of litigation, and execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court, an administrative agency, or a self-regulatory body;

(3) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, anti-fraud activities, rating, or underwriting;

(4) For use by an employer or the employer's agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is

required under the Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31301 et seq., or pursuant to sections 60-4,132 and 60-4,141; and

(5) For use by employers of commercial driver's license holders and by the Commercial Driver License Information System as provided in section 60-4,144.02 and 49 C.F.R. 383.73.

Source: Laws 2000, LB 1317, § 14; Laws 2011, LB178, § 20.
Effective date August 27, 2011.